



# Safeguarding Vulnerable Groups Act 2006

## 2006 CHAPTER 47

An Act to make provision in connection with the protection of children and vulnerable adults. [8th November 2006]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *Barring*

#### **1 Independent Barring Board**

- (1) There shall be a body corporate to be known as the Independent Barring Board ("IBB").
- (2) Schedule 1 makes provision relating to IBB.
- (3) Schedule 2 (transfers to IBB) has effect.

#### **2 Barred lists**

- (1) IBB must establish and maintain—
  - (a) the children's barred list;
  - (b) the adults' barred list.
- (2) Part 1 of Schedule 3 applies for the purpose of determining whether an individual is included in the children's barred list.
- (3) Part 2 of that Schedule applies for the purpose of determining whether an individual is included in the adults' barred list.
- (4) Part 3 of that Schedule contains supplementary provision.

- (5) In respect of an individual who is included in a barred list, IBB must keep other information of such description as is prescribed.

### **3 Barred persons**

- (1) A reference to a person being barred from regulated activity must be construed in accordance with this section.
- (2) A person is barred from regulated activity relating to children if he is—
- (a) included in the children's barred list;
  - (b) included in a list maintained under the law of Scotland or Northern Ireland which the Secretary of State specifies by order as corresponding to the children's barred list.
- (3) A person is barred from regulated activity relating to vulnerable adults if he is—
- (a) included in the adults' barred list;
  - (b) included in a list maintained under the law of Scotland or Northern Ireland which the Secretary of State specifies by order as corresponding to the adults' barred list.

### **4 Appeals**

- (1) An individual who is included in a barred list may appeal to the Tribunal against—
- (a) a decision under paragraph 2 or 8 of Schedule 3 not to remove him from the list;
  - (b) a decision under paragraph 3, 5, 9 or 11 of that Schedule to include him in the list;
  - (c) a decision under paragraph 17 or 18 of that Schedule not to remove him from the list.
- (2) An appeal under subsection (1) may be made only on the grounds that IBB has made a mistake—
- (a) on any point of law;
  - (b) in any finding of fact which it has made and on which the decision mentioned in that subsection was based.
- (3) For the purposes of subsection (2), the decision whether or not it is appropriate for an individual to be included in a barred list is not a question of law or fact.
- (4) An appeal under subsection (1) may be made only with the permission of the Tribunal.
- (5) Unless the Tribunal finds that IBB has made a mistake of law or fact, it must confirm the decision of IBB.
- (6) If the Tribunal finds that IBB has made such a mistake it must—
- (a) direct IBB to remove the person from the list, or
  - (b) remit the matter to IBB for a new decision.
- (7) If the Tribunal remits a matter to IBB under subsection (6)(b)—
- (a) the Tribunal may set out any findings of fact which it has made (on which IBB must base its new decision); and

- (b) the person must be removed from the list until IBB makes its new decision, unless the Tribunal directs otherwise.
- (8) The Secretary of State may by regulations make provision as to the procedure of the Tribunal (including provision as to the award of costs by the Tribunal).
- (9) A person may appeal on a point of law to the Court of Appeal against a decision of the Tribunal.
- (10) An appeal under subsection (9) may be made only with the permission of the Court of Appeal.
- (11) In this section “the Tribunal” means the Tribunal established under section 9 of the Protection of Children Act 1999 (c. 14).

#### *Regulated activity*

### **5 Regulated activity**

- (1) A reference to regulated activity relating to children must be construed in accordance with Part 1 of Schedule 4.
- (2) A reference to regulated activity relating to vulnerable adults must be construed in accordance with Part 2 of that Schedule.
- (3) The Secretary of State may by order amend that Schedule, or any of the modifications of that Schedule in the provisions mentioned in subsection (4), so as to vary the meaning of—
  - (a) regulated activity relating to children;
  - (b) regulated activity relating to vulnerable adults.
- (4) The provisions are—
  - section 7(5);
  - section 9(5);
  - section 10(3);
  - section 19(8);
  - paragraph 4 of Schedule 6.

#### *Regulated activity providers*

### **6 Regulated activity providers**

- (1) A reference to a regulated activity provider must be construed in accordance with this section.
- (2) A person (P) is a regulated activity provider if—
  - (a) he is responsible for the management or control of regulated activity,
  - (b) if the regulated activity is carried out for the purposes of an organisation, his exercise of that responsibility is not subject to supervision or direction by any other person for those purposes, and

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*Status: This is the original version (as it was originally enacted).*

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- (c) he makes, or authorises the making of, arrangements (whether in connection with a contract of service or for services or otherwise) for another person to engage in that activity.
- (3) A person (P) is also a regulated activity provider if section 53(4) (fostering) so provides.
  - (4) A person (P) is also a regulated activity provider if he carries on a scheme—
    - (a) under which an individual agrees with P to provide care or support (which may include accommodation) to an adult who is in need of it, and
    - (b) in respect of which a requirement to register arises under section 11 of the Care Standards Act 2000 (c. 14).
  - (5) P is not a regulated activity provider if he is an individual and the arrangements he makes are private arrangements.
  - (6) Arrangements are private arrangements if the regulated activity is for, or for the benefit of, P himself.
  - (7) Arrangements are private arrangements if the regulated activity is for, or for the benefit of, a child or vulnerable adult who is—
    - (a) a member of P’s family;
    - (b) a friend of P.
  - (8) A person does not make arrangements for another to engage in a regulated activity merely because he (alone or together with others) appoints that person—
    - (a) to a position mentioned in paragraph 4(1)(a), (b), (g), (h), (i), (j) or (m) or 8(1)(a), (d) or (e) of Schedule 4,
    - (b) as a deputy under section 16(2)(b) of the Mental Capacity Act 2005 (c. 9);
    - (c) as member or chief executive of IBB;
    - (d) to any position mentioned in paragraph (a), (b) or (f) of section 59(10) or to exercise any function mentioned in that paragraph.
  - (9) For the purposes of subsection (7) it is immaterial whether P is also acting in any capacity other than as a family member or friend.
  - (10) If a regulated activity provider is an unincorporated association any requirement of or liability (including criminal liability) under this Act must be taken to be a requirement on or liability of—
    - (a) the person responsible for the management and control of the association, or
    - (b) if there is more than one such person, all of them jointly and severally.
  - (11) “Family” and “friend” must be construed in accordance with section 58.
  - (12) The Secretary of State may by order provide that in specified circumstances a person who makes, or authorises the making of, arrangements (of any description) for another to engage in regulated activity either is or is not a regulated activity provider.

*Restrictions on participating in regulated activity*

**7 Barred person not to engage in regulated activity**

- (1) An individual commits an offence if he—

- (a) seeks to engage in regulated activity from which he is barred;
  - (b) offers to engage in regulated activity from which he is barred;
  - (c) engages in regulated activity from which he is barred.
- (2) A person guilty of an offence under subsection (1) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or to a fine, or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.
- (3) It is a defence for a person charged with an offence under subsection (1) to prove that he did not know, and could not reasonably be expected to know, that he was barred from that activity.
- (4) It is a defence for a person charged with an offence under subsection (1) to prove—
- (a) that he reasonably thought that it was necessary for him to engage in the activity for the purpose of preventing harm to a child or vulnerable adult (as the case may be),
  - (b) that he reasonably thought that there was no other person who could engage in the activity for that purpose, and
  - (c) that he engaged in the activity for no longer than was necessary for that purpose.
- (5) For the purposes of this section, Schedule 4 is modified as follows—
- (a) in paragraph 1, sub-paragraphs (1)(b) and (2)(a) must be disregarded;
  - (b) in paragraph 7(1), the words “if it is carried out frequently by the same person or the period condition is satisfied” must be disregarded;
  - (c) in paragraph 7(4), paragraph (a) must be disregarded.
- (6) In relation to an offence committed before the commencement of section 282(3) of the Criminal Justice Act 2003 (c. 44), the reference in subsection (2)(b) to 12 months must be taken to be a reference to six months.

## **8 Person not to engage in regulated activity unless subject to monitoring**

- (1) An individual commits an offence if—
- (a) he engages in regulated activity with the permission of a regulated activity provider, and
  - (b) he is not subject to monitoring in relation to that activity.
- (2) An individual commits an offence if—
- (a) he engages in an activity which is a regulated activity by virtue of paragraph 1(3) or (6) of Schedule 4, and
  - (b) he is not subject to monitoring in relation to regulated activity relating to children.
- (3) An individual commits an offence if—
- (a) he acts as a member of the governing body of an educational establishment mentioned in subsection (5), and
  - (b) he is not subject to monitoring in relation to regulated activity relating to children.

- (4) A person guilty of an offence under subsection (1), (2) or (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) The establishments are—
- (a) an educational institution which is exclusively or mainly for the provision of full-time education to children;
  - (b) a maintained nursery school (within the meaning of section 39 of the Education Act 2002 (c. 32)).
- (6) A person does not commit an offence under subsection (1) or (2) if he has not attained the age of 16.
- (7) A person does not commit an offence under subsection (1) if, in relation to any continuous period for which he is permitted to engage in the activity—
- (a) the permission is first given before the commencement of this section, and
  - (b) it continues to have effect after such commencement.
- (8) Where subsection (7) applies to a person who is engaged in regulated activity which is relevant NHS employment for the purposes of section 17(1)(d), he does not commit an offence under subsection (1) if he also engages in any other such regulated activity as mentioned in section 17.
- (9) Subsection (7) does not apply in respect of permission which continues to have effect after such date as the Secretary of State specifies by order.
- (10) A person does not commit an offence under subsection (1) if the regulated activity—
- (a) is regulated activity relating to vulnerable adults, and
  - (b) falls within section 16.
- (11) A person does not commit an offence under subsection (3) if, in relation to any continuous period for which he acts as a governor—
- (a) his appointment as a governor first took effect before the commencement of this section, and
  - (b) it continues to have effect after such commencement.
- (12) Subsection (11) does not apply in respect of an appointment which continues to have effect after such date as the Secretary of State specifies by order.
- (13) It is a defence for a person charged with an offence under subsection (1), (2) or (3) to prove that he did not know, and could not reasonably be expected to know, that he was not subject to monitoring in relation to the activity.
- (14) In determining what is the appropriate sentence to pass in respect of a person who is convicted of an offence under this section in a case where the regulated activity falls within paragraph 1(1) or (2) or 7(1) or (4) of Schedule 4 the court must consider the extent to which the offender had regard to any guidance issued by the Secretary of State as to the circumstances in which an activity is carried out frequently.

## **9 Use of barred person for regulated activity**

- (1) A person commits an offence if—
- (a) he permits an individual (B) to engage in regulated activity from which B is barred,
  - (b) he knows or has reason to believe that B is barred from that activity, and

- (c) B engages in the activity.
- (2) A personnel supplier commits an offence if—
- (a) he supplies an individual (B) to another (P),
  - (b) he knows or has reason to believe that P will make arrangements for B to engage in regulated activity from which B is barred, and
  - (c) he knows or has reason to believe that B is barred from that activity.
- (3) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or to a fine, or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.
- (4) It is a defence for a person charged with an offence under this section to prove—
- (a) that he reasonably thought that it was necessary for the barred person to engage in the activity for the purpose of preventing harm to a child or vulnerable adult (as the case may be),
  - (b) that he reasonably thought that there was no other person who could engage in the activity for that purpose, and
  - (c) that the barred person engaged in the activity for no longer than was necessary for that purpose.
- (5) For the purposes of this section, Schedule 4 is modified as follows—
- (a) in paragraph 1, sub-paragraphs (1)(b) and (2)(a) must be disregarded;
  - (b) in paragraph 7(1), the words “if it is carried out frequently by the same person or the period condition is satisfied” must be disregarded;
  - (c) in paragraph 7(4), paragraph (a) must be disregarded.
- (6) In relation to an offence committed before the commencement of section 282(3) of the Criminal Justice Act 2003 (c. 44), the reference in subsection (3)(b) to 12 months must be taken to be a reference to six months.

## **10 Use of person not subject to monitoring for regulated activity**

- (1) A regulated activity provider commits an offence if—
- (a) he permits an individual (B) to engage in regulated activity in relation to which B is not subject to monitoring,
  - (b) he knows or has reason to believe that B is not subject to monitoring in relation to that activity, and
  - (c) B engages in the activity.
- (2) A personnel supplier commits an offence if—
- (a) he supplies an individual (B) to another (P),
  - (b) he knows or has reason to believe that P will make arrangements for B to engage in regulated activity in relation to which B is not subject to monitoring, and
  - (c) he knows or has reason to believe that B is not subject to monitoring in relation to that activity.
- (3) For the purposes of subsection (2)(b), Schedule 4 is modified as follows—
- (a) in paragraph 1, sub-paragraphs (1)(b) and (2)(a) must be disregarded;

- (b) in paragraph 7(1), the words “if it is carried out frequently by the same person or the period condition is satisfied” must be disregarded;
  - (c) in paragraph 7(4), paragraph (a) must be disregarded.
- (4) A person guilty of an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) A person does not commit an offence under subsection (1) or (2) if B has not attained the age of 16.
- (6) A person does not commit an offence under subsection (1) if, in relation to any continuous period for which B is permitted to engage in the regulated activity—
  - (a) the permission is first given before the commencement of this section, and
  - (b) it continues to have effect after such commencement.
- (7) A person does not commit an offence under subsection (1) if—
  - (a) he falls within section 17,
  - (b) the permission mentioned in subsection (1) commences at a time when B is engaged in relevant NHS employment mentioned in section 17(1)(b) in circumstances mentioned in subsection (6), and
  - (c) for the duration of the permission mentioned in subsection (1), B continues to be engaged in that relevant NHS employment.
- (8) Subsection (6) or (7) does not apply in respect of permission which continues to have effect after such date as the Secretary of State specifies by order.
- (9) A person does not commit an offence under subsection (1) or (2) if the regulated activity—
  - (a) is regulated activity relating to vulnerable adults, and
  - (b) falls within section 16.
- (10) In determining what is the appropriate sentence to pass in respect of a person who is convicted of an offence under this section in a case where the regulated activity falls within paragraph 1(1) or (2) or 7(1) or (4) of Schedule 4 the court must consider the extent to which the offender had regard to any guidance issued by the Secretary of State as to the circumstances in which an activity is carried out frequently.
- (11) A person is not guilty of an offence by virtue of subsection (2) in relation to any period during which B is continuously supplied to another if the period begins before the commencement of this section.
- (12) Subsection (11) does not have effect in respect of permission which continues to have effect after such date as the Secretary of State specifies by order.

## **11 Regulated activity provider: failure to check**

- (1) A regulated activity provider commits an offence if—
  - (a) he permits an individual (B) to engage in regulated activity,
  - (b) B engages in the activity, and
  - (c) he fails to ascertain whether B is subject to monitoring in relation to the activity.
- (2) A regulated activity provider ascertains whether B is subject to monitoring only if—



- (a) he obtains an appropriate verification in accordance with Part 1 of Schedule 5 and neither of Parts 2 and 3 of that Schedule is prescribed in relation to him,
  - (b) he obtains an appropriate verification in accordance with Part 2 of that Schedule and that Part is prescribed in relation to him, or
  - (c) he obtains an appropriate verification in accordance with Part 3 of that Schedule and that Part is prescribed in relation to him.
- (3) A person does not commit an offence under subsection (1) if the regulated activity—
- (a) is regulated activity relating to vulnerable adults, and
  - (b) falls within section 16.
- (4) A person does not commit an offence under subsection (1) if he falls within section 17.
- (5) A person does not commit an offence under subsection (1) if B has not attained the age of 16.
- (6) A person does not commit an offence under subsection (1) if, in relation to any continuous period for which B is permitted to engage in the regulated activity—
- (a) the permission is first given before the commencement of this section, and
  - (b) it continues to have effect after such commencement.
- (7) Subsection (6) does not apply in respect of permission which continues to have effect after such date as the Secretary of State specifies by order.
- (8) A person commits an offence if—
- (a) he provides written confirmation under Schedule 5 that is false in any material respect, and
  - (b) he either knows that it is false or is reckless as to whether it is false.
- (9) A person guilty of an offence under subsection (1) or (8) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (10) In determining what is the appropriate sentence to pass in respect of a person who is convicted of an offence under this section in a case where the regulated activity falls within paragraph 1(1) or (2) or 7(1) or (4) of Schedule 4 the court must consider the extent to which the offender had regard to any guidance issued by the Secretary of State as to the circumstances in which an activity is carried out frequently.

## **12 Personnel suppliers: failure to check**

- (1) Schedule 6 (employment businesses: failure to check) has effect.
- (2) The Secretary of State may by order make provision (including provision amending this Act) corresponding to Schedule 6 in relation to the supply of persons by a personnel supplier otherwise than in the course of carrying on an employment business.

## **13 Educational establishments: check on members of governing body**

- (1) The appropriate officer (P) commits an offence if he fails in the prescribed period to make a check in accordance with section 15 relating to any person (B) who is appointed to the governing body of an educational establishment mentioned in section 8(5).

- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) A person does not commit an offence under subsection (1) if, in relation to any continuous period for which B is a member of the governing body of the establishment—
  - (a) the appointment first took effect before the commencement of this section, and
  - (b) it continues to have effect after such commencement.
- (4) Subsection (3) does not apply in respect of an appointment which continues to have effect after such date as the Secretary of State specifies by order.
- (5) An appropriate officer is such person as is prescribed.

#### **14 Office holders: offences**

- (1) The Secretary of State may by regulations provide that a person commits an offence if—
  - (a) he engages in activity that is regulated activity by virtue of paragraph 1(9) or 7(9) of Schedule 4, and
  - (b) he is not subject to monitoring in relation to the activity.
- (2) The Secretary of State may by regulations provide that a prescribed person (P) commits an offence if he fails in the prescribed period to make a check in accordance with section 15 in relation to another person (B) appointed to a position mentioned in paragraph 4(1) or 8(1) of Schedule 4.
- (3) Regulations under subsection (1) or (2) may provide for defences to the offence.
- (4) An offence created by regulations under this section is punishable on summary conviction with a maximum fine not exceeding level 5 on the standard scale.

#### **15 Sections 13 and 14: checks**

- (1) This section has effect for the purposes of sections 13 and 14.
- (2) P makes a check in accordance with this section if—
  - (a) he obtains relevant information relating to B in pursuance of an application under section 30, or
  - (b) he obtains a copy of an enhanced criminal record certificate relating to B issued in relation to P.
- (3) P makes a check in accordance with this section if—
  - (a) an enhanced criminal record certificate relating to B is issued during the prescribed period,
  - (b) the application for the certificate is countersigned on behalf of P by a registered person (within the meaning of Part 5 of the Police Act 1997 (c. 50)), and
  - (c) P obtains from the registered person the information mentioned in subsection (4) derived from the certificate.
- (4) The information is—
  - (a) whether B is subject to monitoring, and

- (b) whether the Independent Barring Board is considering whether to include B in a barred list in pursuance of paragraph 3 or 5 or (as the case may be) 9 or 11 of Schedule 3.
- (5) In subsection (2)(a) “relevant information” means—
- (a) in relation to a person appointed to a position mentioned in paragraph 4(1) of Schedule 4, relevant information relating to children (within the meaning of section 31);
  - (b) in relation to a person appointed to a position mentioned in paragraph 8(1) of Schedule 4, relevant information relating to vulnerable adults (within the meaning of section 31).
- (6) For the purposes of subsection (2)(b) an enhanced criminal record certificate is issued in relation to P only if—
- (a) he countersigned the application for the certificate as a registered person for the purposes of Part 5 of the Police Act 1997 (c. 50), or
  - (b) the application was countersigned on his behalf by such a person.
- (7) In this section “enhanced criminal record certificate” means—
- (a) in relation to a person appointed to a position mentioned in paragraph 4(1) of Schedule 4, an enhanced criminal record certificate issued under the Police Act 1997 containing suitability information relating to children (within the meaning of section 113BA of that Act);
  - (b) in relation to a person appointed to a position mentioned in paragraph 8(1) of Schedule 4, an enhanced criminal record certificate issued under that Act containing suitability information relating to vulnerable adults (within the meaning of section 113BB of that Act).

#### *Exceptions*

### **16 Exception to requirement to make monitoring check**

- (1) Regulated activity falls within this section if it is carried out for the purposes of or in connection with any of the following—
- (a) an establishment for the detention of persons in lawful custody (within the meaning of section 59(7)(a) to (c));
  - (b) a recreational, social, sporting or educational activity provided wholly or mainly for vulnerable adults;
  - (c) a course of education or instruction which is provided wholly or mainly for vulnerable adults and is of a prescribed description;
  - (d) the provision of services, by or on behalf of a person who provides or manages housing, to vulnerable adults in connection with that housing;
  - (e) welfare services of a prescribed description;
  - (f) dealing with payments by a person appointed to receive them as mentioned in section 59(10)(f).
- (2) Activity does not fall within this section if the individual engaging in the activity is a prison officer acting in the course of his duty.
- (3) In subsection (2) “prison officer” includes—

- (a) a prisoner custody officer within the meaning of section 89(1) of the Criminal Justice Act 1991 (c. 53);
  - (b) a custody officer within the meaning of section 12(3) of the Criminal Justice and Public Order Act 1994 (c. 33).
- (4) Activity does not fall within this section by virtue of paragraph (b) of subsection (1) if—
- (a) the activity is carried out by or for a local authority in connection with the provision of community care services within the meaning of section 46 of the National Health Service and Community Care Act 1990 (c. 19);
  - (b) the activity is carried out by or in an establishment in relation to which a requirement to register arises under section 11 of the Care Standards Act 2000 (c. 14);
  - (c) the activity is carried out by an agency in relation to which such a requirement arises;
  - (d) the activity is carried out by a person to whom Part 2 of that Act applies in pursuance of an order under section 42 of that Act of 2000;
  - (e) the activity is carried out by an NHS body within the meaning of section 17(3) or by a person who provides health care for such a body.
- (5) In this section “welfare services”—
- (a) includes services which provide support, assistance, advice or counselling to individuals with particular needs;
  - (b) does not include community care services within the meaning of section 46 of the National Health Service and Community Care Act 1990.
- (6) Paragraphs (b), (c), (d) and (e) of subsection (1) cease to have effect on the relevant day.
- (7) The relevant day is—
- (a) the last day of the period of three years starting on the day any provision of this section is brought into force, or
  - (b) such later day as the Secretary of State specifies by order.
- (8) A date specified under subsection (7)(b) must be not more than three years after—
- (a) the relevant day as mentioned in subsection (7)(a), or
  - (b) the last day specified in respect of the paragraph concerned under subsection (7)(b).
- (9) The Secretary of State may by order amend or omit any paragraph of subsection (1).

## 17 NHS employment

- (1) A regulated activity provider falls within this section if—
- (a) he permits a person (E) to engage in regulated activity,
  - (b) immediately before the permission takes effect E is engaged in relevant NHS employment,
  - (c) for the duration of the permission E continues to be engaged in that relevant NHS employment, and
  - (d) the regulated activity is also relevant NHS employment.
- (2) Relevant NHS employment is employment—

- (a) with an NHS body, or
- (b) with a person who provides health care for an NHS body (wherever the health care is provided),

in which the employee engages in regulated activity.

- (3) Each of the following is an NHS body—
  - (a) a National Health Service trust;
  - (b) a Strategic Health Authority;
  - (c) an NHS foundation trust;
  - (d) a Local Health Board;
  - (e) a Special Health Authority;
  - (f) a Primary Care Trust.

*Offences: supplementary*

**18 Offences: companies &c.**

- (1) If an offence under section 9, 10, 11, 23, 27 or 38 or Schedule 6 is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of—
  - (a) a director, manager, secretary or other similar officer of the body, or
  - (b) a person purporting to act in such a capacity,he (as well as the body) commits the offence.
- (2) If an offence under section 9, 10, 11, 23, 27 or 38 or Schedule 6 is committed by a partnership (whether or not a limited partnership) and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of—
  - (a) a partner, or
  - (b) a person purporting to act as a partner,he (as well as the partnership) commits the offence.
- (3) In subsection (1), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body.

**19 Offences: other persons**

- (1) A person commits an offence if, in the course of acting or appearing to act on behalf of a regulated activity provider—
  - (a) he permits an individual (B) to engage in a regulated activity in relation to which B is not subject to monitoring,
  - (b) he knows or has reason to believe that B is not subject to monitoring in relation to that activity, and
  - (c) B engages in the activity.
- (2) A person commits an offence if, in the course of acting or appearing to act on behalf of a personnel supplier—
  - (a) he supplies an individual (B) to another (P),
  - (b) he knows or has reason to believe that P will make arrangements for B to engage in regulated activity from which B is barred, and

- (c) he knows or has reason to believe that B is barred from the activity.
- (3) A person commits an offence if, in the course of acting or appearing to act on behalf of a personnel supplier—
  - (a) he supplies an individual (B) to another (P),
  - (b) he knows or has reason to believe that P will make arrangements for B to engage in regulated activity in relation to which B is not subject to monitoring, and
  - (c) he knows or has reason to believe that B is not subject to monitoring in relation to the activity.
- (4) A person guilty of an offence under subsection (1) or (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) A person guilty of an offence under subsection (2) is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or to a fine, or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.
- (6) If the commission of an offence under section 11 is due to the act or reckless default of a person who acts for or appears to act for the regulated activity provider—
  - (a) that person is guilty of the offence, and
  - (b) he may be proceeded against and punished whether or not proceedings are also taken against the regulated activity provider.
- (7) In the application of subsection (6) to a person who is in Crown employment (within the meaning of the Employment Rights Act 1996 (c. 18)), section 51(2) must be ignored.
- (8) For the purpose of subsections (2)(b) and (3)(b), Schedule 4 is modified as follows—
  - (a) in paragraph 1, sub-paragraphs (1)(b) and (2)(a) must be disregarded;
  - (b) in paragraph 7(1), the words “if it is carried out frequently by the same person or the period condition is satisfied” must be disregarded;
  - (c) in paragraph 7(4), paragraph (a) must be disregarded.
- (9) In determining what is the appropriate sentence to pass in respect of a person who is convicted of an offence under subsection (1) in a case where the regulated activity falls within paragraph 1(1) or (2) or 7(1) or (4) of Schedule 4 the court must consider the extent to which the offender had regard to any guidance issued by the Secretary of State as to the circumstances in which an activity is carried out frequently.
- (10) In relation to an offence committed before the commencement of section 282(3) of the Criminal Justice Act 2003 (c. 44), the reference in subsection (5)(b) to 12 months must be taken to be a reference to six months.

## **20 Section 19: exclusions and defences**

- (1) A person does not commit an offence under section 19 if B has not attained the age of 16.
- (2) A person does not commit an offence under section 19 if the regulated activity—
  - (a) is regulated activity relating to adults, and

- (b) falls within section 16.
- (3) A person does not commit an offence under section 19(1) if, in relation to any continuous period for which B is permitted to engage in the regulated activity—
  - (a) the permission is first given before the commencement of that section, and
  - (b) it continues to have effect after such commencement.
- (4) Subsection (3) does not have effect in respect of permission which continues to have effect after such date as the Secretary of State specifies by order.
- (5) A person does not commit an offence under subsection (1) of section 19 if—
  - (a) the regulated activity provider for whom he acts or appears to act falls within section 17,
  - (b) the permission mentioned in subsection (1) of section 19 commences at a time when B is engaged in relevant NHS employment mentioned in section 17(1)(b) in circumstances mentioned in subsection (3) above, and
  - (c) for the duration of the permission mentioned in subsection (1) of section 19, B continues to be engaged in that relevant NHS employment.
- (6) A person is not guilty of an offence under section 19(3) in relation to any period during which B is continuously supplied to another if the period begins before the commencement of that section.
- (7) Subsection (6) does not have effect in respect of a supply which continues to have effect after such date as the Secretary of State specifies by order.

### *Controlled activity*

## **21 Controlled activity relating to children**

- (1) A reference to a controlled activity relating to children must be construed in accordance with this section.
- (2) An activity which falls within any of subsections (3) to (7) is a controlled activity to the extent that it is not a regulated activity relating to children.
- (3) An activity falls within this subsection if—
  - (a) it consists in or is carried out in connection with any form of health care, treatment or therapy to which subsection (8) applies,
  - (b) it is carried out frequently by the same person or it is carried out by the same person on more than two days in any period of 30 days, and
  - (c) it gives the person an opportunity mentioned in subsection (9).
- (4) An activity falls within this subsection if—
  - (a) it is carried out in a further education institution (within the meaning of section 140(3) of the Education Act 2002 (c. 32)),
  - (b) it is carried out frequently by the same person or it is carried out by the same person on more than two days in any period of 30 days,
  - (c) it is carried out by the person while engaging in any form of work (whether or not for gain),
  - (d) it is carried out for or in connection with the purposes of the institution, and
  - (e) it gives the person the opportunity mentioned in subsection (9)(a).

- (5) An activity falls within this subsection if—
- (a) it consists in making payments under section 17A of the Children Act 1989 (c. 41) or the provision of assistance either in connection with the making of such payments or securing the provision of services paid for out of them,
  - (b) it is carried out frequently by the same person or it is carried out by the same person on more than two days in any period of 30 days, and
  - (c) it gives the person the opportunity mentioned in subsection (9)(a).
- (6) An activity falls within this subsection if it is carried out as mentioned in subsection (10) frequently and it gives a person carrying out the activity the opportunity to have access to—
- (a) health, educational or social services records relating to children;
  - (b) information provided pursuant to section 117(1) of the Learning and Skills Act 2000 (c. 21);
  - (c) in the case of a person carrying out an activity mentioned in subsection (10) (b), records of family proceedings (within the meaning of section 8(3) of the Children Act 1989) held by the Children and Family Court Advisory and Support Service;
  - (d) in the case of a person carrying out an activity mentioned in subsection (10) (c), records of family proceedings (within the meaning of section 8(3) of the Children Act 1989) held by the National Assembly for Wales.
- (7) An activity falls within this subsection if it consists in or involves on a regular basis the day to day management or supervision of a person carrying out an activity which falls within subsection (3), (4) or (6).
- (8) This subsection applies to health care, treatment or therapy which is provided for a child—
- (a) in pursuance of arrangements made by or under an enactment,
  - (b) in an establishment in relation to which a requirement to register arises under section 11 of the Care Standards Act 2000 (c. 14), or
  - (c) by an agency in relation to which such a requirement arises.
- (9) The opportunities are—
- (a) opportunity to have any form of contact with children;
  - (b) opportunity to have access to the health records of children.
- (10) The activity is carried out—
- (a) for, or on behalf of, a local authority (in the exercise of its educational or social services functions);
  - (b) for, or on behalf of, the Children and Family Court Advisory and Support Service;
  - (c) for, or on behalf of, the National Assembly for Wales (in the exercise of its functions under Part 4 of the Children Act 2004 (c. 31) (Welsh family proceedings));
  - (d) for, or on behalf of, the Qualifications and Curriculum Authority;
  - (e) for, or on behalf of, Her Majesty's Chief Inspector of Schools in England;
  - (f) for, or on behalf of, HM Chief Inspector of Education and Training in Wales;
  - (g) for, or on behalf of, an establishment or agency in respect of which a requirement to register arises under section 11 of the Care Standards Act 2000.



(11) In this section—

“educational records” includes individual child information within the meaning of—

- (a) section 99 of Childcare Act 2006 (c. 21),
- (b) that section as modified by section 100 of that Act, or
- (c) section 101 of that Act;

“local authority”—

- (a) in relation to the education functions of a local authority, has the same meaning as in section 579(1) of the Education Act 1996 (c. 56);
- (b) in any other case, has the meaning given by section 1 of the Local Authority Social Services Act 1970 (c. 42);

“social services functions” has the meaning given by section 1A of that Act;

“social services records” means records obtained or held by a local authority in the exercise of its social services functions.

(12) The Secretary of State may, by order, amend subsections (2) to (11) (including by adding new subsections or omitting or varying any of the subsections or anything contained in them).

## **22 Controlled activity relating to vulnerable adults**

- (1) A reference to a controlled activity relating to vulnerable adults must be construed in accordance with this section.
- (2) An activity which is ancillary to or is carried out wholly or mainly in relation to an activity which falls within subsection (4) is a controlled activity to the extent that it is not a regulated activity relating to vulnerable adults if—
  - (a) it is carried out frequently by the same person or it is carried out by the same person on more than two days in any period of 30 days, and
  - (b) it gives the person an opportunity mentioned in subsection (5).
- (3) An activity which consists in or involves on a regular basis the day to day management or supervision of a person carrying out an activity mentioned in subsection (2) is also a controlled activity relating to vulnerable adults.
- (4) Each of the following falls within this subsection—
  - (a) the provision of primary care services;
  - (b) the provision of hospital services;
  - (c) the provision of domiciliary care;
  - (d) the making of arrangements in connection with an adult placement scheme;
  - (e) the provision of community care services;
  - (f) the making of payments under section 57 of the Health and Social Care Act 2001 (c. 15);
  - (g) such other activity as is prescribed.
- (5) The opportunities are—
  - (a) opportunity to have any form of contact with a vulnerable adult;
  - (b) opportunity to have access to the health records or social services records (within the meaning of section 21(11)) of a vulnerable adult;

- (c) opportunity to have access to such other information as may be prescribed relating to a vulnerable adult.

(6) In this section—

“adult placement scheme” means a scheme—

- (a) under which an individual agrees with the person carrying on the scheme to provide care or support (which may include accommodation) to an adult who is in need of it, and
- (b) in respect of which a requirement to register arises under section 11 of the Care Standards Act 2000 (c. 14);

“community care services” has the same meaning as in section 46(3) of the National Health Service and Community Care Act 1990 (c. 19);

“domiciliary care” must be construed in accordance with section 59(4) and (5);

“hospital services” means in-patient or out-patient services provided by—

- (a) a National Health Service trust;
- (b) an NHS foundation trust;
- (c) a Local Health Board;
- (d) a Primary Care Trust;
- (e) an independent hospital (within the meaning of section 2 of the Care Standards Act 2000);
- (f) an independent clinic (within the meaning of that section);
- (g) an independent medical agency (within the meaning of that section);

“primary care services” means any of the following—

- (a) primary medical services or primary dental services provided under the National Health Service Act 2006 (c. 41) (“the NHS Act”) or the National Health Service (Wales) Act 2006 (c. 42) (“the NHS (Wales) Act”);
- (b) general ophthalmic services provided under Part 6 of the NHS (Wales) Act;
- (c) general ophthalmic services provided in accordance with section 38 of the National Health Service Act 1977 (c. 49);
- (d) pharmaceutical services provided in pursuance of arrangements made under section 126 or 127 of the NHS Act or section 80 or 81 of the NHS (Wales) Act, or local pharmaceutical services provided under section 134 of, or Schedule 12 to, the NHS Act or under section 92 of, or Schedule 7 to, the NHS (Wales) Act;
- (e) a service which corresponds to a service mentioned in any of paragraphs (a) to (d) but which is provided otherwise than by virtue of arrangements made pursuant to an enactment mentioned in that paragraph.

## 23 Controlled activity: regulations

(1) The Secretary of State may, by regulations, make provision as to—

- (a) the persons who are permitted to engage in controlled activity;
- (b) the steps which must be taken by a responsible person in connection with permitting another to engage in controlled activity;
- (c) circumstances in which a responsible person must not permit another to engage in controlled activity.

- (2) The regulations may—
- (a) include provision for a responsible person who contravenes any provision of the regulations to be guilty of an offence punishable on summary conviction by a fine not exceeding level 5 on the standard scale;
  - (b) in relation to such an offence, make provision corresponding to sections 18, 19 and 20.
- (3) A person is a responsible person if—
- (a) he is responsible for the management or control of a controlled activity, and
  - (b) if the controlled activity is carried out for the purposes of an organisation, his exercise of that responsibility is not subject to supervision or direction by any other person for those purposes.

### *Monitoring*

## **24 Monitoring**

- (1) An individual is subject to monitoring in relation to regulated activity if—
- (a) he is not barred from engaging in the activity,
  - (b) he makes a monitoring application,
  - (c) he satisfies the prescribed requirements, and
  - (d) he pays such fee (if any) as is prescribed.
- (2) A monitoring application must specify whether it is in respect of—
- (a) regulated activity relating to children, or
  - (b) regulated activity relating to vulnerable adults.
- (3) On a monitoring application being made the Secretary of State must—
- (a) make such enquiries as he thinks appropriate to ascertain whether any relevant information exists in relation to the individual;
  - (b) request the person who holds such information to provide it to him.
- (4) The Secretary of State must—
- (a) provide the individual with any disclosable information that he has, or
  - (b) notify the individual that he has no disclosable information.
- (5) Disclosable information is information provided to the Secretary of State under subsection (3)(b) in relation to the individual, but does not include information to which subsection (9) applies.
- (6) Subsection (4) does not apply if the individual made an application for an enhanced criminal record certificate (under section 113B of the Police Act 1997 (c. 50)) simultaneously with his monitoring application.
- (7) The Secretary of State must also ensure that—
- (a) at such intervals as he thinks appropriate such enquiries are made as he thinks appropriate to ascertain whether any new relevant information exists in relation to the individual;
  - (b) the person who holds such new relevant information is requested to provide it to him.

- (8) Relevant information is—
- (a) the prescribed details of relevant matter (within the meaning of section 113A of the Police Act 1997 (c. 50));
  - (b) information which the chief officer of a relevant police force thinks might be relevant in relation to the regulated activity concerned;
  - (c) such other information as may be prescribed.
- (9) This subsection applies to information mentioned in subsection (8)(b) which the chief officer of a relevant police force thinks it would not be in the interests of the prevention or detection of crime to disclose to an individual subject to monitoring.
- (10) A monitoring application is an application made to the Secretary of State in the prescribed form and manner.
- (11) The prescribed requirements may include requirements as to the manner in which the applicant must prove his identity (identification requirements); and if such requirements include a requirement that the applicant has his fingerprints taken at such place and in such manner as may be prescribed, the regulations may make provision requiring their destruction in specified circumstances and by specified persons.
- (12) For the purpose of verifying evidence of identity supplied in pursuance of the identification requirements the Secretary of State may obtain such information as he thinks is appropriate from data held—
- (a) by the Identity and Passport Service;
  - (b) by the Driver and Vehicle Licensing Agency;
  - (c) by the Secretary of State in connection with keeping records of national insurance numbers;
  - (d) by such other persons or for such purposes as is prescribed.
- (13) Relevant information is new if it was not discovered when any earlier inquiries under this section were carried out.
- (14) References to a relevant police force must be construed in accordance with section 113B of the Police Act 1997 as if an application under this section were an application under that section.

## **25 Monitoring: fees**

- (1) This section has effect in respect of fees which may be prescribed in relation to applications for monitoring under section 24.
- (2) In setting a fee for an application made during the period of five years beginning with the commencement of that section, the Secretary of State may take account of expenditure incurred, or which he thinks will be incurred, by him before the end of that period (taking one financial year with another)—
- (a) in connection with the operation of IBB (including payments under paragraph 11 of Schedule 1);
  - (b) in respect of any other expenditure of the Secretary of State in connection with his functions under this Act.
- (3) In setting a fee for an application made after that period, the Secretary of State may take account of expenditure incurred, or which he thinks will be incurred, by him—
- (a) in making payments under paragraph 11 of Schedule 1;

- (b) in respect of any other expenditure of the Secretary of State in connection with his functions under this Act.
- (4) For the purposes of subsection (2), it is immaterial that any expenditure is incurred before the commencement of section 24.
- (5) The power to prescribe fees is exercisable only with the consent of the Treasury.
- (6) Fees received by the Secretary of State by virtue of section 24(1)(d) must be paid into the Consolidated Fund.

## **26 Ceasing monitoring**

- (1) The Secretary of State may cease monitoring as mentioned in section 24 in relation to an individual in such circumstances as are prescribed.
- (2) The Secretary of State must cease such monitoring in relation to an individual who—
  - (a) satisfies the Secretary of State that he is not engaged in the regulated activity concerned, and
  - (b) requests the Secretary of State to cease monitoring.

## **27 Prohibition of requirement to produce certain records**

- (1) A person (P) must not, in connection with—
  - (a) the recruitment of another person as an employee, or
  - (b) the continued employment of another person,require that other person or a third party to supply him with a relevant record.
- (2) A person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public must not, as a condition of providing or offering to provide any goods, facilities or services to another person, require that other person or a third party to supply him with a relevant record.
- (3) Subsection (1) does not apply if the duties of the employee include activity of a kind mentioned in paragraph 2(1) or 7(1) of Schedule 4 and the activity is for, or for the benefit, of—
  - (a) P himself;
  - (b) a child, or vulnerable adult, who is a member of P's family;
  - (c) a child, or vulnerable adult, who is a friend of P.
- (4) "Family" and "friend" must be construed in accordance with section 58.
- (5) A person who contravenes subsection (1) or (2) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) A relevant record is the record of information provided by the Secretary of State under section 24(4).
- (7) An employee is an individual who—
  - (a) works under a contract of employment, as defined by section 230(2) of the Employment Rights Act 1996 (c. 18),
  - (b) provides any service under a contract for services, or
  - (c) holds any office,

whether or not he is entitled to remuneration; and “employment” must be construed accordingly.

## 28 Independent monitor

After section 119A of the Police Act 1997 (c. 50) (further sources of information: Scotland) insert—

### “119B Independent monitor

- (1) There is to be an independent monitor for the purposes of this Part.
- (2) The independent monitor is a person appointed by the Secretary of State—
  - (a) for such period, not exceeding three years, as the Secretary of State decides;
  - (b) on such terms as the Secretary of State decides.
- (3) A person may be appointed for a further period or periods.
- (4) The Secretary of State may terminate the appointment of the independent monitor before the end of the period mentioned in subsection (2)(a) by giving the monitor notice of the termination not less than three months before it is to take effect.
- (5) The independent monitor must review—
  - (a) all cases in which information is disclosed to a registered person in pursuance of section 113B(6)(b);
  - (b) a sample of cases in which a certificate issued under section 113B has included information in pursuance of subsection (4)(b) of that section;
  - (c) a sample of cases in which the chief officer of a police force has decided that information must not be included in a certificate or report in pursuance of section 113B(4)(b) or disclosed in pursuance of section 113B(5)(c) and (6)(b);
  - (d) all cases in which information is withheld from an individual because it is information to which section 24(9) of the Safeguarding Vulnerable Groups Act 2006 applies;
  - (e) a sample of cases in which relevant information (within the meaning of section 24(8)(b) of that Act) is provided to an individual in pursuance of section 24(4)(a) of that Act.
- (6) The purpose of a review under subsection (5) is to ensure compliance with Article 8 of the European Convention of Human Rights.
- (7) The independent monitor must in relation to each year make a report to the Secretary of State about the performance of police forces in exercising their functions under this Part.
- (8) The independent monitor may make recommendations to the Secretary of State as to—
  - (a) any guidance issued by the Secretary of State or which the monitor thinks it would be appropriate for the Secretary of State to issue;
  - (b) any changes to any enactment which the monitor thinks may be appropriate.

- (9) The chief officer of a police force must provide to the independent monitor such information as the monitor reasonably requires in connection with the exercise of his functions under this section.”

## **29 Part 5 of the Police Act 1997: code of practice**

- (1) Section 122 of the Police Act 1997 (c. 50) (code of practice) is amended as follows.
- (2) In subsection (1) after “information provided to” insert “, or the discharge of any function by,”.
- (3) In subsection (3) for the words from “The Secretary of State” to “application” substitute “Subsection (3A) applies if the Secretary of State thinks that the registered person who countersigned an application for a certificate under section 113A or 113B”.
- (4) After subsection (3) insert—
- “(3A) The Secretary of State may—
- (a) refuse to issue the certificate;
  - (b) suspend the registration of the person;
  - (c) cancel the registration of the person.
- (3B) Section 120AB applies if the Secretary of State proposes to suspend or cancel a person’s registration under subsection (3A) above as it applies if he proposes to suspend or cancel a person’s registration by virtue of section 120AA.”

### *Notices and information*

## **30 Provision of vetting information**

- (1) The Secretary of State must provide a person (A) with the information mentioned in subsection (4) in relation to another (B) if—
- (a) A makes an application for the information,
  - (b) the application contains the appropriate declaration, and
  - (c) the Secretary of State has no reason to believe that the declaration is false.
- (2) The appropriate declaration is a declaration by A—
- (a) that he falls within column 1 of a specified entry, and
  - (b) that B has consented to the provision of the information to A.
- (3) In this section references to a specified entry are to an entry in the table in Schedule 7 specified by A in his declaration.
- (4) The information is—
- (a) if column 2 of the specified entry refers to children, relevant information relating to children, and
  - (b) if column 2 of the specified entry refers to vulnerable adults, relevant information relating to vulnerable adults.
- (5) Paragraph (b) of subsection (2) does not apply if the specified entry is 17.

- (6) If B consents to the provision of information to A in relation to an application under this section, the consent also has effect in relation to any subsequent such application by A.
- (7) The Secretary of State may prescribe the form, manner and contents of an application for the purposes of this section (including the form and manner of a declaration contained in such an application).
- (8) The Secretary of State may by regulations make provision requiring a local authority which makes or proposes to make payments to or on behalf of a person in accordance with regulations under section 17A of the Children Act 1989 (c. 41) or section 57 of the Health and Social Care Act 2001 (c. 15) to inform the person of his right to obtain relevant information under this section.

### **31 Meaning of relevant information in section 30**

- (1) This section has effect for the purposes of section 30.
- (2) Relevant information relating to children is—
  - (a) whether B is subject to monitoring in relation to regulated activity relating to children, and
  - (b) if so, whether he is undergoing assessment.
- (3) Relevant information relating to vulnerable adults is—
  - (a) whether B is subject to monitoring in relation to regulated activity relating to vulnerable adults, and
  - (b) if so, whether he is undergoing assessment.
- (4) B is undergoing assessment if—
  - (a) the Secretary of State is required to notify B as mentioned in section 24(4) in connection with B's monitoring application but has not yet done so;
  - (b) B has made a simultaneous application under section 113B of the Police Act 1997 but the Secretary of State has not yet issued an enhanced criminal record certificate under that section;
  - (c) in relation to subsection (2)(b), IBB is considering whether to include B in the children's barred list in pursuance of paragraph 3 or 5 of Schedule 3;
  - (d) in relation to subsection (3)(b), IBB is considering whether to include B in the adults' barred list in pursuance of paragraph 9 or 11 of that Schedule.
- (5) In subsection (4)(b) "simultaneous application" means an application made simultaneously with B's monitoring application under section 24.
- (6) The Secretary of State may by order amend the preceding provisions of this section for the purpose of altering the meaning of relevant information relating to children or vulnerable adults (as the case may be).

### **32 Notification of cessation of monitoring**

- (1) The Secretary of State must establish and maintain a register for the purposes of this section.
- (2) The Secretary of State must register a person (A) in relation to another (B) if—
  - (a) A makes an application to be registered in relation to B,



- (b) the application contains the appropriate declaration,
  - (c) the Secretary of State has no reason to believe that the declaration is false, and
  - (d) B is subject to monitoring in relation to the regulated activity to which the application relates.
- (3) The appropriate declaration is a declaration by A—
  - (a) that he falls within column 1 of a specified entry, and
  - (b) that B has consented to the application.
- (4) In this section references to a specified entry are to an entry in the table in Schedule 7 specified by A in his declaration.
- (5) A's application and registration relate—
  - (a) if column 2 of the specified entry refers to children, to regulated activity relating to children;
  - (b) if column 2 of the specified entry refers to vulnerable adults, to regulated activity relating to vulnerable adults.
- (6) The Secretary of State must notify A if B ceases to be subject to monitoring in relation to the regulated activity to which A's registration relates.
- (7) The requirement under subsection (6) is satisfied if notification is sent to any address recorded against A's name in the register.
- (8) Paragraph (b) of subsection (3) does not apply if the specified entry is 17.
- (9) If B consents to the provision of information to A under section 30 the consent also has effect as consent to any application by A to be registered in relation to B under this section.
- (10) The Secretary of State may prescribe the form, manner and contents of an application for the purposes of this section (including the form and manner of a declaration contained in such an application).

### **33 Cessation of registration**

- (1) In this section references to registration are to registration in the register maintained for the purposes of section 32.
- (2) Once a person is notified as mentioned in subsection (6) of that section, his registration ceases.
- (3) The Secretary of State may cancel a person's registration in such circumstances as are prescribed.
- (4) The Secretary of State must cancel a person's registration—
  - (a) if the person applies for it to be cancelled;
  - (b) in prescribed circumstances, if the person in relation to whom he is registered applies for it to be cancelled.
- (5) When a person's registration is cancelled under subsection (3) or (4)(b), the Secretary of State must notify him of that fact.
- (6) The requirement under subsection (5) is satisfied if notification is sent to any address recorded against A's name in the register.

**34 Declarations under sections 30 and 32**

- (1) An individual commits an offence if, in an application made for the purposes of section 30 or 32—
  - (a) he makes a false declaration, and
  - (b) he either knows that it is false or is reckless as to whether it is false.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**35 Regulated activity providers: duty to refer**

- (1) Subsection (2) applies to—
  - (a) a regulated activity provider who holds any prescribed information in relation to a person (P) engaged in regulated activity provided by him;
  - (b) a responsible person (within the meaning of section 23) who holds any prescribed information in relation to a person (P) whom he permits to engage in controlled activity.
- (2) A person to whom this subsection applies must provide IBB with the information if—
  - (a) he withdraws permission for P to engage in the activity for a reason mentioned in subsection (3), or
  - (b) he does not withdraw permission for such a reason but would or might have done so if P had not otherwise ceased to engage in the activity.
- (3) The reasons are that the person to whom subsection (2) applies thinks—
  - (a) that paragraph 1, 2, 7 or 8 of Schedule 3 applies to P,
  - (b) that P has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 3), or
  - (c) that the harm test is satisfied.
- (4) The harm test is that P may—
  - (a) harm a child or vulnerable adult,
  - (b) cause a child or vulnerable adult to be harmed,
  - (c) put a child or vulnerable adult at risk of harm,
  - (d) attempt to harm a child or vulnerable adult, or
  - (e) incite another to harm a child or vulnerable adult.
- (5) For the purposes of subsection (3)(b), conduct is inappropriate if it appears to the person to whom subsection (2) applies to be inappropriate having regard to the guidance issued by the Secretary of State under paragraph 4(6) or 10(6) of Schedule 3.
- (6) If regulated activity engaged in by P—
  - (a) is regulated activity relating to vulnerable adults, and
  - (b) falls within section 16,subsection (2) must be read as if for “must” there were substituted “may”.
- (7) This section does not apply if the conditions specified in subsection (2) are fulfilled before the section is commenced.

### **36 Personnel suppliers: duty to refer**

- (1) A personnel supplier must provide IBB with any prescribed information it holds in relation to a person (P) who has been supplied by it to another person if the supplier knows that P has ceased to be engaged in regulated activity or controlled activity in the circumstances mentioned in subsection (2)(a) or (b) of section 35.
- (2) A personnel supplier which is an employment agency or employment business must provide IBB with any prescribed information it holds in relation to a person (P) for whom it acts if—
  - (a) the agency or business determines to cease to act for P for a reason mentioned in subsection (4), or
  - (b) it does not determine to cease to act for P for such a reason but would or might have done so if its arrangement with, or employment of, him had not otherwise come to an end.
- (3) A personnel supplier which is an educational institution must provide IBB with any prescribed information it holds in relation to a student (P) following a course at the institution if—
  - (a) the institution determines to cease to supply P to another person for him to engage in regulated or controlled activity for a reason mentioned in subsection (4),
  - (b) the institution determines that P should cease to follow a course at the institution for a reason mentioned in subsection (4), or
  - (c) it does not determine as mentioned in paragraph (a) or (b) for such a reason but would or might have done so if P had not otherwise ceased to engage in the activity or ceased to follow the course.
- (4) The reasons are that the personnel supplier thinks—
  - (a) that paragraph 1, 2, 7 or 8 of Schedule 3 applies to P,
  - (b) that P has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 3), or
  - (c) that the harm test is satisfied.
- (5) The harm test is that P may—
  - (a) harm a child or vulnerable adult,
  - (b) cause a child or vulnerable adult to be harmed,
  - (c) put a child or vulnerable adult at risk of harm,
  - (d) attempt to harm a child or vulnerable adult, or
  - (e) incite another to harm a child or vulnerable adult.
- (6) For the purposes of subsection (4)(b), conduct is inappropriate if it appears to the personnel supplier to be inappropriate having regard to the guidance issued by the Secretary of State under paragraph 4(6) or 10(6) of Schedule 3.
- (7) An employment agency acts for a person if it makes arrangements with him with a view to—
  - (a) finding him employment with an employer, or
  - (b) supplying him to employers for employment by them.
- (8) An employment business acts for a person if it employs him to act for and under the control of other persons in any capacity.

- (9) In this section “employment” has the same meaning as in the Employment Agencies Act 1973 (c. 35).
- (10) This section does not apply if the conditions specified in subsection (1), (2) or (3) are fulfilled before the section is commenced.

### **37 Regulated activity providers: duty to provide information on request &c.**

- (1) This section applies if IBB is considering—
- (a) whether to include any person in a barred list;
  - (b) whether to remove any person from a barred list.
- (2) IBB may require—
- (a) any regulated activity provider who has made arrangements for that person to engage in regulated activity (whether or not the arrangements are still in place),
  - (b) any responsible person (within the meaning of section 23) who permits or has permitted that person to engage in controlled activity,
  - (c) any personnel supplier which is an employment agency or employment business and which acts for or has acted for that person, or
  - (d) any personnel supplier which is an educational institution and which has supplied that person to another person for him to engage in regulated or controlled activity,
- to provide IBB with any prescribed information he or it holds relating to the person.
- (3) An employment agency acts for a person if it makes arrangements with him with a view to—
- (a) finding him relevant employment with an employer, or
  - (b) supplying him to employers for relevant employment by them.
- (4) Relevant employment is employment which consists in or involves engaging in regulated or controlled activity.
- (5) An employment business acts for a person if it employs him to engage in regulated or controlled activity for and under the control of other persons.
- (6) In this section “employment” has the same meaning as in the Employment Agencies Act 1973 (c. 35).

### **38 Duty to provide information: offences**

- (1) A person commits an offence if—
- (a) he is required under section 35 or 36 or in pursuance of section 37 to provide information to IBB, and
  - (b) he fails, without reasonable excuse, to provide the information.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### *Local authority information and referrals*

#### **39 Local authorities: duty to refer**

- (1) A local authority must provide IBB with any prescribed information they hold relating to a person if the first and second conditions are satisfied.
- (2) The first condition is that the local authority thinks—
  - (a) that paragraph 1, 2, 7 or 8 of Schedule 3 applies to the person,
  - (b) that the person has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 3) occurring after the commencement of this section, or
  - (c) that the harm test is satisfied.
- (3) The harm test is that the person may—
  - (a) harm a child or vulnerable adult,
  - (b) cause a child or vulnerable adult to be harmed,
  - (c) put a child or vulnerable adult at risk of harm,
  - (d) attempt to harm a child or vulnerable adult, or
  - (e) incite another to harm a child or vulnerable adult.
- (4) The second condition is that the local authority thinks—
  - (a) that the person is engaged or may engage in regulated activity or controlled activity, and
  - (b) (except in a case where paragraph 1, 2, 7 or 8 of Schedule 3 applies) that IBB may consider it appropriate for the person to be included in a barred list.
- (5) A local authority may provide IBB with any prescribed information it holds relating to a person if—
  - (a) the local authority think that a person has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 3) occurring before the commencement of this section, and
  - (b) the condition in subsection (4) is satisfied.
- (6) For the purposes of subsection (2)(b) or (5)(a), conduct is inappropriate if it appears to the local authority to be inappropriate having regard to the guidance issued by the Secretary of State under paragraph 4(6) or 10(6) of Schedule 3.
- (7) “Local authority” has the same meaning as in section 1 of the Local Authorities (Goods and Services) Act 1970 (c. 39).

#### **40 Local authorities: duty to provide information on request**

- (1) This section applies if IBB is considering—
  - (a) whether to include any person in a barred list;
  - (b) whether to remove any person from a barred list.
- (2) If IBB thinks that a local authority hold any prescribed information relating to the person, it may require the authority to provide it with the information.
- (3) The local authority must comply with a requirement under subsection (2).

- (4) “Local authority” has the same meaning as in section 1 of the Local Authorities (Goods and Services) Act 1970.

*Professional bodies and supervisory authorities*

**41 Registers: duty to refer**

- (1) A keeper of a relevant register must provide IBB with any prescribed information he holds relating to a person if the first and second conditions are satisfied.
- (2) The first condition is that the keeper thinks—
- (a) that paragraph 1, 2, 7 or 8 of Schedule 3 applies to the person,
  - (b) that the person has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 3) occurring after the commencement of this section, or
  - (c) that the harm test is satisfied.
- (3) The harm test is that the person may—
- (a) harm a child or vulnerable adult,
  - (b) cause a child or vulnerable adult to be harmed,
  - (c) put a child or vulnerable adult at risk of harm,
  - (d) attempt to harm a child or vulnerable adult, or
  - (e) incite another to harm a child or vulnerable adult.
- (4) The second condition is that the keeper thinks—
- (a) that the person is engaged or may engage in regulated activity or controlled activity, and
  - (b) (except in a case where paragraph 1, 2, 7 or 8 of Schedule 3 applies) that IBB may consider it appropriate for the person to be included in a barred list.
- (5) A keeper of a relevant register may provide IBB with any prescribed information he holds relating to a person if—
- (a) he thinks that the person has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 3) occurring before the commencement of this section, and
  - (b) the condition in subsection (4) is satisfied.
- (6) For the purposes of subsection (2)(b) or (5)(a), conduct is inappropriate if it appears to the keeper to be inappropriate having regard to the guidance issued by the Secretary of State under paragraph 4(6) or 10(6) of Schedule 3.
- (7) In this section—
- (a) a relevant register is a register appearing in column 1 of the following table, and
  - (b) in relation to a relevant register, the keeper of the register is the corresponding person appearing in column 2 of the table.

*Status: This is the original version (as it was originally enacted).*

<i>Relevant register</i>	<i>Keeper of the register</i>
1. The register of teachers maintained under section 3 of the Teaching and Higher Education Act 1998 (c. 30)	The General Teaching Council for England or the General Teaching Council for Wales, as the case may be
2. The register of pharmaceutical chemists maintained under section 2 of the Pharmacy Act 1954 (c. 61)	The registrar appointed under section 1 of that Act
3. Either of the lists of medical practitioners kept under section 2 of the Medical Act 1983 (c. 54)	The registrar of the General Medical Council
4. The dentists register kept under section 14 of the Dentists Act 1984 (c. 24) or the dental care professionals register kept under section 36B of that Act	The registrar appointed under section 14 of that Act
5. The register of optometrists or the register of dispensing opticians maintained under section 7 of the Opticians Act 1989 (c. 44), or the register of persons undertaking training as optometrists or the register of persons undertaking training as dispensing opticians maintained under section 8A of that Act	The registrar of the General Optical Council
6. The register of osteopaths maintained under section 2 of the Osteopaths Act 1993 (c. 21)	The Registrar of Osteopaths
7. The register of chiropractors maintained under section 2 of the Chiropractors Act 1994 (c. 17)	The Registrar of Chiropractors
8. The register of social workers and social care workers maintained under section 56 of the Care Standards Act 2000 (c. 14)	The General Social Care Council or the Care Council for Wales, as the case may be
9. The register of qualified nurses and midwives maintained under Article 5 of the Nursing and Midwifery Order 2001 (S.I. 2002/253)	The registrar appointed under Article 4 of that Order
10. The register of members of relevant professions maintained under Article 5 of the Health Professions Order 2001 (S.I. 2002/254)	The registrar appointed under Article 4 of that Order

- (8) The Secretary of State may by order amend the table in subsection (7) by inserting an entry or amending or omitting an entry for the time being contained in the table.

**42 Registers: duty to provide information on request**

- (1) This section applies if IBB is considering—
  - (a) whether to include in a barred list a person who appears on a relevant register;
  - (b) whether to remove such a person from a barred list.
- (2) IBB may require the keeper of the register to provide it with any prescribed information he holds relating to the person.
- (3) The keeper of the register must comply with a requirement under subsection (2).
- (4) References to a relevant register and the keeper of a relevant register must be construed in accordance with section 41(7).

**43 Registers: notice of barring and cessation of monitoring**

- (1) Subsection (2) applies if the Secretary of State knows or thinks that a person (A) appears on a relevant register and either—
  - (a) A is newly included in a barred list or the Secretary of State becomes aware that A is subject to a relevant disqualification, or
  - (b) having been subject to monitoring, A ceases to be so subject by virtue of section 26.
- (2) The Secretary of State must—
  - (a) notify the keeper of the register of the circumstances mentioned in paragraph (a) or (b) (as the case may be) of subsection (1), and
  - (b) in a case where A is newly included in a barred list, require IBB to provide the keeper with all the information on which IBB relied in deciding to include A in the list.
- (3) If IBB—
  - (a) knows or thinks that a person appears on a relevant register, and
  - (b) becomes aware of relevant information relating to that person,it must provide the keeper of the register with that information.
- (4) In subsection (3), relevant information is information which—
  - (a) relates to the protection of children or vulnerable adults in general, or of any child or vulnerable adult in particular, and
  - (b) is relevant to the exercise of any function of the keeper of the register.
- (5) But, in that subsection, relevant information does not include—
  - (a) information that any of the events mentioned in subsection (1)(a) and (b) has occurred in relation to the person;
  - (b) the information mentioned in subsection (2)(b);
  - (c) information falling within paragraph 19(5) of Schedule 3.
- (6) In this section—
  - (a) a relevant register is a register appearing in column 1 of entry 1 or 8 of the table in section 41(7), and
  - (b) in relation to a relevant register, the keeper of the register is the corresponding person appearing in column 2 of the table.



- (7) A person is subject to a relevant disqualification if he is included in a list maintained under the law of Scotland or Northern Ireland which the Secretary of State specifies by order as corresponding to a barred list.

#### **44 Registers: power to apply for vetting information**

- (1) If the keeper of a relevant register applies to the Secretary of State for information within subsection (2) in relation to a person (B), the Secretary of State must provide the keeper of the register with that information.
- (2) The information within this subsection is—
- (a) whether B is barred from regulated activity relating to children or vulnerable adults,
  - (b) whether IBB is considering whether to include B in a barred list in pursuance of paragraph 3 or 5 or 9 or 11 of Schedule 3,
  - (c) whether B is subject to monitoring in relation to regulated activity relating to children or vulnerable adults,
  - (d) if B is subject to such monitoring and the Secretary of State is required to notify B as mentioned in section 24(4), whether the Secretary of State has yet done so, and
  - (e) if B is subject to such monitoring and has made a simultaneous application under section 113B of the Police Act 1997, whether the Secretary of State has yet issued an enhanced criminal record certificate under that section.
- (3) The keeper of a relevant register may apply for information under this section in relation to a person only if—
- (a) the person appears in the register, or
  - (b) the person is being considered for inclusion in the register.
- (4) In this section—
- (a) a relevant register is a register appearing in column 1 of entry 1 or 8 of the table in section 41(7), and
  - (b) in relation to a relevant register, the keeper of the register is the corresponding person appearing in column 2 of the table.
- (5) In subsection (2)(e) “simultaneous application” means an application made simultaneously with B’s monitoring application under section 24.
- (6) The Secretary of State may by order amend this section for the purpose of altering the information within subsection (2).
- (7) The Secretary of State may prescribe the form, manner and contents of an application for the purposes of this section.

#### **45 Supervisory authorities: duty to refer**

- (1) A supervisory authority must provide IBB with any prescribed information it holds relating to a person if the first and second conditions are satisfied.
- (2) The first condition is that the supervisory authority thinks, on the basis of relevant evidence—
- (a) that paragraph 1, 2, 7 or 8 of Schedule 3 applies to the person,

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*Status: This is the original version (as it was originally enacted).*

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- (b) that the person has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 3) occurring after the commencement of this section, or
  - (c) that the harm test is satisfied.
- (3) The harm test is that the person may—
- (a) harm a child or vulnerable adult,
  - (b) cause a child or vulnerable adult to be harmed,
  - (c) put a child or vulnerable adult at risk of harm,
  - (d) attempt to harm a child or vulnerable adult, or
  - (e) incite another to harm a child or vulnerable adult.
- (4) The second condition is that the supervisory authority thinks—
- (a) that the person is engaged or may engage in regulated activity or controlled activity, and
  - (b) (except in a case where paragraph 1, 2, 7 or 8 of Schedule 3 applies) that IBB may consider it appropriate for the person to be included in a barred list.
- (5) The supervisory authority may provide IBB with any prescribed information it holds relating to a person if—
- (a) it thinks, on the basis of relevant evidence, that the person has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 3) occurring before the commencement of this section, and
  - (b) the condition in subsection (4) is satisfied.
- (6) Subsection (1) does not apply if the supervisory authority is satisfied that IBB already has the information.
- (7) A supervisory authority is—
- (a) a registration authority within the meaning of section 5 of the Care Standards Act 2000 (c. 14) in respect of its functions under Part 2 of that Act;
  - (b) the National Assembly for Wales in respect of its functions under Chapter 1 of Part 10 of the Education Act 2002 (c. 32);
  - (c) the Commission for Healthcare Audit and Inspection in respect of its functions under Chapter 3 of Part 2 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43);
  - (d) the Commission for Social Care Inspection in respect of its functions under Chapter 5 of Part 2 of that Act;
  - (e) the National Assembly for Wales in respect of its functions under Chapters 4 and 6 of Part 2 of that Act;
  - (f) the Public Guardian in the exercise of his functions;
  - (g) Her Majesty's Chief Inspector of Schools in England in the exercise of his functions;
  - (h) Her Majesty's Chief Inspector of Education and Training in Wales in the exercise of his functions;
  - (i) the Charity Commissioners for England and Wales in the exercise of their functions.
- (8) Relevant evidence is evidence obtained by the supervisory authority in the exercise of the functions mentioned in subsection (7).

- (9) The Secretary of State may by order amend subsection (7) by inserting a paragraph or amending or omitting a paragraph for the time being contained in the subsection.
- (10) For the purposes of subsection (2)(b) or (5)(a), conduct is inappropriate if it appears to the supervisory authority to be inappropriate having regard to the guidance issued by the Secretary of State under paragraph 4(6) or 10(6) of Schedule 3.

**46 Supervisory authorities: duty to provide information on request**

- (1) This section applies if IBB is considering—
  - (a) whether to include in a barred list a person in relation to whom IBB thinks that a supervisory authority may have prescribed information;
  - (b) whether to remove such a person from a barred list.
- (2) IBB may require the supervisory authority to provide it with any prescribed information it holds relating to the person.
- (3) The supervisory authority must comply with a requirement under subsection (2).

**47 Supervisory authorities: power to apply for vetting information**

- (1) If a supervisory authority applies to the Secretary of State for information within subsection (2) or (3) relating to a person (B), the Secretary of State must provide the supervisory authority with that information.
- (2) The information within this subsection is—
  - (a) whether B is barred from regulated activity relating to children,
  - (b) whether IBB is considering whether to include B in the children's barred list in pursuance of paragraph 3 or 5 of Schedule 3,
  - (c) whether B is subject to monitoring in relation to regulated activity relating to children,
  - (d) if B is subject to such monitoring and the Secretary of State is required to notify B as mentioned in section 24(4) in connection with his monitoring application, whether the Secretary of State has yet done so, and
  - (e) if B is subject to such monitoring and has made a simultaneous application under section 113B of the Police Act 1997, whether the Secretary of State has yet issued an enhanced criminal record certificate under that section.
- (3) The information within this subsection is—
  - (a) whether B is barred from regulated activity relating to vulnerable adults,
  - (b) whether IBB is considering whether to include B in the adults' barred list in pursuance of paragraph 9 or 11 of Schedule 3,
  - (c) whether B is subject to monitoring in relation to regulated activity relating to vulnerable adults,
  - (d) if B is subject to such monitoring and the Secretary of State is required to notify B as mentioned in section 24(4) in connection with his monitoring application, whether the Secretary of State has yet done so, and
  - (e) if B is subject to such monitoring and has made a simultaneous application under section 113B of the Police Act 1997, whether the Secretary of State has yet issued an enhanced criminal record certificate under that section.

- (4) A supervisory authority may apply for information under this section only if the information is required in connection with the exercise of a function of the supervisory authority mentioned in section 45(7).
- (5) In subsections (2)(e) and (3)(e), “simultaneous application” means an application made simultaneously with B’s monitoring application under section 24.
- (6) The Secretary of State may by order amend this section for the purpose of altering the information within subsection (2) or (3).
- (7) The Secretary of State may prescribe the form, manner and contents of an application for the purposes of this section.

#### **48 Supervisory authorities: notification of barring &c. in respect of children**

- (1) This section applies if—
  - (a) a person is newly included in the children’s barred list,
  - (b) the Secretary of State becomes aware that a person is subject to a relevant children’s disqualification, or
  - (c) having been subject to monitoring in relation to regulated activity relating to children, a person ceases to be so subject by virtue of section 26.
- (2) The Secretary of State must notify every interested supervisory authority of the circumstance mentioned in paragraph (a), (b) or (c) (as the case may be) of subsection (1).
- (3) A supervisory authority is an interested supervisory authority only if—
  - (a) it has applied to the Secretary of State to be notified if any of the circumstances mentioned in subsection (1) occurs in relation to the person, and
  - (b) the application has not been withdrawn.
- (4) A supervisory authority may apply to the Secretary of State under subsection (3)(a) only if the notification is required in connection with the exercise of a function of the supervisory authority mentioned in section 45(7).
- (5) For the purposes of subsection (3)(b) an application is withdrawn if the supervisory authority notifies the Secretary of State that it no longer wishes to be notified if any of the circumstances mentioned in subsection (1) occurs in relation to the person.
- (6) A person is subject to a relevant children’s disqualification if he is included in a list maintained under the law of Scotland or Northern Ireland which the Secretary of State specifies by order as corresponding to the children’s barred list.
- (7) The Secretary of State may provide that in prescribed circumstances a supervisory authority is not an interested supervisory authority for the purposes of this section.
- (8) The Secretary of State may prescribe the form, manner and contents of an application for the purposes of this section.

#### **49 Supervisory authorities: notification of barring &c. in respect of vulnerable adults**

- (1) This section applies if—
  - (a) a person is newly included in the adults' barred list,

- (b) the Secretary of State becomes aware that a person is subject to a relevant adults' disqualification, or
  - (c) having been subject to monitoring in relation to regulated activity relating to vulnerable adults, a person ceases to be so subject by virtue of section 26.
- (2) The Secretary of State must notify every interested supervisory authority of the circumstance mentioned in paragraph (a), (b) or (c) (as the case may be) of subsection (1).
- (3) A supervisory authority is an interested supervisory authority only if—
- (a) it has applied to the Secretary of State to be notified if any of the circumstances mentioned in subsection (1) occurs in relation to the person, and
  - (b) the application has not been withdrawn.
- (4) A supervisory authority may apply to the Secretary of State under subsection (3)(a) only if the notification is required in connection with the exercise of a function of the supervisory authority mentioned in section 45(7).
- (5) For the purposes of subsection (3)(b) an application is withdrawn if the supervisory authority notifies the Secretary of State that it no longer wishes to be notified if any of the circumstances mentioned in subsection (1) occurs in relation to the person.
- (6) A person is subject to a relevant adults' disqualification if he is included in a list maintained under the law of Scotland or Northern Ireland which the Secretary of State specifies by order as corresponding to the adults' barred list.
- (7) The Secretary of State may provide that in prescribed circumstances a supervisory authority is not an interested supervisory authority for the purposes of this section.
- (8) The Secretary of State may prescribe the form, manner and contents of an application for the purposes of this section.

## **50 Provision of information to supervisory authorities**

- (1) This section applies if IBB has information that it thinks is relevant to a supervisory authority.
- (2) IBB must provide the supervisory authority with the information.
- (3) Information is relevant to a supervisory authority if—
- (a) it relates to the protection of children or vulnerable adults in general, or of any child or vulnerable adult in particular, and
  - (b) is relevant to the exercise of any function of the authority,
- but does not include information falling within paragraph 19(5) of Schedule 3 or information that any of the events mentioned in section 48(1)(a), (b) and (c) or 49(1)(a), (b) and (c) has occurred in relation to a person.

*Crown*

## **51 Crown application**

- (1) Subject to the provisions of this section, this Act and any regulations or orders made under it bind the Crown.

- (2) No contravention by the Crown of any provision of this Act or of any regulations or order made under it makes the Crown criminally liable.
- (3) Despite subsection (2), this Act and any regulations or orders made under it apply to persons in Crown employment (within the meaning of the Employment Rights Act 1996 (c. 18)) as they apply to other persons.
- (4) Subsection (2) of section 6 does not apply in relation to any activity carried out by the Crown.
- (5) Each government department and other body performing functions on behalf of the Crown—
  - (a) if the department or body engages in regulated activity, is the regulated activity provider in relation to the activity;
  - (b) if the department or body engages in controlled activity, is the responsible person (within the meaning of section 23) in relation to the activity.
- (6) In subsection (5) “body” includes office-holder.
- (7) Nothing in this section is to be taken as in any way affecting Her Majesty in her private capacity (within the meaning of section 38(3) of the Crown Proceedings Act 1947 (c. 44)).

#### *Miscellaneous*

### **52 Referrals: findings of fact immaterial**

- (1) For the purposes of the provisions mentioned in subsection (2), it is immaterial whether there is a finding of fact in any proceedings.
- (2) The provisions are—
  - section 35(3)(b) and (c);
  - section 36(4)(b) and (c);
  - section 39(2)(b) and (c) and (5)(a);
  - section 41(2)(b) and (c) and (5)(a);
  - section 45(2)(b) and (c) and (5)(a).

### **53 Fostering**

- (1) Despite section 58, this Act applies to activity that is regulated activity by virtue of paragraph 1(5) of Schedule 4.
- (2) Subsection (1) does not affect the operation of this Act in relation to any other activity that is carried out in connection with a foster child.
- (3) Subsection (4) applies if a person (P)—
  - (a) makes arrangements for another person to foster a child as a private foster parent, and
  - (b) has power to terminate the arrangements.
- (4) P is, if he would not otherwise be, a regulated activity provider in relation to fostering carried out by the foster parent in pursuance of the arrangements.

- (5) The following provisions of this section apply for the purposes of this Act.
- (6) A person fosters a child if he is a foster parent of the child.
- (7) A person is a foster parent if—
- (a) he is a local authority foster parent within the meaning of section 23(3) of the Children Act 1989 (c. 41);
  - (b) he is a person with whom a child has been placed by a voluntary organisation under section 59(1)(a) of that Act;
  - (c) he is a private foster parent.
- (8) A person is a private foster parent if he falls within subsection (9) and looks after a child—
- (a) for reward, or
  - (b) in pursuance of an arrangement made by someone other than a member of the child's family.
- (9) A person falls within this subsection if—
- (a) he fosters the child privately within the meaning of section 66(1) of the Children Act 1989,
  - (b) he would be so fostering the child but for subsection (2) of that section (minimum period of 28 days), or
  - (c) (in the case of a child who has attained the age of 16) he would fall within paragraph (a) or (b) if the child were under the age of 16.
- (10) A person's family includes—
- (a) the person's foster child;
  - (b) the foster child of any member of the person's family;
- and references to a family relationship and family member are to be construed accordingly.

#### **54 Devolution: alignment**

- (1) The Secretary of State may, by order, make such provision (including provision amending any enactment contained in or made under any Act, including this Act) as he thinks necessary or expedient in consequence of or having regard to any relevant Scottish legislation or relevant Northern Ireland legislation.
- (2) An order may—
- (a) include provision for treating a person to whom a monitoring provision applies as if he were subject to monitoring in relation to regulated activity;
  - (b) confer power to make subordinate legislation (within the meaning given by the Interpretation Act 1978 (c. 30)).
- (3) Relevant Scottish legislation is any provision made by or under an Act of the Scottish Parliament which the Secretary of State thinks—
- (a) corresponds to provision made by or under this Act,
  - (b) makes monitoring provision, or
  - (c) affects the operation of any provision made by or under this Act.
- (4) Relevant Northern Ireland legislation is any provision of such legislation which the Secretary of State thinks—

- (a) corresponds to provision made by or under this Act
  - (b) makes monitoring provision, or
  - (c) affects the operation of any provision made by or under this Act.
- (5) Monitoring provision is provision for the collation and disclosure of information relating to persons who engage or wish to engage in activity which the Secretary of State thinks corresponds to regulated activity with children or vulnerable adults.

## 55 Northern Ireland

An Order in Council under paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) (legislation for Northern Ireland during suspension of devolved government) which contains a statement that it is made only for purposes corresponding to those of this Act—

- (a) is not subject to paragraph 2 of that Schedule (affirmative resolution of both Houses of Parliament), but
- (b) is subject to annulment in pursuance of a resolution of either House of Parliament.

## 56 Devolution: Wales

- (1) In so far as a power to make subordinate legislation under any of the following provisions is exercisable only in relation to Wales, it is exercisable by the Welsh Ministers instead of by the Secretary of State—
- (a) section 8(9) or (12);
  - (b) section 10(8) or (12);
  - (c) section 11(7);
  - (d) section 13(1), (4) or (5);
  - (e) section 20(4) or (7);
  - (f) section 23(1);
  - (g) section 30(8);
  - (h) paragraph 3(3) of Schedule 6.
- (2) If the exercise of a power to make subordinate legislation under any of the following provisions will have effect in relation to any function of the Welsh Ministers to which the provision applies, or would apply in consequence of the exercise of the power, the Secretary of State must not exercise the power without the consent of the Welsh Ministers—
- (a) section 45(1), (5) or (9);
  - (b) section 46(2);
  - (c) section 47(7);
  - (d) section 48(7) or (8);
  - (e) section 49(7) or (8).
- (3) If the exercise of a power to make subordinate legislation under any of the following provisions will have effect in relation to Wales, the Secretary of State must not exercise the power unless he first consults the Welsh Ministers—
- (a) section 5(3);
  - (b) section 16(1)(c) or (e);
  - (c) section 21(12);



- (d) section 22(4)(g);
  - (e) section 26(1);
  - (f) section 31(6);
  - (g) section 35(1);
  - (h) section 36(1), (2) or (3);
  - (i) section 37(2);
  - (j) section 39(1) or (5);
  - (k) section 40(2);
  - (l) section 41(1), (5) or (8);
  - (m) section 42(2);
  - (n) section 59(1)(g) or (11);
  - (o) section 64(2);
  - (p) section 65;
  - (q) paragraph 1(1), 2(1), 7(1) or 8(1) of Schedule 3;
  - (r) paragraph 2(1)(f) or 7(1)(f) of Schedule 4;
  - (s) paragraph 14 of Schedule 5;
  - (t) paragraph 5 of Schedule 6.
- (4) A power to make subordinate legislation is a power to make regulations or an order.
- (5) In the application of section 61 to the exercise of a power by the Welsh Ministers by virtue of this section—
- (a) the reference in subsection (2) of that section to either House of Parliament must be taken to be a reference to the National Assembly for Wales;
  - (b) the reference in subsection (3) of that section to each House of Parliament must be taken to be a reference to the Assembly.

### *General*

## **57 Damages**

- (1) No claim for damages lies in respect of any loss or damage suffered by any person in consequence of—
- (a) the fact that an individual is included in a barred list;
  - (b) the fact that an individual is not included in a barred list;
  - (c) the provision of prescribed information in pursuance of any of sections 35, 36, 37, 39, 40, 41, 42, 45 and 46.
- (2) Subsection (1)(c) does not apply to the provision of information which is untrue by a person who knows the information is untrue and either—
- (a) he is the originator of the information and he knew at the time he originated the information that it was not true, or
  - (b) he causes another person to be the originator of the information knowing, at the time the information is originated, that it is untrue.
- (3) Nothing in this Act affects section 8 of the Human Rights Act 1998 (c. 42) as it relates to the power of a court to award damages in respect of an unlawful act of a public authority (within the meaning of that Act).

## **58 Family and personal relationships**

- (1) This Act does not apply to any activity which is carried out in the course of a family relationship.
- (2) This Act does not apply to any activity which is carried out—
  - (a) in the course of a personal relationship, and
  - (b) for no commercial consideration.
- (3) A family relationship includes a relationship between two persons who—
  - (a) live in the same household, and
  - (b) treat each other as though they were members of the same family.
- (4) A personal relationship is a relationship between or among friends.
- (5) A friend of a person (A) includes a person who is a friend of a member of A's family.
- (6) The Secretary of State may by order provide that an activity carried out in specified circumstances either is or is not—
  - (a) carried out in the course of a family relationship;
  - (b) carried out in the course of a personal relationship.

## **59 Vulnerable adults**

- (1) A person is a vulnerable adult if he has attained the age of 18 and—
  - (a) he is in residential accommodation,
  - (b) he is in sheltered housing,
  - (c) he receives domiciliary care,
  - (d) he receives any form of health care,
  - (e) he is detained in lawful custody,
  - (f) he is by virtue of an order of a court under supervision by a person exercising functions for the purposes of Part 1 of the Criminal Justice and Court Services Act 2000 (c. 43),
  - (g) he receives a welfare service of a prescribed description,
  - (h) he receives any service or participates in any activity provided specifically for persons who fall within subsection (9),
  - (i) payments are made to him (or to another on his behalf) in pursuance of arrangements under section 57 of the Health and Social Care Act 2001 (c. 15), or
  - (j) he requires assistance in the conduct of his own affairs.
- (2) Residential accommodation is accommodation provided for a person—
  - (a) in connection with any care or nursing he requires, or
  - (b) who is or has been a pupil attending a residential special school.
- (3) A residential special school is a school which provides residential accommodation for its pupils and which is—
  - (a) a special school within the meaning of section 337 of the Education Act 1996 (c. 56);
  - (b) an independent school (within the meaning of section 463 of that Act) which is approved by the Secretary of State in accordance with section 347 of that Act;

- (c) an independent school (within the meaning of section 463 of that Act) not falling within paragraph (a) or (b) which, with the consent of the Secretary of State given under section 347(5)(b) of that Act, provides places for children with special educational needs (within the meaning of section 312 of that Act);
  - (d) an institution within the further education sector (within the meaning of section 91 of the Further and Higher Education Act 1992) which provides accommodation for children.
- (4) Domiciliary care is care of any description or assistance falling within subsection (5) whether provided continuously or not which a person receives in a place where he is, for the time being, living.
- (5) Assistance falls within this subsection if it is (to any extent) provided to a person by reason of—
  - (a) his age;
  - (b) his health;
  - (c) any disability he has.
- (6) Health care includes treatment, therapy or palliative care of any description.
- (7) A person is in lawful custody if he is—
  - (a) detained in a prison (within the meaning of the Prison Act 1952 (c. 52));
  - (b) detained in a remand centre, young offender institution or secure training centre (as mentioned in section 43 of that Act);
  - (c) detained in an attendance centre (within the meaning of section 53(1) of that Act);
  - (d) a detained person (within the meaning of Part 8 of the Immigration and Asylum Act 1999 (c. 33)) who is detained in a removal centre or short-term holding facility (within the meaning of that Part) or in pursuance of escort arrangements made under section 156 of that Act.
- (8) The reference to a welfare service must be construed in accordance with section 16(5).
- (9) A person falls within this subsection if—
  - (a) he has particular needs because of his age;
  - (b) he has any form of disability;
  - (c) he has a physical or mental problem of such description as is prescribed;
  - (d) she is an expectant or nursing mother in receipt of residential accommodation pursuant to arrangements made under section 21(1)(aa) of the National Assistance Act 1948 or care pursuant to paragraph 1 of Schedule 8 to the National Health Service Act 1977 (c. 49);
  - (e) he is a person of a prescribed description not falling within paragraphs (a) to (d).
- (10) A person requires assistance in the conduct of his own affairs if—
  - (a) a lasting power of attorney is created in respect of him in accordance with section 9 of the Mental Capacity Act 2005 (c. 9) or an application is made under paragraph 4 of Schedule 1 to that Act for the registration of an instrument intended to create a lasting power of attorney in respect of him;
  - (b) an enduring power of attorney (within the meaning of Schedule 4 to that Act) in respect of him is registered in accordance with that Schedule or an

- application is made under that Schedule for the registration of an enduring power of attorney in respect of him;
- (c) an order under section 16 of that Act has been made by the Court of Protection in relation to the making of decisions on his behalf, or such an order has been applied for;
  - (d) an independent mental capacity advocate is or is to be appointed in respect of him in pursuance of arrangements under section 35 of that Act;
  - (e) independent advocacy services (within the meaning of section 248 of the National Health Service Act 2006 (c. 41) or section 187 of the National Health Service (Wales) Act 2006 (c. 42)) are or are to be provided in respect of him;
  - (f) a representative is or is to be appointed to receive payments on his behalf in pursuance of regulations made under the Social Security Administration Act 1992 (c. 5).
- (11) The Secretary of State may by order provide that a person specified in the order or of a description so specified who falls within subsection (1) is not to be treated as a vulnerable adult.

## 60 Interpretation

### (1) In this Act—

“the adults' barred list” must be construed in accordance with section 2(1)(b);

“barred list” means the children's barred list or the adults' barred list;

“child” means a person who has not attained the age of 18;

“the children's barred list” must be construed in accordance with section 2(1)(a);

“educational institution” includes any training provider (within the meaning of Part 3 of the Education Act 2005 (c. 18)), whether or not the training provider would otherwise be regarded as an institution;

“employment agency” and “employment business” must be construed in accordance with the Employment Agencies Act 1973 (c. 35);

“personnel supplier” means—

(a) a person carrying on an employment agency or an employment business, or

(b) an educational institution which supplies to another person a student who is following a course at the institution, for the purpose of enabling the student to obtain experience of engaging in regulated or controlled activity;

“prescribed” means prescribed by regulations made by the Secretary of State;

“supervisory authority” must be construed in accordance with section 45(7);

“vulnerable adult” must be construed in accordance with section 59.

(2) A reference (however expressed) to a person being barred must be construed in accordance with section 3.

(3) A reference to a person being subject to monitoring in relation to a regulated activity must be construed in accordance with section 24.

- (4) Nothing in this Act affects any power to provide information that exists apart from this Act.

## **61 Orders and regulations**

- (1) Any power under this Act to make orders or regulations is exercisable by statutory instrument.
- (2) Subject to subsections (3) and (4), orders or regulations under this Act are subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) An instrument containing provision made—
- (a) by order under section 5(3),
  - (b) by order under section 16(7)(b),
  - (c) by order under section 21(12),
  - (d) in regulations under section 22(4)(g),
  - (e) in regulations under section 23,
  - (f) by order under section 54(1) if it contains provision amending any Act or confers power to make subordinate legislation,
  - (g) under section 64(3),
  - (h) in regulations prescribing criteria for the purpose of paragraph 1, 2, 7 or 8 of Schedule 3,
  - (i) by order under paragraph 6 or 12 of Schedule 3, or
  - (j) by order under paragraph 14 of Schedule 5.
- must not be made unless a draft of the instrument is laid before and approved by a resolution of each House of Parliament.
- (4) Subsection (2) does not apply to an order made under section 65, including such an order which contains provision made under section 64 (except subsection (3) of that section).
- (5) A power to make an order or regulations may be exercised so as to make different provision for different purposes.

## **62 Transitional provision**

Schedule 8 has effect.

## **63 Amendments and repeals**

- (1) Schedule 9 contains amendments.
- (2) Schedule 10 contains repeals.

## **64 Supplementary, incidental, consequential &c. provision**

- (1) Power to make subordinate legislation under this Act includes power to make—
- (a) such supplementary, incidental or consequential provision, or
  - (b) such transitory, transitional or saving provision,
- as the person making the subordinate legislation thinks necessary or expedient.

- (2) The Secretary of State may by order may make such further provision as he considers appropriate—
  - (a) for the general purposes, or any particular purpose, of this Act;
  - (b) in consequence of any provision made by this Act;
  - (c) for giving full effect to this Act or any provision made by it.
- (3) Subordinate legislation under subsection (1) or (2) may amend, repeal, revoke or otherwise modify any enactment (including this Act).
- (4) References in this section to subordinate legislation are to an order or regulations under this Act.
- (5) Nothing in this Act affects the generality of the power conferred by this section.

## **65 Commencement**

This Act (except this section and section 55) comes into force on such day as the Secretary of State appoints by order.

## **66 Extent**

- (1) Subject to subsections (2) to (4), the preceding provisions of this Act extend only to England and Wales.
- (2) Sections 1, 28, 29 and 55 and Schedule 1 and, so far as relating to those provisions, sections 59 to 61 and 65 also extend to Northern Ireland.
- (3) The amendment of an enactment in Schedule 9 has the same extent as the enactment amended, but the amendments made by paragraph 14 of that Schedule do not extend to Scotland.
- (4) Her Majesty may by Order in Council direct that this Act extends, with such modifications as appear to Her Majesty to be appropriate, to any of the Channel Islands or the Isle of Man.

## **67 Short title**

This Act may be cited as the Safeguarding Vulnerable Groups Act 2006.

## SCHEDULES

### SCHEDULE 1

Section 1

#### INDEPENDENT BARRING BOARD

##### *Membership*

- 1 (1) IBB shall consist of—
  - (a) a chairman;
  - (b) such number of other members as the Secretary of State decides.
- (2) The chairman and other members—
  - (a) are to be appointed by the Secretary of State;
  - (b) must appear to the Secretary of State to have knowledge or experience of any aspect of child protection or the protection of vulnerable adults.

##### *Tenure of office*

- 2 (1) The chairman and members hold and must vacate office as such in accordance with the terms of their respective appointments.
- (2) The appointment of a person to hold office is for a term not exceeding five years.
- (3) A person holding office may at any time resign that office by giving notice in writing to the Secretary of State.
- (4) The Secretary of State may by notice in writing remove a person from office if satisfied that any of the following applies to him—
  - (a) he has, without reasonable excuse, failed, for a continuous period of three months, to carry out his functions;
  - (b) he has been convicted (whether before or after his appointment) of a criminal offence;
  - (c) he is an undischarged bankrupt or his estate has been sequestrated and he has not been discharged;
  - (d) he is the subject of a bankruptcy restrictions order or an interim order under Schedule 4A to the Insolvency Act 1986 (c. 45) or an order to the like effect made under any corresponding enactment in force in Scotland or Northern Ireland;
  - (e) he has made a composition or arrangement with, or granted a trust deed for, his creditors;
  - (f) he has failed to comply with the terms of his appointment;
  - (g) he is otherwise unable or unfit to carry out his functions as chairman or member.
- (5) A person who ceases to be chairman or a member is eligible for re-appointment, except where he is removed from office under sub-paragraph (4).

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*Status: This is the original version (as it was originally enacted).*

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### *Remuneration, pension etc. of members*

- 3 (1) IBB must pay to the chairman and each of the other members such remuneration and allowances as may be determined by the Secretary of State.
- (2) IBB must, if required to do so by the Secretary of State—
- (a) pay such pension, allowances or gratuities as may be determined by the Secretary of State to or in respect of a person who is or has been the chairman or a member, or
  - (b) make such payments as may be so determined towards provision for the payment of a pension, allowances or gratuities to or in respect of such a person.
- (3) If the Secretary of State thinks that there are special circumstances which make it right for a person ceasing to hold office as chairman or a member to receive compensation, IBB must pay to him a sum by way of compensation of such amount as may be determined by the Secretary of State.
- (4) Service as chairman or other member of IBB is included among the kinds of service to which a scheme under section 1 of the Superannuation Act 1972 (c. 11) can apply, and accordingly in Schedule 1 to that Act (in which those kinds of service are listed) insert at the appropriate place—
- “The Independent Barring Board.”
- (5) IBB must pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to subparagraph (4) in the sums payable out of money provided by Parliament under that Act.

### *Staff*

- 4 (1) IBB shall have—
- (a) a chief executive;
  - (b) such other employees as it may appoint.
- (2) The chairman may be appointed as chief executive.
- (3) IBB may make arrangements for persons to be seconded to IBB to serve as members of its staff.
- (4) A member of a police force on temporary service with IBB shall be under the direction and control of IBB.

### *Remuneration, pensions etc. of staff*

- 5 (1) IBB must pay to its employees such remuneration and allowances as it may determine.
- (2) IBB may pay, or make payments in respect of, such pensions, allowances or gratuities to or in respect of its employees or former employees as it may determine.
- (3) Employment with IBB is included among the kinds of employment to which a scheme under section 1 of the Superannuation Act 1972 (c. 11) can apply, and accordingly in Schedule 1 to that Act (in which those kinds of employment are listed) insert at the appropriate place—



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*Status: This is the original version (as it was originally enacted).*

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“Employment by the Independent Barring Board.”

- (4) If any person—
- (a) on ceasing to be employed by IBB becomes or continues to be one of its members, and
  - (b) was, by reference to his employment, a participant in a scheme under section 1 of that Act,
- the Minister for the Civil Service may determine that his service as a member of IBB is to be treated for the purposes of the scheme as if his service as a member were service as an employee of IBB (whether or not any benefits are payable to or in respect of him by virtue of paragraph 3).
- (5) IBB must pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to this paragraph in the sums payable out of money provided by Parliament under that Act.

#### *Delegation of functions*

- 6 (1) IBB may to such extent as it may determine delegate any of its functions to—
- (a) one of its members;
  - (b) a member of its staff;
  - (c) a committee consisting of some of its members, members of its staff or both members and members of staff.
- (2) A committee mentioned in sub-paragraph (1)(c) which consists of both members and members of staff must be chaired by a member.
- 7 IBB may to such extent as it may determine delegate any of its functions, other than a core function, to—
- (a) a person who is neither a member nor a member of staff;
  - (b) a committee (including a committee which comprises or includes persons who are neither members nor members of staff).
- 8 A core function is—
- (a) determining whether it is appropriate for a person to be included in a barred list;
  - (b) determining whether to remove a person from a barred list;
  - (c) considering representations made for the purposes of Schedule 3.

#### *Reports*

- 9 (1) As soon as possible after the end of each financial year IBB must issue a report on the exercise of its functions during that year.
- (2) IBB must arrange for the report to be published in such manner as it considers appropriate.
- 10 The Secretary of State may direct IBB to submit a report to him on any matter regarding the exercise of IBB’s functions as may be specified in the direction.

*Funding*

- 11 The Secretary of State may make payments to IBB of such amounts, at such times and on such conditions (if any) as he thinks appropriate.

*Accounts*

- 12 (1) IBB must keep its accounts in such form as the Secretary of State determines.
- (2) IBB must prepare annual accounts in respect of each financial year in such form as the Secretary of State decides.
- (3) Before the end of the specified period following the end of each financial year to which the annual accounts relate IBB must send a copy of the accounts to the Secretary of State and the Comptroller and Auditor General.
- (4) The Comptroller and Auditor General must—
- (a) examine, certify and report on the annual accounts;
  - (b) send a copy of the accounts and of his report to the Secretary of State, who must lay them before each House of Parliament.
- (5) The financial year is—
- (a) the period starting on the day IBB is established and ending on the next 31st March;
  - (b) each succeeding period of 12 months.
- (6) The specified period is such period as the Secretary of State directs.

*Status*

- 13 (1) IBB is not to be regarded—
- (a) as the servant or agent of the Crown, or
  - (b) as enjoying any status, immunity or privilege of the Crown.
- (2) IBB's property is not to be regarded as property of, or property held on behalf of, the Crown.

*Payments in connection with maladministration*

- 14 (1) If IBB thinks—
- (a) that action taken by or on behalf of IBB amounts to maladministration, and
  - (b) that a person has been adversely affected by the action,
- IBB may make such payment (if any) to the person as it thinks appropriate.
- (2) "Action" includes failure to act.

*Incidental powers*

- 15 (1) In connection with the exercise of any of its functions IBB may—
- (a) enter into contracts and other agreements (whether legally binding or not);
  - (b) acquire and dispose of property (including land);
  - (c) borrow money;
  - (d) do such other things as IBB thinks necessary or expedient.

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*Status: This is the original version (as it was originally enacted).*

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- (2) The power conferred by sub-paragraph (1)(b) includes accepting—
  - (a) gifts of money, and
  - (b) gifts or loans of other property,on such terms as IBB thinks appropriate.
- (3) But IBB may exercise the power conferred by sub-paragraph (1)(b) or (c) only with the consent of the Secretary of State.
- (4) Such consent may be given—
  - (a) with respect to a particular case or with respect to a class of cases;
  - (b) subject to such conditions as the Secretary of State thinks appropriate.

#### *Documents*

- 16 A document purporting to be signed on behalf of IBB shall be received in evidence and, unless the contrary is proved, be taken to be so signed.

## SCHEDULE 2

Section 1

### TRANSFERS TO IBB

#### *Staff transfer schemes*

- 1 (1) The Secretary of State may make a scheme (a “staff transfer scheme”) providing—
  - (a) for a person employed in the civil service of the state to become an employee of IBB;
  - (b) for his terms of employment to have effect (subject to any necessary modifications) as the terms of his contract of employment with IBB;
  - (c) for the transfer to IBB of the rights, powers, duties and liabilities of the Crown under or in connection with his terms of employment;
  - (d) for anything done (or having effect as if done) before that transfer by or in relation to the Crown in respect of the terms of employment or the person to be treated as having been done by or in relation to IBB.
- (2) A staff transfer scheme may provide for a period before a person became an employee of IBB to count as a period during which he was such an employee (and for the operation of the scheme not to be treated as having interrupted the continuity of that period).
- (3) A staff transfer scheme may provide for a person in the civil service of the state who would otherwise become an employee of IBB not to become such an employee if he gives notice objecting to the operation of the scheme in relation to him.
- (4) A staff transfer scheme may provide for any person who would be treated (whether by an enactment or otherwise) as having his employment terminated by the operation of the scheme not to be so treated.

*Property transfer schemes*

- 2 (1) The Secretary of State may make a scheme (a “property transfer scheme”) providing for the transfer to IBB of any property, rights or liabilities of the Secretary of State.
- (2) The things that may be transferred by a property transfer scheme include—
- (a) property, rights and liabilities that could not otherwise be transferred;
  - (b) property acquired, and rights and liabilities arising, after the making of the scheme.
- (3) A property transfer scheme may—
- (a) create interests in, or rights in relation to, anything that is or could be transferred by the scheme;
  - (b) impose liabilities in relation to anything that is or could be transferred or created by the scheme;
  - (c) apportion property, rights and liabilities;
  - (d) provide for things done by or in relation to the Secretary of State in connection with any property, rights or liabilities transferred by the scheme to be treated as done, or to be continued, by or in relation to IBB;
  - (e) make provision about the continuation of legal proceedings.

*Schemes: supplementary*

- 3 A staff transfer scheme, or property transfer scheme, may make supplementary, incidental, transitional and consequential provision.

## SCHEDULE 3

Section 2

## BARRED LISTS

**PART 1**

## CHILDREN’S BARRED LIST

*Automatic inclusion*

- 1 (1) This paragraph applies to a person if any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person.
- (2) If it appears to the Secretary of State that this paragraph applies to a person the Secretary of State must refer the matter to IBB.
- (3) On the reference being made, IBB must include the person in the children’s barred list.

*Inclusion subject to consideration of representations*

- 2 (1) This paragraph applies to a person if any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person.

- (2) If it appears to the Secretary of State that this paragraph applies to a person the Secretary of State must refer the matter to IBB.
- (3) On the reference being made, IBB must—
  - (a) include the person in the children’s barred list;
  - (b) give the person the opportunity to make representations as to why he should be removed from the children’s barred list.
- (4) If it appears to IBB that it is not appropriate for the person to be included in the list, it must remove him from the list.

### *Behaviour*

- 3 (1) This paragraph applies to a person if—
  - (a) it appears to IBB that the person has (at any time) engaged in relevant conduct, and
  - (b) IBB proposes to include him in the children’s barred list.
- (2) IBB must give the person the opportunity to make representations as to why he should not be included in the children’s barred list.
- (3) IBB must include the person in the children’s barred list if—
  - (a) it is satisfied that the person has engaged in relevant conduct, and
  - (b) it appears to IBB that it is appropriate to include the person in the list.
- (4) This paragraph does not apply to a person if the relevant conduct consists only of an offence committed against a child before the commencement of section 2 and the court, having considered whether to make a disqualification order, decided not to.
- (5) In sub-paragraph (4)—
  - (a) the reference to an offence committed against a child must be construed in accordance with Part 2 of the Criminal Justice and Court Services Act 2000 (c. 43);
  - (b) a disqualification order is an order under section 28, 29 or 29A of that Act.
- 4 (1) For the purposes of paragraph 3 relevant conduct is—
  - (a) conduct which endangers a child or is likely to endanger a child;
  - (b) conduct which, if repeated against or in relation to a child, would endanger that child or would be likely to endanger him;
  - (c) conduct involving sexual material relating to children (including possession of such material);
  - (d) conduct involving sexually explicit images depicting violence against human beings (including possession of such images), if it appears to IBB that the conduct is inappropriate;
  - (e) conduct of a sexual nature involving a child, if it appears to IBB that the conduct is inappropriate.
- (2) A person’s conduct endangers a child if he—
  - (a) harms a child,
  - (b) causes a child to be harmed,
  - (c) puts a child at risk of harm,
  - (d) attempts to harm a child, or

- (e) incites another to harm a child.
- (3) “Sexual material relating to children” means—
  - (a) indecent images of children, or
  - (b) material (in whatever form) which portrays children involved in sexual activity and which is produced for the purposes of giving sexual gratification.
- (4) “Image” means an image produced by any means, whether of a real or imaginary subject.
- (5) A person does not engage in relevant conduct merely by committing an offence prescribed for the purposes of this sub-paragraph.
- (6) For the purposes of sub-paragraph (1)(d) and (e), IBB must have regard to guidance issued by the Secretary of State as to conduct which is inappropriate.

*Risk of harm*

- 5 (1) This paragraph applies to a person if—
  - (a) it appears to IBB that the person falls within sub-paragraph (4), and
  - (b) IBB proposes to include him in the children’s barred list.
- (2) IBB must give the person the opportunity to make representations as to why he should not be included in the children’s barred list.
- (3) IBB must include the person in the children’s barred list if—
  - (a) it is satisfied that the person falls within sub-paragraph (4), and
  - (b) it appears to IBB that it is appropriate to include the person in the list.
- (4) A person falls within this sub-paragraph if he may—
  - (a) harm a child,
  - (b) cause a child to be harmed,
  - (c) put a child at risk of harm,
  - (d) attempt to harm a child, or
  - (e) incite another to harm a child.

*Restriction on inclusion*

- 6 (1) IBB must not include a person in the children’s barred list—
  - (a) only on a particular ground if a relevant Scottish authority has already considered whether the person should be included in a corresponding list on the same ground (whether or not it decided to include him in the list), or
  - (b) if, in accordance with such criteria as the Secretary of State specifies by order, it is more appropriate for the person’s case to be considered by the relevant Scottish authority.
- (2) A relevant Scottish authority is such authority as the Secretary of State specifies by order as exercising for the purposes of the law of Scotland functions which correspond to those of IBB.
- (3) A corresponding list is a list maintained for the purposes of the law of Scotland which the Secretary of State specifies by order as corresponding to the children’s barred list.

## PART 2

### ADULTS' BARRED LIST

#### *Automatic inclusion*

- 7 (1) This paragraph applies to a person if any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person.
- (2) If it appears to the Secretary of State that this paragraph applies to a person the Secretary of State must refer the matter to IBB.
- (3) On the reference being made, IBB must include the person in the adults' barred list.

#### *Inclusion subject to consideration of representations*

- 8 (1) This paragraph applies to a person if any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person.
- (2) If it appears to the Secretary of State that this paragraph applies to a person the Secretary of State must refer the matter to IBB.
- (3) On the reference being made, IBB must—
- (a) include the person in the adults' barred list;
  - (b) give the person the opportunity to make representations as to why he should be removed from the adults' barred list.
- (4) If it appears to IBB that it is not appropriate for the person to be included in the list, it must remove him from the list.

#### *Behaviour*

- 9 (1) This paragraph applies to a person if—
- (a) it appears to IBB that the person has (at any time) engaged in relevant conduct, and
  - (b) IBB proposes to include him in the adults' barred list.
- (2) IBB must give the person the opportunity to make representations as to why he should not be included in the adults' barred list.
- (3) IBB must include the person in the adults' barred list if—
- (a) it is satisfied that the person has engaged in relevant conduct, and
  - (b) it appears to IBB that it is appropriate to include the person in the list.
- 10 (1) For the purposes of paragraph 9 relevant conduct is—
- (a) conduct which endangers a vulnerable adult or is likely to endanger a vulnerable adult;
  - (b) conduct which, if repeated against or in relation to a vulnerable adult, would endanger that adult or would be likely to endanger him;
  - (c) conduct involving sexual material relating to children (including possession of such material);
  - (d) conduct involving sexually explicit images depicting violence against human beings (including possession of such images), if it appears to IBB that the conduct is inappropriate;

- (e) conduct of a sexual nature involving a vulnerable adult, if it appears to IBB that the conduct is inappropriate.
- (2) A person’s conduct endangers a vulnerable adult if he—
  - (a) harms a vulnerable adult,
  - (b) causes a vulnerable adult to be harmed,
  - (c) puts a vulnerable adult at risk of harm,
  - (d) attempts to harm a vulnerable adult, or
  - (e) incites another to harm a vulnerable adult.
- (3) “Sexual material relating to children” means—
  - (a) indecent images of children, or
  - (b) material (in whatever form) which portrays children involved in sexual activity and which is produced for the purposes of giving sexual gratification.
- (4) “Image” means an image produced by any means, whether of a real or imaginary subject.
- (5) A person does not engage in relevant conduct merely by committing an offence prescribed for the purposes of this sub-paragraph.
- (6) For the purposes of sub-paragraph (1)(d) and (e), IBB must have regard to guidance issued by the Secretary of State as to conduct which is inappropriate.

*Risk of harm*

- 11 (1) This paragraph applies to a person if—
- (a) it appears to IBB that the person falls within sub-paragraph (4), and
  - (b) IBB proposes to include him in the adults' barred list.
- (2) IBB must give the person the opportunity to make representations as to why he should not be included in the adults' barred list.
- (3) IBB must include the person in the adults' barred list if—
- (a) it is satisfied that the person falls within sub-paragraph (4), and
  - (b) it appears to IBB that it is appropriate to include the person in the list.
- (4) A person falls within this sub-paragraph if he may—
- (a) harm a vulnerable adult,
  - (b) cause a vulnerable adult to be harmed,
  - (c) put a vulnerable adult at risk of harm,
  - (d) attempt to harm a vulnerable adult, or
  - (e) incite another to harm a vulnerable adult.

*Restriction on inclusion*

- 12 (1) IBB must not include a person in the adults' barred list—
- (a) only on a particular ground if a relevant Scottish authority has already considered whether the person should be included in a corresponding list on the same ground (whether or not it decided to include him in the list), or



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- (b) if, in accordance with such criteria as the Secretary of State specifies by order, it is more appropriate for the person's case to be considered by the relevant Scottish authority.
- (2) A relevant Scottish authority is such authority as the Secretary of State specifies by order as exercising for the purposes of the law of Scotland functions which correspond to those of IBB.
- (3) A corresponding list is a list maintained for the purposes of the law of Scotland which the Secretary of State specifies by order as corresponding to the adults' barred list.

### PART 3

#### SUPPLEMENTARY

##### *Procedure*

- 13 (1) IBB must ensure that in respect of any information it receives in relation to an individual from whatever source or of whatever nature it considers whether the information is relevant to its consideration as to whether the individual should be included in each barred list.
- (2) Sub-paragraph (1) does not, without more, require IBB to give an individual the opportunity to make representations as to why he should not be included in a barred list.
- 14 When an individual is included in a barred list IBB must take all reasonable steps to notify the individual of that fact.
- 15 (1) The Secretary of State may, by regulations, make provision as to the procedure to be followed for the purposes of any decision IBB is required or authorised to take under this Schedule.
- (2) Such provision may include provision as to the time within which anything is to be done.

##### *Representations*

- 16 (1) A person who is, by virtue of any provision of this Schedule, given an opportunity to make representations must have the opportunity to make representations in relation to all of the information on which IBB intends to rely in taking a decision under this Schedule.
- (2) Any requirement of this Schedule to give a person an opportunity to make representations does not apply if IBB does not know and cannot reasonably ascertain the whereabouts of the person.
- (3) The opportunity to make representations does not include the opportunity to make representations that findings of fact made by a competent body were wrongly made.
- (4) Findings of fact made by a competent body are findings of fact made in proceedings before one of the following bodies or any of its committees—
  - (a) the General Teaching Council for England;
  - (b) the General Teaching Council for Wales;

- (c) the Council of the Pharmaceutical Society of Great Britain;
  - (d) the General Medical Council;
  - (e) the General Dental Council;
  - (f) the General Optical Council;
  - (g) the General Osteopathic Council;
  - (h) the General Chiropractic Council;
  - (i) the Nursing and Midwifery Council;
  - (j) the Health Professions Council;
  - (k) the General Social Care Council;
  - (l) the Care Council for Wales.
- (5) The Secretary of State may by order amend sub-paragraph (4) by inserting a paragraph or amending or omitting a paragraph for the time being contained in the sub-paragraph.
- 17 (1) This paragraph applies to a person who is included in a barred list (except a person included in pursuance of paragraph 1 or 7) if, before he was included in the list, IBB was unable to ascertain his whereabouts.
- (2) This paragraph also applies to such a person if—
- (a) he did not, before the end of any time prescribed for the purpose, make representations as to why he should not be included in the list, and
  - (b) IBB grants him permission to make such representations out of time.
- (3) If a person to whom this paragraph applies makes such representations after the prescribed time—
- (a) IBB must consider the representations, and
  - (b) if it thinks that it is not appropriate for the person to be included in the list concerned, it must remove him from the list.
- (4) For the purposes of this paragraph, it is immaterial that any representations mentioned in sub-paragraph (3) relate to a time after the person was included in the list concerned.

*Review*

- 18 (1) A person who is included in a barred list may apply to IBB for a review of his inclusion.
- (2) An application for a review may be made only with the permission of IBB.
- (3) A person may apply for permission only if—
- (a) the application is made after the end of the minimum barred period, and
  - (b) in the prescribed period ending with the time when he applies for permission, he has made no other such application.
- (4) IBB must not grant permission unless it thinks—
- (a) that the person's circumstances have changed since he was included in the list or since he last applied for permission (as the case may be), and
  - (b) that the change is such that permission should be granted.

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- (5) On a review of a person's inclusion, if IBB is satisfied that it is no longer appropriate for him to be included in the list it must remove him from it; otherwise it must dismiss the application.
- (6) The minimum barred period is the prescribed period beginning with such of the following as may be prescribed—
  - (a) the date on which the person was first included in the list;
  - (b) the date on which any criterion prescribed for the purposes of paragraph 1, 2, 7 or 8 is first satisfied;
  - (c) where the person is included in the list on the grounds that he has been convicted of an offence in respect of which a custodial sentence (within the meaning of section 76 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)) was imposed, the date of his release;
  - (d) the date on which the person made any representations as to why he should not be included in the list.

### *Information*

- 19 (1) IBB may require—
  - (a) any person who holds records of convictions or cautions for the use of police forces generally to provide to it any relevant information relating to a person to whom any of paragraphs 1 to 5 or 7 to 11 applies;
  - (b) any person who holds such records to provide to it prescribed details of relevant matter (within the meaning of section 113A of the Police Act 1997 (c. 50)) relating to a person to whom any of those paragraphs apply;
  - (c) the chief officer of a relevant police force to provide to it any such relevant information;
  - (d) any person who holds information prescribed for the purposes of section 24(8)(c) to provide to it any such information relating to a person to whom any of paragraphs 1 to 5 or 7 to 11 applies.
- (2) For the purposes of sub-paragraph (1)(a), relevant information relating to a person is information which the person holding the records thinks might be relevant in relation to the regulated activity concerned.
- (3) For the purposes of sub-paragraph (1)(c), relevant information relating to a person is information which the chief officer thinks might be relevant in relation to the regulated activity concerned.
- (4) IBB must pay to the appropriate police authority such fee as the Secretary of State thinks appropriate for information provided to IBB in accordance with sub-paragraph (1)(c).
- (5) For the purpose of deciding under this Schedule whether or not a person is included in a barred list IBB must not take account of relevant police information if the chief officer of the relevant police force thinks that it would not be in the interests of the prevention or detection of crime to disclose the information to the person.
- (6) In sub-paragraph (5) relevant police information is information which falls within sub-paragraph (3), whether it is obtained by IBB in pursuance of sub-paragraph (1)(c) or paragraph 20(2).
- (7) In this paragraph—

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“caution” has the same meaning as in section 126 of the Police Act 1997 (c. 50);

“relevant police force” must be construed in accordance with subsection (9) of section 113B of that Act as if the person had made an application for the purposes of that section.

- (8) If IBB so requests, the Secretary of State must inform IBB which police forces are relevant police forces in relation to a person.
- 20 (1) The Secretary of State may provide to IBB any information relating to a person which is held by him in connection with his functions under—
- (a) the Protection of Children Act 1999 (c. 14), except section 9 (the Tribunal);
  - (b) Part 7 of the Care Standards Act 2000 (c. 14);
  - (c) sections 142 to 144 of the Education Act 2002 (c. 32).
- (2) The Secretary of State must provide to IBB any information relating to a person which is held by him in connection with his functions under this Act (except information he holds relating to an offence prescribed for the purposes of paragraph 4(5) or 10(5) of this Schedule).
- 21 IBB must provide the Secretary of State with the prescribed information relating to a person if—
- (a) it includes that person in a barred list;
  - (b) it is considering whether to include him in a barred list;
  - (c) it thinks that any of the criteria prescribed for the purposes of paragraph 1, 2, 7 or 8 is satisfied in relation to him and that the Secretary of State does not already have the information.
- 22 The Secretary of State must inform the Scottish Ministers if a person is included in a barred list.
- 23 IBB may, at the request of the Welsh Ministers, provide them with such information relating to the exercise of its functions as it thinks may be relevant to the exercise by the Welsh Ministers of any of their functions.

#### *Prescribed criteria*

- 24 (1) The criteria which may be prescribed for the purposes of paragraphs 1, 2, 7 and 8 are—
- (a) that a person has been convicted of, or cautioned in relation to, an offence of a specified description;
  - (b) that an order of a specified description requiring the person to do or not to do anything has been made against him;
  - (c) that a person is included in a specified list maintained for the purposes of a country or territory outside the United Kingdom;
  - (d) that an order or direction of a specified description requiring the person to do or not to do anything has been made against him for the purposes of a country or territory outside the United Kingdom.
- (2) The power to specify offences for the purposes of sub-paragraph (1) includes power to specify offences under—
- (a) the law of Scotland, Northern Ireland, the Channel Islands or the Isle of Man;
  - (b) section 70 of the Army Act 1955 (3 & 4 Eliz. 2 c. 18);

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- (c) section 70 of the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19);
  - (d) section 42 of the Naval Discipline Act 1957 (c. 53);
  - (e) section 42 of the Armed Forces Act 2006 (c. 52).
- (3) The Secretary of State may specify a list for the purposes of sub-paragraph (1)(c) only if he thinks that inclusion in the list has a corresponding or similar effect to inclusion in a barred list.
- (4) For the purposes of determining whether any of the criteria is satisfied in relation to a person, ignore—
- (a) any offence committed before he attained the age of 18;
  - (b) any order or direction made before that time.
- (5) The criteria which may be prescribed for the purposes of paragraph 1 or 2 must not consist only of circumstances in which the person has committed an offence against a child before the commencement of section 2 if the court, having considered whether to make a disqualification order, decided not to.
- (6) In sub-paragraph (5)—
- (a) the reference to an offence committed against a child must be construed in accordance with Part 2 of the Criminal Justice and Court Services Act 2000 (c. 43);
  - (b) a disqualification order is an order under section 28, 29 or 29A of that Act.
- (7) For the purposes of sub-paragraph (4) an offence committed over a period of time must be treated as committed on the last day of the period.
- (8) For the purpose of considering whether the criteria apply to an individual, the Secretary of State must, from time to time, examine records of convictions or cautions held for the use of police forces generally.
- (9) Sub-paragraph (8) does not apply to records of convictions made, or cautions given, before such date as is prescribed.
- 25 A court by or before which a person is convicted of an offence of a description specified for the purposes of paragraph 24(1)(a), or which makes an order of a description specified for the purposes of paragraph 24(1)(b), must inform the person at the time he is convicted or the order is made that IBB will include him in the barred list concerned.

## SCHEDULE 4

Section 5

### REGULATED ACTIVITY

#### PART 1

#### REGULATED ACTIVITY RELATING TO CHILDREN

##### *Regulated activity: general*

- 1 (1) An activity is a regulated activity relating to children if—

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- (a) it is mentioned in paragraph 2(1), and
  - (b) it is carried out frequently by the same person or the period condition is satisfied.
- (2) An activity is a regulated activity relating to children if—
- (a) it is carried out frequently by the same person or the period condition is satisfied,
  - (b) it is carried out in an establishment mentioned in paragraph 3(1),
  - (c) it is carried out by a person while engaging in any form of work (whether or not for gain),
  - (d) it is carried out for or in connection with the purposes of the establishment, and
  - (e) it gives that person the opportunity, in consequence of anything he is permitted or required to do in connection with the activity, to have contact with children.
- (3) Each of the following, if carried out in England, is a regulated activity relating to children—
- (a) providing early years childminding in respect of which a requirement to register arises by section 33(1) of the Childcare Act 2006 (c. 21) (requirement to register);
  - (b) providing later years childminding in respect of which a requirement to register arises by section 52(1) of that Act (requirement to register);
  - (c) providing early years childminding or later years childminding, if it is provided by a person who is registered by virtue of section 62(1) of that Act (voluntary registration of childminders);
  - (d) providing later years childminding for a child who has attained the age of eight, if a requirement to register would arise in respect of that provision by section 52(1) of that Act if the child had not attained that age.
- (4) Any expression used both in sub-paragraph (3) and in Part 3 of the Childcare Act 2006 has the meaning given by that Act.
- (5) It is a regulated activity relating to children to foster a child (as mentioned in section 53).
- (6) Each of the following, if carried out in Wales, is a regulated activity relating to children—
- (a) acting as a child minder so as to give rise to a requirement to register under section 79D of the Children Act 1989 (c. 41);
  - (b) an activity which would give rise to such a requirement if the child in relation to whom the activity is carried out were under the age of eight.
- (7) For the purposes of sub-paragraph (6), “acting as a child minder” must be construed in accordance with section 79A of that Act.
- (8) The exercise of any function of the following is a regulated activity relating to children—
- (a) officer of the Children and Family Court Advisory and Support Service;
  - (b) Welsh family proceedings officer (within the meaning of Part 4 of the Children Act 2004 (c. 31)).

- (9) The exercise of a function of a person mentioned in paragraph 4(1) is a regulated activity relating to children.
- (10) The exercise of a function of any of the following so far as it relates to the inspection of an establishment mentioned in paragraph 3(1) is a regulated activity relating to children—
- (a) HM Chief Inspector of Schools in England;
  - (b) HM Chief Inspector of Education and Training in Wales;
  - (c) a body approved in pursuance of section 163(1)(b) of the Education Act 2002 (c. 32) to inspect a registered independent school;
  - (d) HM Chief Inspector of Prisons;
  - (e) the Commission for Social Care Inspection;
  - (f) the Commission for Healthcare Audit and Inspection;
  - (g) the National Assembly for Wales.
- (11) The exercise of a function of—
- (a) the Commission for Healthcare Audit and Inspection, or
  - (b) the National Assembly for Wales,
- so far as it relates to the inspection of an establishment, agency or body falling within sub-paragraph (12) is a regulated activity relating to children.
- (12) An establishment, agency or body falls within this sub-paragraph if it is—
- (a) an establishment in relation to which a requirement to register arises under section 11 of the Care Standards Act 2000 (c. 14),
  - (b) an agency in relation to which such a requirement arises, or
  - (c) an NHS body within the meaning of section 148 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43),
- and it provides any form of treatment or therapy for children.
- (13) In sub-paragraph (12)(c) the reference to an NHS body includes a reference to any person who provides, or is to provide, health care for the body (wherever the health care is or is to be provided).
- (14) Any activity which consists in or involves on a regular basis the day to day management or supervision of a person carrying out an activity mentioned in sub-paragraph (1), (2), (8), (10) or (11) is a regulated activity relating to children.

### *Activities*

- 2 (1) The activities referred to in paragraph 1(1) are—
- (a) any form of teaching, training or instruction of children, unless the teaching, training or instruction is merely incidental to teaching, training or instruction of persons who are not children;
  - (b) any form of care for or supervision of children, unless the care or supervision is merely incidental to care for or supervision of persons who are not children;
  - (c) any form of advice or guidance provided wholly or mainly for children, if the advice or guidance relates to their physical, emotional or educational well-being;
  - (d) any form of treatment or therapy provided for a child;

- (e) moderating a public electronic interactive communication service which is likely to be used wholly or mainly by children;
  - (f) driving a vehicle which is being used only for the purpose of conveying children and any person supervising or caring for the children pursuant to arrangements made in prescribed circumstances.
- (2) Sub-paragraph (1)(a), (b), (c) and (d) do not include—
- (a) teaching, training or instruction provided to a child in the course of his employment;
  - (b) care for or supervision of a child in the course of his employment;
  - (c) advice or guidance provided for a child in the course of his employment;
  - (d) treatment or therapy provided for a child in the course of his employment.
- (3) Sub-paragraph (2) does not apply if—
- (a) the child has not attained the age of 16, and
  - (b) the activity is carried out by a person in respect of whom arrangements exist principally for that purpose.
- (4) For the purposes of sub-paragraph (1)(e) a person moderates a public electronic interactive communication service if, for the purpose of protecting children, he has any function relating to—
- (a) monitoring the content of matter which forms any part of the service,
  - (b) removing matter from, or preventing the addition of matter to, the service, or
  - (c) controlling access to, or use of, the service.
- (5) But a person does not moderate a public electronic interactive communications service as mentioned in sub-paragraph (4)(b) or (c) unless he has—
- (a) access to the content of the matter;
  - (b) contact with users of the service.
- (6) In sub-paragraph (2) employment includes any form of work which is carried out under the supervision or control of another, whether or not the person carrying it out is paid for doing so.

### *Establishments*

- 3 (1) The establishments referred to in paragraph 1(2) and (10) are—
- (a) an educational institution which is exclusively or mainly for the provision of full-time education to children;
  - (b) an establishment which is exclusively or mainly for the provision of nursery education (within the meaning of section 117 of the School Standards and Framework Act 1998 (c. 31));
  - (c) a hospital which is exclusively or mainly for the reception and treatment of children;
  - (d) an institution which is exclusively or mainly for the detention of children;
  - (e) a children's home (within the meaning of section 1 of the Care Standards Act 2000 (c. 14));
  - (f) a home provided in pursuance of arrangements under section 82(5) of the Children Act 1989 (c. 41);
  - (g) relevant childcare premises.



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- (2) Relevant childcare premises are any part of premises on which a person carries on—
- (a) any form of childcare (within the meaning of section 18 of the Childcare Act 2006 (c. 21)) in respect of which he must be registered under that Act;
  - (b) any form of such childcare in respect of which he may be registered under that Act, whether or not he is so registered;
  - (c) any form of day care (within the meaning of section 79A of the Children Act 1989 (c. 41)) in respect of which he must be registered under that Act.

### *Positions*

- 4 (1) The persons referred to in paragraph 1(9) are—
- (a) member of the governing body of an educational establishment mentioned in section 8(5);
  - (b) member of a relevant local government body;
  - (c) director of children’s services of a local authority in England;
  - (d) director of adult social services of a local authority in England;
  - (e) director of social services of a local authority in Wales;
  - (f) chief education officer of a local authority in Wales;
  - (g) charity trustee of a children’s charity;
  - (h) member of the Youth Justice Board for England and Wales;
  - (i) Children’s Commissioner or deputy Children’s Commissioner appointed under Part 1 of the Children Act 2004 (c. 31);
  - (j) Children’s Commissioner for Wales or deputy Children’s Commissioner for Wales;
  - (k) operator of a database established in pursuance of section 12(1)(a) or (b) or 29(1)(a) or (b) of the Children Act 2004;
  - (l) member of a Local Safeguarding Children Board established under section 13 or 31 of that Act;
  - (m) member or chief executive of the Children and Family Court Advisory and Support Service;
  - (n) a deputy appointed in respect of a child under section 16(2)(b) of the Mental Capacity Act 2005 (c. 9);
  - (o) member, chief executive or member of staff of IBB.
- (2) For the purposes of sub-paragraph (1)(b), a person is a member of a relevant local government body if—
- (a) he is a member of a local authority and discharges any education functions, or social services functions, of a local authority;
  - (b) he is a member of an executive of a local authority which discharges any such functions;
  - (c) he is a member of a committee of an executive of a local authority which discharges any such functions;
  - (d) he is a member of an area committee, or any other committee, of a local authority which discharges any such functions.
- (3) Any reference in sub-paragraph (2) to a committee includes a reference to any sub-committee which discharges any functions of that committee.

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- (4) A charity is a children’s charity if the individuals who are workers for the charity normally include individuals engaging in regulated activity relating to children.
- (5) An individual is a worker for a charity if he does work under arrangements made by the charity; but the arrangements referred to in this sub-paragraph do not include any arrangements made for purposes which are merely incidental to the purposes for which the charity is established.
- (6) For the purposes of sub-paragraph (1)(k), a person is the operator of a database if he—
- (a) establishes or maintains the database, or
  - (b) otherwise, exercises any function in relation to the management or control of the database.
- (7) In this paragraph—
- “area committee” has the same meaning as in section 18 of the Local Government Act 2000 (c. 22);
- “charity” and “charity trustee” have the same meanings as in the Charities Act 1993 (c. 10);
- “education functions”, in relation to a local authority, means any functions with respect to education which are conferred on the authority in its capacity as a local education authority;
- “executive”, in relation to a local authority, has the same meaning as in Part 2 of the Local Government Act 2000;
- “local authority” has the same meaning as in the Education Act 1996 (c. 56);
- “social services functions”, in relation to a local authority, has the same meaning as in the Local Authority Social Services Act 1970 (c. 42).
- 5 A person who is part of a group in relation to which another (P) engages in regulated activity relating to children does not engage in regulated activity only because he assists P or does anything on behalf of or under the direction of P which, but for this paragraph, would amount to engaging in regulated activity relating to children.

### *Exceptions*

- 6 The Secretary of State may, by order, provide that in such circumstances as are specified an activity which is a regulated activity in relation to children is not to be treated as a regulated activity.

## **PART 2**

### REGULATED ACTIVITY RELATING TO VULNERABLE ADULTS

- 7 (1) Each of the following is a regulated activity relating to vulnerable adults if it is carried out frequently by the same person or the period condition is satisfied—
- (a) any form of training, teaching or instruction provided wholly or mainly for vulnerable adults;
  - (b) any form of care for or supervision of vulnerable adults;
  - (c) any form of assistance, advice or guidance provided wholly or mainly for vulnerable adults;

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- (d) any form of treatment or therapy provided for a vulnerable adult;
  - (e) moderating a public electronic interactive communication service which is likely to be used wholly or mainly by vulnerable adults;
  - (f) driving a vehicle which is being used only for the purpose of conveying vulnerable adults and any person caring for the vulnerable adults pursuant to arrangements made in prescribed circumstances;
  - (g) anything done on behalf of a vulnerable adult in such circumstances as are prescribed.
- (2) For the purposes of sub-paragraph (1)(e) a person moderates a public electronic interactive communication service if, for the purpose of protecting vulnerable adults, he has any function relating to—
- (a) monitoring the content of matter which forms any part of the service,
  - (b) removing matter from, or preventing the addition of matter to, the service, or
  - (c) controlling access to, or use of, the service.
- (3) But a person does not moderate a public electronic interactive communications service as mentioned in sub-paragraph (2)(b) or (c) unless he has—
- (a) access to the content of the matter;
  - (b) contact with users of the service.
- (4) An activity carried out in a care home (for the purposes of the Care Standards Act 2000 (c. 14)) which is exclusively or mainly for vulnerable adults is a regulated activity relating to vulnerable adults if—
- (a) it is carried out at the establishment frequently by the same person or the period condition is satisfied,
  - (b) it is carried out by a person while engaging in any form of work (whether or not for gain),
  - (c) it is carried out for or in connection with the purposes of the establishment, and
  - (d) it gives that person the opportunity, in consequence of anything he is permitted or required to do in connection with the activity, to have contact with vulnerable adults.
- (5) Any activity which consists in or involves on a regular basis the day to day management or supervision of a person carrying out an activity mentioned in sub-paragraph (1) or (4) is a regulated activity relating to vulnerable adults.
- (6) The exercise of the inspection functions of—
- (a) the Commission for Healthcare, Audit and Inspection;
  - (b) the Commission for Social Care Inspection;
  - (c) the National Assembly for Wales,
- is a regulated activity relating to vulnerable adults.
- (7) Inspection functions are functions relating to the inspection of—
- (a) a local authority (within the meaning of section 1 of the Local Authority Social Services Act 1970 (c. 42)) in the exercise of its social services functions (within the meaning of that Act),
  - (b) an establishment in relation to which a requirement to register arises under section 11 of the Care Standards Act 2000,
  - (c) an agency in relation to which such a requirement arises,

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- (d) a person to whom Part 2 of that Act applies in pursuance of an order under section 42 of that Act,
- (e) an NHS body within the meaning of section 148 of the Health and Social Care (Community Health and Standards) Act 2003, or
- (f) any person, other than a local authority, providing English local authority social services or Welsh local authority social services within the meaning of that section,

in so far as the inspection relates to social services, care, treatment or therapy provided for vulnerable adults by the establishment, agency, person or body.

- (8) In sub-paragraph (7)(e) the reference to an NHS body includes a reference to any person who provides, or is to provide, health care for the body (wherever the health care is or is to be provided).
- (9) The exercise of a function of a person mentioned in paragraph 8(1) is a regulated activity relating to vulnerable adults.
- (10) A person who is part of a group in relation to which another (P) engages in regulated activity relating to vulnerable adults does not engage in regulated activity only because he assists P or does anything on behalf of or under the direction of P which, but for this sub-paragraph, would amount to engaging in regulated activity relating to vulnerable adults.

- 8 (1) The persons referred to in paragraph 7(9) are—
- (a) member of a relevant local government body;
  - (b) director of adult social services of a local authority in England;
  - (c) director of social services of a local authority in Wales;
  - (d) Commissioner for older people in Wales or deputy Commissioner for older people in Wales;
  - (e) charity trustee of vulnerable adults' charity;
  - (f) member or chief executive or member of staff of IBB.
- (2) For the purposes of sub-paragraph (1)(a), a person is a member of a relevant local government body if—
- (a) he is a member of a local authority and discharges any social services functions of a local authority which relate wholly or mainly to vulnerable adults;
  - (b) he is a member of an executive of a local authority which discharges any such functions;
  - (c) he is a member of a committee of an executive of a local authority which discharges any such functions;
  - (d) he is a member of an area committee, or any other committee, of a local authority which discharges any such functions.
- (3) Any reference in sub-paragraph (2) to a committee includes a reference to any sub-committee which discharges any functions of that committee.
- (4) A charity is a vulnerable adults' charity if the individuals who are workers for the charity normally include individuals engaging in regulated activity relating to vulnerable adults.
- (5) An individual is a worker for a charity if he does work under arrangements made by the charity; but the arrangements referred to in this sub-paragraph do not include

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any arrangements made for purposes which are merely incidental to the purposes for which the charity is established.

(6) In this paragraph—

“area committee” has the same meaning as in section 18 of the Local Government Act 2000 (c. 22);

“charity” and “charity trustee” have the same meanings as in the Charities Act 1993 (c. 10);

“executive”, in relation to a local authority, has the same meaning as in Part 2 of the Local Government Act 2000;

“local authority” has the same meaning as in the Education Act 1996 (c. 56);

“social services functions”, in relation to a local authority, has the same meaning as in the Local Authority Social Services Act 1970 (c. 42).

(7) In relation to a local authority—

(a) which is a children’s services authority (within the meaning of the Children Act 2004 (c. 31)), and

(b) which has not appointed a director of children’s services under section 18 of that Act,

in sub-paragraph (1)(b) above the word “adult” must be ignored.

9 The Secretary of State may, by order, provide that in such circumstances as are specified an activity which is a regulated activity in relation to vulnerable adults is not to be treated as a regulated activity.

### PART 3

#### THE PERIOD CONDITION

10 (1) The period condition is satisfied if the person carrying out the activity does so at any time on more than two days in any period of 30 days.

(2) In relation to an activity that falls within paragraph 2(1)(a), (b), (c) or (d) or 7(1)(a), (b), (c), (d) or (g), the period condition is also satisfied if—

(a) the person carrying out the activity does so at any time between 2 a.m. and 6 a.m, and

(b) the activity gives the person the opportunity to have face-to-face contact with children or vulnerable adults (as the case may be).

### SCHEDULE 5

Section 11

#### APPROPRIATE VERIFICATION

### PART 1

#### DEFAULT POSITION

1 (1) A regulated activity provider obtains an appropriate verification in accordance with this Part if, during the prescribed period—

- (a) he obtains relevant information relating to B in pursuance of an application under section 30, or
  - (b) he obtains a copy of an enhanced criminal record certificate relating to B issued in relation to the regulated activity provider.
- (2) “Relevant information” means—
- (a) in relation to regulated activity relating to children, relevant information relating to children (within the meaning of section 31);
  - (b) in relation to regulated activity relating to vulnerable adults, relevant information relating to vulnerable adults (within the meaning of section 31).
- 2 (1) A regulated activity provider obtains an appropriate verification in accordance with this Part if—
- (a) an enhanced criminal record certificate relating to B is issued during the prescribed period,
  - (b) the application for the certificate is countersigned on behalf of the regulated activity provider by a registered person (within the meaning of Part 5 of the Police Act 1997 (c. 50)), and
  - (c) the regulated activity provider obtains from the registered person the information mentioned in sub-paragraph (2) derived from the certificate.
- (2) The information is—
- (a) whether B is subject to monitoring, and
  - (b) whether the IBB is considering whether to include B in a barred list in pursuance of paragraph 3 or 5 or (as the case may be) 9 or 11 of Schedule 3.
- 3 (1) This paragraph applies if—
- (a) a regulated activity provider permits B to engage in an activity that is regulated activity,
  - (b) B engages in the activity with the permission of that and another regulated activity provider (C), and
  - (c) the permission mentioned in paragraph (a) does not have continuous effect for a period exceeding the prescribed period.
- (2) The regulated activity provider mentioned in sub-paragraph (1)(a) obtains an appropriate verification in accordance with this Part if, during the prescribed period, he obtains written confirmation from C—
- (a) that C is appropriately registered in relation to B,
  - (b) that C has no reason to believe that B is barred from the activity, and
  - (c) that C has no reason to believe that B is not subject to monitoring in relation to the activity.
- 4 (1) This paragraph applies if—
- (a) a regulated activity provider permits B to engage in regulated activity,
  - (b) B is supplied by a personnel supplier, and
  - (c) the permission does not have continuous effect for a period exceeding the prescribed period.
- (2) The regulated activity provider obtains an appropriate verification in accordance with this Part if, during the prescribed period, he obtains written confirmation from the personnel supplier—
- (a) that the personnel supplier is appropriately registered in relation to B,

- (b) that the personnel supplier has no reason to believe that B is barred from the activity, and
- (c) that the personnel supplier has no reason to believe that B is not subject to monitoring in relation to the activity.

## PART 2

### PRESCRIBED VERIFICATION

- 5 A regulated activity provider obtains an appropriate verification in accordance with this Part if, during the prescribed period—
- (a) he ascertains in the prescribed manner whether B is subject to monitoring in relation to the activity, and
  - (b) he takes prescribed steps to have an enhanced criminal record certificate relating to B issued in relation to him.
- 6 (1) This paragraph applies if—
- (a) a regulated activity provider permits B to engage in an activity that is regulated activity,
  - (b) B engages in the activity with the permission of that and another regulated activity provider (C), and
  - (c) the permission mentioned in paragraph (a) does not have continuous effect for a period exceeding the prescribed period.
- (2) The regulated activity provider mentioned in sub-paragraph (1)(a) obtains an appropriate verification in accordance with this Part if he obtains from C—
- (a) a copy of an enhanced criminal record certificate relating to B issued in relation to C during the prescribed period, and
  - (b) the confirmation mentioned in sub-paragraph (3) during the prescribed period.
- (3) The confirmation is written confirmation—
- (a) that C is appropriately registered in relation to B,
  - (b) that C has no reason to believe that B is barred from the activity,
  - (c) that C has no reason to believe that B is not subject to monitoring in relation to the activity, and
  - (d) that no information has been disclosed to C in pursuance of section 113B(6)(b) of the Police Act 1997 (c. 50) in connection with the enhanced criminal record certificate.
- 7 (1) This paragraph applies if—
- (a) a regulated activity provider permits B to engage in regulated activity,
  - (b) B is supplied by a personnel supplier, and
  - (c) the permission does not have continuous effect for a period exceeding the prescribed period.
- (2) The regulated activity provider obtains an appropriate verification in accordance with this Part if he obtains from the personnel supplier—
- (a) a copy of an enhanced criminal record certificate relating to B issued in relation to the personnel supplier during the prescribed period, and

- (b) the confirmation mentioned in sub-paragraph (3) during the prescribed period.
- (3) The confirmation is written confirmation—
  - (a) that the personnel supplier is appropriately registered in relation to B,
  - (b) that the personnel supplier has no reason to believe that B is barred from the activity,
  - (c) that the personnel supplier has no reason to believe that B is not subject to monitoring in relation to the activity, and
  - (d) that no information has been disclosed to the personnel supplier in pursuance of section 113B(6)(b) of the Police Act 1997 (c. 50) in connection with the enhanced criminal record certificate.

### PART 3

#### PRESCRIBED VERIFICATION

- 8 A regulated activity provider obtains an appropriate verification in accordance with this Part if, during the prescribed period, he obtains a copy of an enhanced criminal record certificate relating to B issued in relation to the regulated activity provider.
- 9 (1) This paragraph applies if—
- (a) a regulated activity provider permits B to engage in an activity that is regulated activity,
  - (b) B engages in the activity with the permission of that and another regulated activity provider (C), and
  - (c) the permission mentioned in paragraph (a) does not have continuous effect for a period exceeding the prescribed period.
- (2) The regulated activity provider mentioned in sub-paragraph (1)(a) obtains an appropriate verification in accordance with this Part if he obtains from C—
- (a) a copy of an enhanced criminal record certificate relating to B issued in relation to C during the prescribed period, and
  - (b) the confirmation mentioned in sub-paragraph (3) during the prescribed period.
- (3) The confirmation is written confirmation—
- (a) that C is appropriately registered in relation to B,
  - (b) that C has no reason to believe that B is barred from the activity,
  - (c) that C has no reason to believe that B is not subject to monitoring in relation to the activity, and
  - (d) that no information has been disclosed to C in pursuance of section 113B(6)(b) of the Police Act 1997 in connection with the enhanced criminal record certificate.
- 10 (1) This paragraph applies if—
- (a) a regulated activity provider permits B to engage in regulated activity,
  - (b) B is supplied by a personnel supplier, and
  - (c) the permission does not have continuous effect for a period exceeding the prescribed period.



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- (2) The regulated activity provider obtains an appropriate verification in accordance with this Part if he obtains from the personnel supplier—
- (a) a copy of an enhanced criminal record certificate relating to B issued in relation to the personnel supplier during the prescribed period, and
  - (b) the confirmation mentioned in sub-paragraph (3) during the prescribed period.
- (3) The confirmation is written confirmation—
- (a) that the personnel supplier is appropriately registered in relation to B,
  - (b) that the personnel supplier has no reason to believe that B is barred from the activity,
  - (c) that the personnel supplier has no reason to believe that B is not subject to monitoring in relation to the activity, and
  - (d) that no information has been disclosed to the personnel supplier in pursuance of section 113B(6)(b) of the Police Act 1997 (c. 50) in connection with the enhanced criminal record certificate.

## PART 4

### DEFINITIONS AND POWER TO AMEND

- 11 In this Schedule “enhanced criminal record certificate” means—
- (a) in relation to regulated activity relating to children, an enhanced criminal record certificate issued under the Police Act 1997 containing suitability information relating to children (within the meaning of section 113BA of that Act);
  - (b) in relation to regulated activity relating to vulnerable adults, an enhanced criminal record certificate issued under that Act containing suitability information relating to vulnerable adults (within the meaning of section 113BB of that Act).
- 12 For the purposes of this Schedule an enhanced criminal record certificate is issued in relation to a regulated activity provider, or personnel supplier, only if—
- (a) he countersigned the application for the certificate as a registered person for the purposes of Part 5 of the Police Act 1997, or
  - (b) the application was countersigned on his behalf by such a person.
- 13 For the purposes of this Schedule a regulated activity provider, or personnel supplier, is “appropriately registered” in relation to B if—
- (a) he is registered in relation to B under section 32,
  - (b) his registration relates to monitoring in relation to the activity that he has permitted or supplied B to engage in, and
  - (c) he has notified the Secretary of State of the address to which communications are to be sent in connection with his registration.
- 14 The Secretary of State may by order amend the preceding provisions of this Schedule for the purpose of altering what constitutes obtaining an appropriate verification.

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## SCHEDULE 6

Section 12

## EMPLOYMENT BUSINESSES: FAILURE TO CHECK

*Offences*

- 1 (1) A person (P) who carries on an employment business commits an offence if—
- (a) he supplies an individual (B) to another person in the course of that business,
  - (b) he knows or has reason to believe that the other person will permit B to engage in regulated activity, and
  - (c) he is not appropriately registered in relation to B.
- (2) P is appropriately registered in relation to B if—
- (a) he is registered in relation to B under section 32,
  - (b) his registration relates to monitoring in relation to the activity, and
  - (c) he has notified the Secretary of State of the address to which communications are to be sent in connection with his registration.
- (3) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- 2 (1) In such circumstances as are prescribed, a person (P) who carries on an employment business commits an offence if—
- (a) he supplies an individual (B) to another person in the course of that business,
  - (b) he knows or has reason to believe that the other person will permit B to engage in regulated activity, and
  - (c) he fails to obtain a copy of an enhanced criminal record certificate relating to B issued in relation to P during the prescribed period.
- (2) For these purposes “enhanced criminal record certificate” means—
- (a) in relation to regulated activity relating to children, an enhanced criminal record certificate issued under the Police Act 1997 (c. 50) containing suitability information relating to children (within the meaning of section 113BA of that Act);
  - (b) in relation to regulated activity relating to vulnerable adults, an enhanced criminal record certificate issued under that Act containing suitability information relating to vulnerable adults (within the meaning of section 113BB of that Act).
- (3) An enhanced criminal record certificate is issued in relation to P only if—
- (a) he countersigned the application for the certificate as a registered person for the purposes of Part 5 of the Police Act 1997 Act, or
  - (b) the application was countersigned on his behalf by such a person.
- (4) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

*Defences*

- 3 (1) P does not commit an offence under paragraph 1 or 2 if the regulated activity—
- (a) is regulated activity relating to vulnerable adults, and
  - (b) falls within section 16.

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- (2) P does not commit an offence under paragraph 1 or 2 in relation to any period during which B is continuously supplied to another if the period begins before the commencement of this Schedule.
- (3) Sub-paragraph (2) does not apply in relation to a period falling after such date as the Secretary of State specifies by order.

*Modified meaning of regulated activity*

- 4 For the purposes of this Schedule, Schedule 4 is modified as follows—
- (a) in paragraph 1, sub-paragraphs (1)(b) and (2)(a) must be disregarded;
  - (b) in paragraph 7(1), the words “if it is carried out frequently by the same person or the period condition is satisfied” must be disregarded;
  - (c) in paragraph 7(4), paragraph (a) must be disregarded.

*Power to amend paragraph 2(1)(c)*

- 5 The Secretary of State may by order amend paragraph 2(1)(c) for the purpose of requiring an employment business to carry out such checks in relation to B as may be specified.

*Offence: acting for P etc*

- 6 If the commission of an offence under paragraph 1 or 2 is due to the act or reckless default of a person who acts for or appears to act for P—
- (a) that person is guilty of the offence, and
  - (b) he may be proceeded against and punished whether or not proceedings are also taken against P.

SCHEDULE 7

Section 30

VETTING INFORMATION

- 1 This is the table referred to in sections 30 and 32—

<i>Column 1</i>	<i>Column 2</i>
1. Person who permits, or is considering whether to permit, B to engage in regulated activity relating to children	Children
2. Person who permits, or is considering whether to permit, B to engage in regulated activity relating to vulnerable adults	Vulnerable adults
3. Person who permits, or is considering whether to permit, B to engage in controlled activity relating to children	Children
4. Person who permits, or is considering whether to permit, B to engage in	Vulnerable adults

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<i>Column 1</i>	<i>Column 2</i>
controlled activity relating to vulnerable adults	
5. Personnel supplier in connection with the supply, or possible supply, of B to another person for B to engage in regulated activity relating to children	Children
6. Personnel supplier in connection with the supply, or possible supply, of B to another person for B to engage in regulated activity relating to vulnerable adults	Vulnerable adults
7. Personnel supplier in connection with the supply, or possible supply, of B to another person for B to engage in controlled activity relating to children	Children
8. Personnel supplier in connection with the supply, or possible supply, of B to another person for B to engage in controlled activity relating to vulnerable adults	Vulnerable adults
9. Person who has parental responsibility for a child and is considering whether B is suitable to engage in regulated activity in relation to the child, but not if B is permitted to do so by an independent regulated activity provider	Children
10. Parent who is considering whether B should be a private foster parent (within the meaning of section 53) in relation to his child	Children
11. Person (except the parent of a child to be fostered) making or who has made arrangements for another to foster a child who is considering whether B is suitable to live in premises in which the child is fostered	Children
12. Local authority (within the meaning of the Children Act 1989) in the exercise of functions under section 67 of that Act considering whether B is suitable —	Children
(a) to foster a child privately (within the meaning of that Act);	
(b) to live in premises in which a child is so fostered	

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	<i>Column 1</i>	<i>Column 2</i>
	13. Person who is considering whether B is suitable to engage in regulated activity in relation to a vulnerable adult who is a friend or family member of the person, but not if B is permitted to do so by an independent regulated activity provider	Vulnerable adults
	14. Person who carries on an adult placement scheme and is considering whether B is suitable to live in premises in which an adult is provided with accommodation as part of the scheme	Vulnerable adults
	15. Person who is permitting, or considering whether to permit, B to have access to health or educational records relating to a child	Children
	16. Person who is permitting, or considering whether to permit, B to have access to health records relating to vulnerable adults	Vulnerable adults
	17. Appropriate officer (within the meaning of section 13) who is required to obtain relevant information relating to B	Children
	18. Person who is permitting, or is considering whether to permit, B to engage in an activity in respect of which financial resources are provided pursuant to section 5(1) or 34(1) of the Learning and Skills Act 2000 (c. 21), if engaging in the activity gives B the opportunity to have contact with children	Children
	19. Person of a prescribed description who is performing a prescribed function in connection with B in such circumstances as are prescribed	(a) Children (if prescribed for the purposes of this entry); (b) vulnerable adults (if prescribed for the purposes of this entry)
2	The Secretary of State may by order amend any of entries 1 to 18 in column 1 of the table.	
3	(1) In entries 1 and 5 in the table the reference to regulated activity must be construed by disregarding sub-paragraph (2) of paragraph 2 of Schedule 4 if the activity— (a) relates to a child who has not attained the age of 16, or (b) is carried on for the purposes of the armed forces of the Crown.	
	(2) In entries 1, 2, 5, 6, 9 and 13 in the table the reference to regulated activity includes a reference to an activity which would be a regulated activity if— (a) it were carried out frequently, or	

- (b) it were not merely incidental to another activity.
- (3) In entries 3, 4, 7 and 8 in the table the reference to controlled activity includes a reference to an activity which would be a controlled activity if it were carried out frequently.
- 4 Parental responsibility has the same meaning as in the Children Act 1989 (c. 41).
- 5 A regulated activity provider is an independent regulated activity provider unless it is a company wholly owned by B.
- 6 An adult placement scheme is a scheme—
- (a) under which an individual agrees with the person carrying on the scheme to provide accommodation, in the home in which the individual ordinarily resides, to an adult who is in need of it, and
  - (b) in respect of which a requirement to register arises under section 11 of the Care Standards Act 2000 (c. 14).

## SCHEDULE 8

Section 62

## TRANSITIONAL PROVISIONS

*Advice by IBB*

- 1 IBB must provide the Secretary of State with such advice as he requests in connection with—
- (a) any decision in relation to the inclusion of a person in the list kept under section 1 of the Protection of Children Act 1999 (c. 14);
  - (b) any decision in relation to the inclusion of a person in the list kept under section 81 of the Care Standards Act 2000 (c. 14);
  - (c) any decision in relation to a direction under section 142 of the Education Act 2002 (c. 32) in relation to a person.

*Existing restrictions relating to children*

- 2 (1) This paragraph applies to a person who is—
- (a) included in the list kept under section 1 of the Protection of Children Act 1999 (c. 14) (individuals considered unsuitable to work with children);
  - (b) disqualified from working with children by virtue of an order of the court under section 28, 29 or 29A of the Criminal Justice and Court Services Act 2000 (c. 43);
  - (c) subject to a direction under section 142 of the Education Act 2002 (prohibition from teaching etc).
- (2) The Secretary of State may, by order, make such provision as he thinks appropriate—
- (a) requiring IBB to include the person in the children’s barred list;
  - (b) requiring IBB to consider including the person in the children’s barred list;
  - (c) as to circumstances in which the person may make representations to IBB and the time at which such representations may be made;

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- (d) modifying the provisions of this Act so as to enable the person to engage in regulated activity of such description as is specified in the order in such circumstances as are so specified;
  - (e) modifying anything done under paragraph 15 or in paragraphs 16 to 21 of Schedule 3 in connection with IBB’s consideration of any matter relating to the person.
- (3) An order under this paragraph may contain provision—
- (a) enabling the General Teaching Council for England to make determinations on an application by a person who has ceased to be subject to a direction under section 142 of the Education Act 2002 in relation to his eligibility for registration under the Teaching and Higher Education Act 1998 (c. 30);
  - (b) enabling the General Teaching Council for Wales to make determinations on an application by a person who has ceased to be subject to a direction under section 142 of the Education Act 2002 in relation to his eligibility for registration under the Teaching and Higher Education Act 1998;
  - (c) for the Secretary of State to prescribe the procedure in relation to an application as mentioned in paragraph (a);
  - (d) for the Welsh Ministers to prescribe the procedure in relation to an application as mentioned in paragraph (b).
- (4) In sub-paragraph (3)(c) and (d) “prescribe” means prescribe by regulations made by statutory instrument.
- (5) Regulations made by virtue of sub-paragraph (3)(c) are subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Regulations made by virtue of sub-paragraph (3)(d) are subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (7) Sections 61(5) and 64(1) apply to power to make regulations by virtue of sub-paragraph (3)(c) or (d) as they apply to power to make regulations under this Act.

*Existing restrictions relating to vulnerable adults*

- 3 (1) This paragraph applies to a person who is included in the list kept under section 81 of the Care Standards Act 2000 (c. 14) (individuals considered unsuitable to work with certain adults).
- (2) The Secretary of State may, by order, make such provision as he thinks appropriate—
- (a) requiring IBB to include the person in the adults' barred list;
  - (b) requiring IBB to consider including the person in the adults' barred list;
  - (c) as to circumstances in which the person may make representations to IBB and the time at which such representations may be made;
  - (d) modifying the provisions of this Act so as to enable the person to engage in regulated activity of such description as is specified in the order in such circumstances as are so specified;
  - (e) modifying anything done under paragraph 15 or in paragraphs 16 to 21 of Schedule 3 in connection with IBB’s consideration of any matter relating to the person.

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*Existing restrictions: supplementary*

- 4 An order under paragraph 2 or 3 may—
- (a) modify any criminal offence created by this Act;
  - (b) create any new criminal offence,
- but the penalty for an offence created by virtue of this paragraph must not exceed level 5 on the standard scale.

*Modifications relating to monitoring*

- 5 (1) The Secretary of State may by order provide that in relation to permission to engage in regulated activity having effect during the transitional period, references in section 11(1) and (2) to ascertaining whether B is subject to monitoring in relation to an activity have effect as references to ascertaining whether B is barred from that activity.
- (2) The transitional period is the period—
- (a) beginning with the commencement of section 2, and
  - (b) ending with the commencement of section 24.

SCHEDULE 9

Section 63

AMENDMENTS

**PART 1**

EXISTING LISTS

*Children Act 1989 (c. 41)*

- 1 In Schedule 9A to the Children Act 1989 (child minding and day care for young children), after paragraph 4(2)(b) insert—
- “(ba) he is barred from regulated activity relating to children (within the meaning of section 3(2) of the Safeguarding Vulnerable Groups Act 2006);”.

*Teaching and Higher Education Act 1998 (c. 30)*

- 2 The Teaching and Higher Education Act 1998 is amended as follows.
- 3 Section 2(4) (advisory functions of General Teaching Council) is omitted.
- 4 In section 3(3) (eligibility for registration), after paragraph (a) insert—
- “(aa) barred from regulated activity relating to children (within the meaning of section 3(2) of the Safeguarding Vulnerable Groups Act 2006);”.
- 5 (1) Section 15 (supply of information following dismissal etc) is amended as follows.
- (2) In subsection (1)—



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- (a) in paragraph (a) for “a person’s services on a ground mentioned in section 142 of the Education Act 2002” substitute “the services of a registered teacher on a ground mentioned in subsection (1A)”;
  - (b) in paragraph (b)—
    - (i) for “a person's” substitute “a registered teacher's”;
    - (ii) for “section” substitute “subsection”;
    - (iii) for “the person” substitute “the teacher”.
- (3) After subsection (1) insert—
- “(1A) The grounds are—
- (a) misconduct;
  - (b) professional incompetence;
  - (c) conviction of a relevant offence within the meaning of paragraph 8 of Schedule 2.”
- (4) In subsection (2)—
- (a) for “a person” substitute “a teacher”;
  - (b) for the words from “such of the following” to the end substitute “the Council”.
- (5) In subsection (3)—
- (a) for “a person” substitute “a teacher”;
  - (b) for the words from “such of the following” to the end substitute “the General Teaching Council for Wales”.
- (6) Omit subsection (4).
- (7) In subsection (5) for the definition of “relevant employer” substitute—
- ““relevant employer” means—
- (a) a local education authority;
  - (b) a person exercising a function relating to the provision of education on behalf of a local education authority;
  - (c) the proprietor of a school;
  - (d) the governing body of a further education institution;
- “education” includes vocational, social, physical and recreational training;
- “proprietor” and “school” have the meanings given in the Education Act 1996;
- “further education institution” has the meaning given in section 140 of the Education Act 2002;”.
- 6 (1) Section 15A (supply of information by contractor, agency, etc) is amended as follows.
- (2) In subsection (1) for “another person (the “worker”)” substitute “a registered teacher (the “teacher”)”.
  - (3) In subsection (2)—

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- (a) in paragraph (a) for “section 142 of the Education Act 2002” substitute “section 15(1A)”;
  - (b) in paragraph (b) for “section” substitute “subsection”;
  - (c) in paragraph (c)—
    - (i) for “worker” substitute “teacher”;
    - (ii) for “section” substitute “subsection”.
- (4) In subsection (3)—
- (a) for “worker” substitute “teacher”;
  - (b) for the words from “such of the following” to the end substitute “the Council”.
- (5) In subsection (4)—
- (a) for “worker” substitute “teacher”;
  - (b) for the words from “such of the following” to the end substitute “the General Teaching Council for Wales”.
- (6) In subsection (9)—
- (a) for “Subsections (4) and” substitute “Subsection”;
  - (b) for “they apply” substitute “it applies”.
- 7 In paragraph 1(4) of Schedule 2 (disciplinary powers of Council), for the words from “of the powers exercisable” to the end substitute “of the powers exercisable by the Independent Barring Board under the Safeguarding Vulnerable Groups Act 2006”.

*Protection of Children Act 1999 (c. 14)*

- 8 (1) The Protection of Children Act 1999 is amended as follows.
- (2) Sections 1 to 4C and 7 (list of persons considered unsuitable to work with children) are omitted.
- (3) In section 9 (the Tribunal)—
- (a) in subsection (1), omit the words from “which shall exercise” to the end;
  - (b) in subsection (2)—
    - (i) omit paragraphs (a) and (b);
    - (ii) in paragraph (d), for “68, 86, 87 or 88” substitute “or 68”;
    - (iii) omit paragraph (e);
  - (c) omit subsection (3A).
- (4) In section 12 (interpretation)—
- (a) in subsection (1), omit all the definitions except the definition of “prescribed”;
  - (b) omit subsections (2) to (3A).

*Care Standards Act 2000 (c. 14)*

- 9 Sections 80 to 89 and 91 to 93 of the Care Standards Act 2000 (list of persons considered unsuitable to work with vulnerable adults) are omitted.

*Childcare Act 2006*

- 10 (1) In section 75(3) of the Childcare Act 2006 (disqualification from registration), after paragraph (b) insert—
- “(ba) he is barred from regulated activity relating to children (within the meaning of section 3(2) of the Safeguarding Vulnerable Groups Act 2006);”.

**PART 2**

OTHER AMENDMENTS

*Police Pensions Act 1976 (c. 35)*

- 11 (1) The Police Pensions Act 1976 is amended as follows.
- (2) In section 7(2) (persons eligible for police pensions), after paragraph (cf) insert—
- “(cg) a member of staff of the Independent Barring Board who holds the office of constable;”.
- (3) In section 11—
- (a) in subsection (1) (references to membership of a police force etc.), after paragraph (bf) insert—
- “(bg) service, by a person holding the office of constable, as a member of staff of the Independent Barring Board;”
- (b) in subsection (2) (meaning of “police authority”), after paragraph (f) insert—
- “(bg) in relation to any service such as is mentioned in subsection (1)(bg), it means the Independent Barring Board;”
- (c) in subsection (3) (meaning of “police force”), in paragraph (b), after “(bf),” insert “(bg),”.

*Children Act 1989 (c. 41)*

- 12 In section 68 of the Children Act 1989 (persons disqualified from being private foster parents) after subsection (3) insert—
- “(3A) A person shall not foster a child privately if—
- (a) he is barred from regulated activity relating to children (within the meaning of section 3(2) of the Safeguarding Vulnerable Groups Act 2006); or
- (b) he lives in the same household as a person who is barred from such activity.”

*Police Act 1996 (c. 16)*

- 13 (1) Section 97 of the Police Act 1996 (police officers engaged on service outside their force) is amended as follows.
- (2) In subsection (1) (meaning of “relevant service”), after paragraph (cg) insert—
- “(ch) temporary service with the Independent Barring Board on which a person is engaged with the consent of the appropriate authority;”.

- (3) In subsections (6)(a) and (8), after “(cg)” insert “, (ch)”.

*Police Act 1997 (c. 50)*

- 14 (1) The Police Act 1997 is amended as follows.
- (2) In section 113A (criminal record certificates) after subsection (6) insert—
- “(7) The Secretary of State may by order amend the definitions of “central records” and “relevant matter” in subsection (6).
- (8) The power to make an order under subsection (7) is exercisable by statutory instrument, but no such order may be made unless a draft of the instrument containing the order is laid before and approved by resolution of each House of Parliament.”
- (3) In section 113B (enhanced criminal record certificates), in subsection (2)(b) after “required” insert “for the purposes of an exempted question asked”.
- (4) After section 113B insert—

**“113BA Suitability information relating to children**

- (1) In such cases as are prescribed, an enhanced criminal record certificate must also include suitability information relating to children.
- (2) Suitability information relating to children is—
- (a) whether the applicant is barred from regulated activity relating to children;
  - (b) if the applicant is barred from such activity, such details as are prescribed of the circumstances in which he became barred;
  - (c) whether the applicant is subject to monitoring in relation to regulated activity relating to children;
  - (d) whether the Independent Barring Board is considering whether to include the applicant in the children’s barred list in pursuance of paragraph 3 or 5 of Schedule 3 to the 2006 Act.
- (3) Expressions used in this section and in the 2006 Act have the same meaning in this section as in that Act, except that “prescribed” must be construed in accordance with section 125 of this Act.
- (4) “The 2006 Act” means the Safeguarding Vulnerable Groups Act 2006.

**113BB Suitability information relating to vulnerable adults**

- (1) In such cases as are prescribed, an enhanced criminal record certificate must also include suitability information relating to vulnerable adults.
- (2) Suitability information relating to vulnerable adults is —
- (a) whether the applicant is barred from regulated activity relating to vulnerable adults;
  - (b) if the applicant is barred from such activity, such details as are prescribed of the circumstances in which he became barred;

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*Status: This is the original version (as it was originally enacted).*

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- (c) whether the applicant is subject to monitoring in relation to regulated activity relating to vulnerable adults;
  - (d) whether the Independent Barring Board is considering whether to include the applicant in the adults' barred list in pursuance of paragraph 9 or 11 of Schedule 3 to the 2006 Act.
- (3) Expressions used in this section and in the 2006 Act have the same meaning in this section as in that Act, except that “prescribed” must be construed in accordance with section 125 of this Act.
- (4) “The 2006 Act” means the Safeguarding Vulnerable Groups Act 2006.

### **113BC Suitability information: power to amend**

- (1) The Secretary of State may by order made by statutory instrument—
- (a) amend section 113BA for the purpose of altering the meaning of suitability information relating to children;
  - (b) amend section 113BB for the purpose of altering the meaning of suitability information relating to vulnerable adults.
- (2) Such an order is subject to annulment in pursuance of a resolution of either House of Parliament.”
- (5) In section 114 (criminal record certificates: Crown employment), in subsection (3), for “Sections 113A(3) to (6) and 113C to 113F” substitute “Section 113A(3) to (6)”.
- (6) In section 116 (enhanced criminal record certificates: judicial appointments and Crown employment), in subsection (3), for “113C to 113F” substitute “113BA to 113BC”.
- (7) In section 119 (sources of information)—
- (a) in subsection (1), for the words from “his functions” to the end substitute “a relevant function”;
  - (b) before subsection (2) insert—

“(1B) The Secretary of State may require the chief officer of a police force to make available such information as he may specify for the purpose of determining, in relation to applications under section 113B, whether the police force is a relevant police force.”;
  - (c) in subsection (2) after “or 116” insert “or for the purposes of section 24 of the Safeguarding Vulnerable Groups Act 2006”;
  - (d) after subsection (7) insert—

“(8) In this section a relevant function is a function of the Secretary of State —

    - (a) under this Part in relation to any application for a certificate or for registration;
    - (b) under this Part in relation to the determination of whether a person should continue to be a registered person;
    - (c) under section 24 of the Safeguarding Vulnerable Groups Act 2006 in relation to monitoring a person in relation to a regulated activity (within the meaning of that Act);

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- (d) under paragraph 1, 2, 7 or 8 of Schedule 3 to that Act (considering whether criteria prescribed for the purpose of that paragraph apply to an individual).”

*Data Protection Act 1998 (c. 29)*

- 15 (1) The Data Protection Act 1998 is amended as follows.
- (2) In section 56 (prohibition of requirement as to production of certain records) in the table in subsection (6)—
- (a) in the second column of the entry relating to the Secretary of State, after paragraph (f) insert—

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“(g) His functions under the Safeguarding Vulnerable Groups Act 2006.”

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- (b) after the entry relating to the Department of Health and Social Services in Northern Ireland insert—

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“4. The Independent Barring Board	Its functions under the Safeguarding Vulnerable Groups Act 2006.”
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- (3) In section 75 (commencement etc.), after subsection (4) insert—
- “(4A) Subsection (4) does not apply to section 56 so far as that section relates to a record containing information relating to—
- (a) the Secretary of State’s functions under the Safeguarding Vulnerable Groups Act 2006, or
- (b) the Independent Barring Board’s functions under that Act.”

*Care Standards Act 2000 (c. 14)*

- 16 In section 58 of the Care Standards Act 2000, after subsection (3) insert—
- “(4) For the purposes of subsection (1)(a), in considering whether a person is of good character, the Council may have regard to whether he is included in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006).”

SCHEDULE 10

Section 63

REPEALS

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Children Act 1989 (c. 41)	In Schedule 9A, in paragraph 4(2), paragraphs (a) and (b)
Police Act 1997 (c. 50)	Sections 113C to 113F

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Teaching and Higher Education Act 1998 (c. 30)	Section 2(4) In section 3(3), paragraph (a) Section 15(4)
Protection of Children Act 1999 (c. 14)	Sections 1 to 4C and 7 In section 9(1), the words from “which shall exercise” to the end In section 9(2), paragraphs (a), (b) and (e) Section 9(3A) In section 12, all the definitions in subsection (1) except the definition of “prescribed”, and subsections (2) to (3A) Section 13
Care Standards Act 2000 (c. 14)	Sections 80 to 89, 91 to 99 and 101 In Schedule 4, in paragraph 26, both of the sub-paragraphs numbered (2) and sub-paragraph (4)
Criminal Justice and Court Services Act 2000 (c. 43)	Sections 24 and 26 to 38 In section 42(1), the definition of “disqualification order” Schedule 4 In Schedule 7, paragraphs 155, 157 and 158
Education Act 2002 (c. 32)	Sections 142 to 144 In Schedule 21, paragraphs 75, 76(b), 86(2), 121, 122(a), 123 and 128
Adoption and Children Act 2002 (c. 38)	In Schedule 3, paragraph 94
Health and Social Care (Community Health and Standards) Act 2003 (c. 43)	Section 189(1) to (3) In Schedule 9, paragraph 14
Criminal Justice Act 2003 (c. 44)	Section 299 Schedule 30
Children Act 2004 (c. 31)	Section 39 In Schedule 1, paragraph 11 In Schedule 2, paragraphs 6 and 7
Civil Partnership Act 2004 (c. 33)	In Schedule 21, paragraph 49A
Constitutional Reform Act 2005 (c. 4)	In Schedule 11, paragraph 35
Inquiries Act 2005 (c. 12)	In Schedule 2, paragraphs 18 and 19
Serious Organised Crime and Police Act 2005 (c. 15)	Schedule 14, paragraph 2
Childcare Act 2006 (c. 21)	In section 75(3), paragraphs (a) and (b)