
STATUTORY INSTRUMENTS

2008 No. 473

**CHILDREN AND YOUNG
PERSONS, ENGLAND AND WALES
PROTECTION OF VULNERABLE
ADULTS, ENGLAND AND WALES**

The Safeguarding Vulnerable Groups Act
2006 (Transitional Provisions) Order 2008

<i>Made</i>	- - - -	<i>28th February 2008</i>
<i>Laid before Parliament</i>		<i>5th March 2008</i>
<i>Coming into force</i>	- -	<i>7th April 2008</i>

The Secretary of State for Children, Schools and Families makes the following Order in exercise of the powers conferred by sections 61(5) and 64(1) of, and paragraphs 2 and 3 of Schedule 8 to, the Safeguarding Vulnerable Groups Act 2006(1):

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008 and comes into force on 7th April 2008.

(2) In this Order—

“the 1999 Act” means the Protection of Children Act 1999(2);

“the 2000 Act” means the Criminal Justice and Court Services Act 2000(3);

“the 2002 Act” means the Education Act 2002(4);

“the Act” means the Safeguarding Vulnerable Groups Act 2006;

“the CSA” means the Care Standards Act 2000(5);

“disqualification order” means an order under section 28, 29 or 29A of the 2000 Act(6);

(1) 2006 c.47.

(2) 1999 c.14.

(3) 2000 c.43.

(4) 2002 c.32.

(5) 2000 c.14.

(6) Section 29A was inserted by paragraph 2 of Schedule 30 to the Criminal Justice Act 2003 (c.44).

“Tribunal” means the Tribunal established under section 9(7) of the 1999 Act.

Inclusion in the children’s barred list: persons disqualified from working with children

2.—(1) This article applies to a person, other than a person to whom article 3(1) applies, (“X”)—

(a) who is—

- (i) included (otherwise than provisionally) in the list kept under section 1 of the 1999 Act (individuals considered unsuitable to work with children)(**8**);
- (ii) subject to a disqualification order; or
- (iii) subject to a direction under section 142(1) of the 2002 Act (prohibition from teaching etc.), given on the grounds that X is unsuitable to work with children (including any prohibition, restriction or disqualification which has effect as if it were contained in such a direction on those grounds)(**9**);

(b) who has no appeal or review outstanding under the 1999 Act(**10**) or the 2000 Act(**11**), or representations, appeal or review outstanding under the 2002 Act(**12**), or in whose case the time limit for making representations or appealing under those Acts has expired; and

(c) who is referred by the Secretary of State to IBB(**13**).

(2) IBB must—

(a) include X in the children’s barred list(**14**), and

(b) subject to paragraphs (5) and (7), give X the opportunity to make representations as to why X should be removed from the children’s barred list.

(3) Regulation 2 (representations) of the Safeguarding Vulnerable Groups Act 2006 (Barring Procedure) Regulations 2008(**15**) applies in relation to representations made under paragraph (2)(b) as it applies in relation to representations made under Schedule 3 to the Act.

(4) IBB must consider any representations made by X and if it appears to IBB in light of those representations that it is not appropriate for X to be included in the children’s barred list, it must remove X from that list.

(7) Section 9 was amended by paragraph 26(3) of Schedule 4 to the Care Standards Act 2000 (“CSA”), paragraphs 154 and 157(a) and (d) of Part 2 of Schedule 7 to the Criminal Justice and Court Services Act 2000 (“the 2000 Act”), paragraph 6 of Schedule 14 and paragraph 122 of Schedule 21 to the Education Act 2002 (“the 2002 Act”), paragraph 23 of Schedule 9 and Part 1 of Schedule 19 to the Education Act 2005 (c.18), paragraph 38(b) of Schedule 2 to the Childcare Act 2006 (c.21), section 170(3) of the Education and Inspections Act 2006 (c.40), and paragraph 8(3)(b)(ii) of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006 (“the Act”). It was repealed in part by Part 3 of Schedule 22 to the 2002 Act, paragraph 38(a) of Schedule 2 and Part 2 of Schedule 3 to the Childcare Act 2006, and is to be further repealed by paragraph 8(3)(a), (b) (i) and (iii) and (c) of Schedule 9, and Schedule 10, to the Act. The amendments and repeals made under the Education and Inspections Act 2006 and the Act were not in force on the making of these Regulations.

(8) Section 1 was amended by sections 95 to 98 of the CSA.

(9) Regulation 3(2) to (5) of the Education (Prohibition from Teaching or Working with Children) Regulations 2003 (S.I. 2003/1184 amended by S.I. 2007/195) makes transitional provision so that specified prohibitions, restrictions and disqualifications have effect as if contained in a direction under section 142(1) of the 2002 Act, given on the grounds that the person is unsuitable to work with children.

(10) An individual included in the list kept under section 1 of the Protection of Children Act 1999 may appeal to the Tribunal under section 4(1) or apply to the Tribunal under section 4A to be removed from the list.

(11) An individual subject to a disqualification order under the 2000 Act may appeal under section 31 and may apply to the Tribunal under section 32 for a review of that disqualification order.

(12) An individual subject to a direction under section 142(1) of the 2002 Act may in certain circumstances make representations under regulation 8A, seek a review by the Secretary of State under regulation 9 or by the Tribunal under regulation 10 (subject to regulations 10A and 11), or appeal under regulation 12, of the Education (Prohibition from Teaching or Working with Children) Regulations 2003.

(13) The Independent Barring Board (“IBB”) was established by section 1 of the Act.

(14) See section 60(1) of the Act for the meaning of the children’s barred list. Although X is included in the children’s barred list, X will not be barred from engaging in regulated activity in relation to children until section 3(2) of the Act comes into force. X will remain subject to the current restrictions until the provisions repealing the restrictions are brought into force subject to any savings.

(15) S.I. 2008/474.

(5) Part 3 of Schedule 3 to the Act in its application to the functions of IBB under this article has effect subject to the following modifications—

- (a) in paragraph 16(1)—
 - (i) for “any provision of this Schedule” substitute “article 2 of the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008”; and
 - (ii) for “this Schedule” substitute “that article”;
- (b) after paragraph 16(1), insert—

“(1A) A person to whom article 2(2)(b) of the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008 applies may make representations as to why he should be removed from the children’s barred list in accordance with that provision only in relation to his engaging in regulated activity relating to children which does not constitute work in a regulated position within the meaning of section 36 of the Criminal Justice and Court Services Act 2000.”;
- (c) in paragraph 16(2), for “Schedule” substitute “article 2 of the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008”;
- (d) in paragraph 18(4), for the words “he was included” to “(as the case may be)” substitute “the date of the most recent disqualification decision made in respect of him”;
- (e) after paragraph 18(4), insert—

“(4A) In sub-paragraph (4), “disqualification decision” means—

 - (a) a decision of the Secretary of State—
 - (i) to include the person (otherwise than provisionally) in the list kept under section 1 of the Protection of Children Act 1999, or
 - (ii) not to remove him from that list;
 - (b) a decision of the Tribunal not to direct the person’s removal from the list referred to in sub-paragraph (4A)(a);
 - (c) a decision of the court to make a disqualification order (within the meaning given by paragraph 24(6)(b)) in respect of the person;
 - (d) a decision of the Tribunal, that the person should continue to remain subject to that disqualification order;
 - (e) a decision of the Secretary of State—
 - (i) to make the person subject to a direction under section 142(1) of the Education Act 2002, given on the grounds that the person is unsuitable to work with children (including any prohibition, restriction or disqualification which has effect as if it were contained in such a direction on those grounds), or
 - (ii) not to revoke that direction;
 - (f) a decision of the Tribunal not to order the Secretary of State to revoke the direction referred to in sub-paragraph (4A)(e).”;
- (f) in paragraph 19(1)(a) and (d), for “any of paragraphs 1 to 5 or 7 to 11” substitute “article 2(1) of the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008”.

(6) X may appeal to the Tribunal against a decision under this article not to remove him from the children’s barred list and section 4 of the Act applies in relation to an appeal under this paragraph as it applies in relation to an appeal under subsection (1) of that section.

(7) Paragraph (2)(b) does not apply to a person if any of the criteria prescribed for the purposes of paragraph 1 of Schedule 3 to the Act as it has effect for the purposes of this paragraph is satisfied in relation to that person.

Inclusion in the children’s barred list: other persons prohibited from teaching etc.

3.—(1) This article applies to a person (“Y”)—

(a) who—

(i) is included in the list kept under section 1 of the 1999 Act on transfer from the Consultancy Service Index under section 3 of that Act and is not subject to a disqualification order or a direction under section 142(1) of the 2002 Act given on grounds that Y is unsuitable to work with children; or

(ii) is subject to a direction under section 142(1) of the 2002 Act (including any prohibition, restriction or disqualification which has effect as if it were contained in such a direction), given only—

(aa) on grounds relating to Y’s misconduct;

(bb) on grounds relating to Y’s health;

(cc) on grounds relating to Y’s professional incompetence;

(b) who has no appeal or review outstanding under the 1999 Act or the 2002 Act or in whose case the time limit for appealing under those Acts has expired; and

(c) who is referred by the Secretary of State to IBB.

(2) IBB must consider including Y in the children’s barred list in accordance with paragraphs 3 to 5 of Schedule 3 to the Act.

Inclusion in the adults’ barred list: persons considered unsuitable to work with vulnerable adults

4.—(1) This article applies to a person (“X”)—

(a) who is included (otherwise than provisionally) in the list kept under section 81 of the CSA (individuals considered unsuitable to work with vulnerable adults);

(b) who has no appeal or review outstanding under the CSA(16) or in whose case the time limit for appealing under that Act has expired; and

(c) who is referred by the Secretary of State to IBB.

(2) IBB must—

(a) include X in the adults’ barred list(17), and

(b) subject to paragraphs (5) and (7), give X the opportunity to make representations as to why he should be removed from the adults’ barred list.

(3) Regulation 2 (representations) of the Safeguarding Vulnerable Groups (Barring Procedure) Regulations 2008 applies in relation to representations made under paragraph (2)(b) as it applies in relation to representations made under Schedule 3 to the Act.

(4) IBB must consider any representations made by X and if it appears to IBB in light of those representations that it is not appropriate for X to be included in the adults’ barred list, it must remove X from that list.

(16) A person included in the list kept under section 81 of the CSA may appeal to the Tribunal under section 86 or apply to the Tribunal under section 87 to be removed from the list.

(17) See section 60(1) of the Act for the meaning of the adults’ barred list. Although X is included in the adults’ barred list, X will not be barred from engaging in regulated activity relating to vulnerable adults until section 3(3) of the Act comes into force. X will remain included in the list kept under section 81 of the CSA until that provision is repealed subject to any savings.

(5) Part 3 of Schedule 3 to the Act in its application to the functions of IBB under this article has effect subject to the following modifications—

- (a) in paragraph 16(1)—
 - (i) for “any provision of this Schedule” substitute “article 4 of the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008”; and
 - (ii) for “this Schedule” substitute “that article”;
- (b) after paragraph 16(1), insert—

“(1A) A person to whom article 4(2)(b) of the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008 applies may make representations as to why he should be removed from the adults’ barred list in accordance with that provision only in relation to his engaging in regulated activity relating to vulnerable adults which does not constitute work in a care position within the meaning of section 80(2)(a) and (c) of the Care Standards Act 2000.”;
- (c) in paragraph 16(2), for “Schedule” substitute “article 4 of the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008”;
- (d) in paragraph 18(4), for the words “he was included” to “(as the case may be)” substitute “the date of the most recent disqualification decision made in respect of him”;
- (e) after paragraph 18(4), insert—

“(4A) In sub-paragraph (4), “disqualification decision” means—

 - (a) a decision of the Secretary of State—
 - (i) to include the person in the list kept under section 81 of the Care Standards Act 2000, or
 - (ii) not to remove him from that list; or
 - (b) a decision of the Tribunal not to direct the person’s removal from the list referred to in sub-paragraph (4A)(a).”;
- (f) in paragraphs 19(1)(a) and (d), for “any of paragraphs 1 to 5 or 7 to 11”, substitute “article 4(1) of the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008”.

(6) X may appeal to the Tribunal against a decision under this article not to remove him from the adults’ barred list and section 4 of the Act applies in relation to an appeal under this paragraph as it applies to an appeal under subsection (1) of that section.

(7) Paragraph (2)(b) does not apply to a person if any of the criteria prescribed for the purposes of paragraph 7 of Schedule 3 to the Act as it has effect for the purposes of this paragraph is satisfied in relation to that person.

28th February 2008

Kevin Brennan
Parliamentary Under Secretary of State
Department for Children, Schools and Families

EXPLANATORY NOTE

(This note is not part of the Order)

This Order made under the Safeguarding Vulnerable Groups Act 2006 (“the Act”) makes transitional provision in relation to those subject to existing restrictions relating to working with children or vulnerable adults. The Order requires the Independent Barring Board (“IBB”) established under section 1 of the Act to include, or consider including, those subject to existing restrictions in the new barred lists. The individuals included in the new barred lists will not be barred from engaging in regulated activity relating to children or, as the case may be, vulnerable adults, until section 3(2) and (3) of the Act (bar from engaging in regulated activity) comes into force. The existing restrictions are to remain in place until then.

Article 2 applies to persons who are included in the list kept under section 1 of the Protection of Children Act 1999 (“the 1999 Act”) (other than those to whom article 3(1)(a)(i) applies), disqualified from working with children by virtue of a disqualification order (that is an order under section 28, 29 or 29A of the Criminal Justice and Court Services Act 2000), or subject to a direction under section 142(1) of the Education Act 2002 (“the 2002 Act”) given on the grounds of unsuitability and who have no appeal etc. outstanding. IBB must include those individuals in the children’s barred list established and maintained by IBB under section 2 of the Act, but the bar will not take effect until the date on which section 3(2) of the Act comes into force (article 2(2)). At that point a person who is included in the children’s barred list will be barred from engaging in regulated activity relating to children. The individual will remain subject to the existing restrictions until that date. IBB must give the individual an opportunity to make representations as to why they should be removed from the list, unless any of the criteria prescribed for the purposes of paragraph 1 of Schedule 3 to the Act as it has effect for the purposes of article 2(7) is satisfied in relation to that individual. That right to make representations is limited (article 2(5)). Article 2(6) provides that an individual may appeal against the decision of IBB not to remove the individual from the children’s barred list and section 4 of the Act applies in relation to any appeal.

Article 3 applies to those included in the list kept under section 1 of the 1999 Act who were transferred to that list under section 3 of that Act - Consultancy Service Index cases (unless subject to a disqualification order or subject to a direction under section 142(1) of the 2002 Act on grounds of unsuitability) and those who are subject to a direction under section 142(1) of the 2002 Act given only on grounds relating to misconduct, health or professional incompetence. IBB must consider including such individuals in the children’s barred list in accordance with paragraphs 3 to 5 of Schedule 3 to the Act. There is a right of appeal against the decision of IBB to include an individual in the children’s barred list under section 4 of the Act.

Article 4 makes similar provision to article 2 in relation to those included in the list kept under section 81 of the Care Standards Act 2000 (individuals considered unsuitable to work with vulnerable adults). IBB must include those individuals in the adults’ barred list maintained under section 2 of the Act but the bar will not take effect until section 3(3) of the Act comes into force (article 4(2)). At that point an individual who is included in the adults’ barred list will be barred from engaging in regulated activity relating to vulnerable adults. The individual will remain subject to the existing restriction until that date. IBB must give the individual an opportunity to make representations as to why they should be removed from the adults’ barred list, unless any of the criteria prescribed for the purposes of paragraph 7 of Schedule 3 to the Act as it has effect for the purposes of article 4(7) is satisfied in relation to that individual. That right to make representations is limited (article 4(5)). Article 4(6) provides that an individual may appeal against a decision of IBB not to remove the individual from the adults’ barred list and section 4 of the Act applies in relation to any appeal.

Articles 2(3) and 4(3) provide that regulation 2 of the Safeguarding Vulnerable Groups Act 2006 (Barring Procedure) Regulations 2008 which governs representations to IBB applies in relation to representations made under these articles.