

These notes refer to the Safeguarding Vulnerable Groups Act 2006 (c.47) which received Royal Assent on 8 November 2006

SAFEGUARDING VULNERABLE GROUPS ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Barring

Section 1: Independent Barring Board

21. [Section 1](#) establishes a statutory body to be known as the Independent Barring Board (“IBB”). The creation of the IBB meets the Ministerial commitment to transfer the responsibility for barring decisions from Ministers to a new independent board of experts.

Schedule 1: Independent Barring Board

22. This Schedule makes provision regarding the IBB. The IBB has core functions of determining whether to include an individual in a barred list, determining whether to remove an individual from a barred list and considering representations made under Schedule 3. These functions cannot be delegated outside the IBB, but can be delegated internally to allow the IBB’s workload to be managed effectively. The IBB can delegate its non-core functions, such as administrative functions, to persons outside the IBB, for example to the CRB.
23. [Schedule 1](#) provides for the IBB’s membership and staffing arrangements. The Secretary of State will appoint the chairman and members, and the IBB will recruit its own staff. The IBB must publish an annual report on the exercise of its functions, and the Secretary of State can also direct the IBB to submit a report to him on the exercise of any of its functions. The IBB’s annual accounts are to be audited by the Comptroller and Auditor General and laid before Parliament.
24. [Schedule 1](#) also provides for the IBB to be funded by the Secretary of State. Income from those applying to be monitored will be received by the Secretary of State (see sections 24) and a mechanism for funding the IBB on the basis of this income will be put in place.

Section 2: Barred lists

25. This section provides that the IBB must establish and maintain two barred lists – a children’s barred list and an adults’ barred list. Schedule 3 makes provision regarding inclusion in the barred lists.

Schedule 3: Barred lists

26. [Part 1](#) sets out how someone may be included in the children’s barred list. [Part 2](#) covers the equivalent rules in relation to the adults’ barred list. For each list there will be four types of cases:

These notes refer to the Safeguarding Vulnerable Groups Act 2006 (c.47) which received Royal Assent on 8 November 2006

- a. Paragraphs 1 and 7 of the Schedule require the IBB to include individuals in the barred list automatically (with no right to make representations). This applies where an individual's case is referred to the IBB by the Secretary of State and criteria set out in regulations are met. The criteria which may be specified as requiring an individual's inclusion in a list automatically are set out in paragraph 24 of the Schedule. For the purposes of paragraphs 1 and 7 the criteria are likely to include being cautioned for, or convicted of, the most serious offences against vulnerable individuals.
- b. Paragraphs 2 and 8 of the Schedule require the IBB to include individuals in the relevant barred list, but allow listed individuals then to make representations as to why they should be removed. Once again, this applies where an individual's case is referred to the IBB by the Secretary of State and criteria set out in regulations are met. The criteria which may be specified as requiring an individual's inclusion in a list automatically are set out in paragraph 24 of the Schedule. For the purposes of paragraph 2 and 8 the criteria are likely to include being cautioned for, or convicted of, serious offences against vulnerable individuals.
- c. Paragraphs 3 and 9 are concerned with the inclusion of individuals in a barred list because of concerns regarding their behaviour. This includes cases where the IBB has information that an individual has engaged in behaviour which:
 - harms, attempts to harm, puts at risk of harm or incites another to harm a child or vulnerable adult;
 - involves child pornography or inappropriate conduct involving violent pornography; or
 - is of an inappropriate sexual nature involving a child or vulnerable adult

The IBB, if minded to bar, will allow the individual to make representations and, having considered any such representations, decide whether the individual should be included in one or both barred lists.

- d. Paragraphs 5 and 11 are concerned with an individual's inclusion in a barred list because of a perceived risk that they might cause harm to children or vulnerable adults. Where the IBB has information that an individual may be at risk of harming, attempting to harm, putting at risk of harm or inciting another to harm a child or vulnerable adult (but has yet to engage in such behaviour), IBB will, if minded to bar, allow the individual to make representations, and having considered any such representations decide whether the individual should be included in one or both barred lists.
 - e. Paragraphs 6 and 12 provide that the IBB must not include a person in the children's or adults' barred list where:
 - Scottish Ministers have already made a decision to include or not to include the person in their equivalent barred list and the IBB has no new evidence.
 - Prescribed conditions are met such that it is more appropriate for a person's case to be considered by Scottish Ministers. An example of a condition that may be prescribed is that the person lives and works in Scotland. Any regulations setting such conditions will be subject to the affirmative resolution procedure.
27. (Note: a person who is included in a corresponding list in Scotland (or Northern Ireland) will be barred from regulated activity in England and Wales by virtue of section 3(2) and (3)).
28. [Part 3](#) sets out general provisions relating to the barred lists. Paragraph 13 places a duty on the IBB to consider all the information it receives and to decide whether it suggests

that a person should be included in the lists. Where this information indicates a risk, then the IBB may consider the individual for inclusion in either or both lists.

29. **Paragraph 14** ensures that the IBB must take all reasonable steps to notify an individual when he has been included in a barred list.
30. **Paragraph 15** allows for regulations to be made governing the procedure which the IBB must follow in making its barring decisions. This also enables time limits to be specified within which decisions must be taken, along with time limits within which IBB must carry out reviews and representations.
31. **Paragraph 16** deals with representations. Any information which the IBB proposes to use to make a barring decision is to be made available to the relevant individual to give them a fair opportunity to make representations as to why they should not be barred.
32. **Paragraph 17** allows for late representations to be made. This is designed for exceptional cases where, for example, the IBB is unable to locate the person under consideration and has therefore not been able to inform them that they are at risk of being barred. In this case late representations are allowed as of right. Alternatively, an individual may have been unwell, or unable to understand or respond to letters from the IBB, in which case the right to make representations will be dependent on the IBB granting permission.
33. **Paragraph 18** makes provision for barred individuals to be able to apply to the IBB to have their case reviewed after the minimum prescribed period has elapsed. An application for a review can only happen with the IBB's permission. An application for permission may be allowed only if the individual's circumstances have changed since he was included in the list or last applied for permission.
34. **Paragraph 19** provides the IBB with the power to obtain relevant police information in relation to individuals whose cases it is considering. The IBB is required to pay the police a fee determined by the Secretary of State for providing this information.
35. **Paragraph 20(1)** provides for information to flow from the Secretary of State to the IBB about particular individuals in connection with the current barring schemes. Paragraph 20(2) is the basis on which the information which the Secretary of State gathers in relation to a person who is subject to monitoring must be transferred to the IBB.
36. **Paragraph 21** places a duty on the IBB to provide prescribed information to the Secretary of State about an individual who has been barred or that the Board is considering for barring. The Secretary of State, in the guise of the CRB, will perform the administrative function of actually adding the individual's name to the barred list. There is also the requirement in paragraph 21(c) for the IBB to refer cases to the Secretary of State which come to its attention through the referral process and meet the prescribed criteria for automatic barring.
37. **Paragraph 24** sets out the criteria that may be prescribed for automatic barring. This provision also ensures that individuals will not be barred automatically on the basis of any offences they have committed, or orders or directions that have been made in relation to them, before they reached the age of 18.
38. **Paragraph 25** places a duty on the courts, when convicting an individual for an automatic barring offence or making a specified order against him, to inform the individual that a consequence of his conviction or order is that IBB will include him in the relevant barred list.

Section 3: Barred persons

39. This section provides that an individual is barred from "regulated activity" if he is included in either of the lists set up by section 2, or in an equivalent list held in Northern Ireland or Scotland.

Section 4: Appeals

40. This section provides for an appeal to the Care Standards Tribunal on a point of law or on a finding of fact made by the IBB against a decision of the IBB to include or keep someone in the children's or adults' barred list. It gives the Secretary of State the power to make regulations specifying Tribunal procedure. The Court of Appeal will hear appeals on points of law against a Tribunal decision.