

EXPLANATORY MEMORANDUM TO
THE PROTECTION OF CHILDREN AND VULNERABLE ADULTS AND CARE
STANDARDS TRIBUNAL (CHILDREN'S AND ADULTS' BARRED LISTS)
(TRANSITIONAL PROVISIONS) REGULATIONS 2008

2008. No 1497

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty

2. Description

- 2.1. These Regulations provide an additional set of procedural rules for appeals to the Tribunal established under section 9 of the Protection of Children Act 1999, and come into force on 2nd July 2008. The Regulations are made under section 9(2) of that Act. These Regulations are required for the purpose of providing an appeal mechanism in relation to individuals transferred from the existing lists or provisions which presently bar them from working with children or vulnerable adults to the new Barred Lists established pursuant to section 2 of the Safeguarding Vulnerable Groups Act 2006.

3. Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None

4. Legislative Background

- 4.1 The Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002 (SI 2002/ 816)) (“the Tribunal Regulations”) as amended, set out the procedural rules for the Tribunal (generally known as the Care Standards Tribunal)(“CST”) in relation to appeals handled by it under its various jurisdictions. These include appeals in relation people included on lists maintained by the Secretary of State barring them from working with children or vulnerable adults under the Protection of Children Act 1999 (“the 1999 Act”), the Care Standards Act 2000 (“the CSA”) and the Education Act 2002 (“the 2002 Act”).

The Protection of Children and Vulnerable Adults and Care Standards Tribunal (Review of Disqualification Orders) Regulations 2006 (SI 2006/1929) also provide a right for people disqualified from working with children by a senior court, to seek a review of the disqualification order after specific qualifying periods under the Criminal Justice and Courts Services Act 2000 (the 2000 Act). The Tribunal was established under section 9 of the Protection of Children Act

1999(c.14), and the powers to make rules relating to the procedure of the Tribunal are contained in section 9(2) of that Act.

The Safeguarding Vulnerable Groups Act 2006 (“the ACT”) will introduce a new barring scheme in relation to those persons who are judged unsuitable to work with children and /or vulnerable adults. These arrangements will replace those provided for under section 1 of the 1999 Act, section 81 of the CSA, a direction under 142(1) of the 2002 Act and sections 28, 29 or 29A of the 2000 Act.

Articles 2 to 4 of the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008 (SI 2008/473) requires the Independent Barring Board (established under section 1 of the Act) to include persons presently included on an existing barred list on the corresponding new list set up under section 2 of the Act.

Once the Act comes fully into operation, the effect of inclusion in the new list (in respect of the person concerned) will be to impose a bar the scope of which is wider than the effect of the current barring restrictions. As a result, persons included in the new list will be able to make representations to the IBB as to why they should be removed from the new list. If the IBB declines to remove the person from the new list, they will have a right of appeal to the CST against that decision. The right to make representations to the IBB and to appeal to the CST is time limited, in both cases, to the scope of the wider bar. This is because these individuals are already subject to the existing restrictions and it is therefore considered appropriate that the right to make representations to the IBB and the subsequent appeal right to the CST is limited. Appeals are dealt with in section 4 of the Act and are permissible on a point of law or on a finding of fact on which the decision appealed against was made.

5. Territorial Extent and Application

5.1. The Regulations apply to England and Wales

6. European Convention on Human Rights

6.1. As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1. The policy objective of the Safeguarding Vulnerable Groups Act 2006 is to minimise the risk of harm to children or vulnerable adults by introducing improved vetting and barring procedures in relation to persons who work (or who wish to work) with such groups. The Act was introduced following the Bichard Inquiry Report

(www.bichardinquiry.org.uk) which identified systematic failures in current vetting and barring systems. The intention behind the Act was to address these failings and to put barring decisions into the hands of a body of experts that is independent of Government. As described above, all those who are subject to current restrictions are to be included or considered for inclusion in the new barred lists. As from the date on which the Act is fully in force (the “go live” date), inclusion on those lists will take effect to bar the relevant individuals from engaging in regulated activity with children and/or vulnerable adults. It is anticipated that the current restrictions will fall away at that point although the exact timing of this aspect is not yet settled. People subject to a restriction or disqualification under the current regimes will be included or considered for inclusion on the new barred lists.

The Administrative Justice and Tribunals Council has been consulted on these Regulations, as required by section 9 (3C) of the Protection of Children Act 1999, and they are content with them. Other organisations concerned with child and vulnerable adult protection and organisations representing employees working in those fields were also consulted but none of them responded to the consultation. Given that these Regulations are concerned with procedural changes only, they are not considered to be in any way controversial.

In addition, the Government consulted publicly in relation to the introduction of the new vetting and barring scheme in Summer 2007. The results of that consultation were published on 14th November 2007 at:

www.dcsf.gov.uk/consultations/conResults.cfm?consultationId=1476

8. Impact

- 8.1. A regulatory impact assessment has not been prepared for these Regulations as they have no impact on business, charities or voluntary bodies.
- 8.2. The impact on the public sector is considered to be negligible. The Regulations changes have no costs implication for the public. The transitional arrangements in relation to the new vetting and barring scheme may increase appeals to the Tribunal, but as appeals can only be on a point of law or on a finding of fact some applications for leave to appeal are likely to be unsuccessful. Any additional costs resulting from appeals under the Safeguarding Vulnerable Groups Act will be met by DCSF.

9. Contact

- 9.1. Any enquiries about the contents of this memorandum should be addressed to:
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