

SAFEGUARDING VULNERABLE GROUPS ACT 2006

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Safeguarding Vulnerable Groups Act which received Royal Assent on 8th November 2006. They have been prepared by the Department for Education and Skills in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The current system for vetting people who wish to work with children or vulnerable adults operates through employers obtaining criminal record certificates issued by the Criminal Records Bureau (“CRB disclosures”) for new job applicants. CRB disclosures give employers information about an individual’s criminal records history, which informs their assessments about the individual’s suitability to work with children or vulnerable adults.
4. There are also three separate lists of persons who are barred from working with children or, as the case may be, vulnerable adults. These lists operate under different legislation and with different criteria and procedures: List 99 (a list of those in respect of whom directions under section 142 of the Education Act 2002 have been made), the Protection of Children Act (POCA) List (maintained under the Protection of Children Act 1999) and the Protection of Vulnerable Adults (POVA) List (maintained under Part 7 of the Care Standards Act 2000). Disqualification orders made by a court (under Part 2 of the Criminal Justice and Court Services Act 2000) also bar individuals from working with children.
5. The Bichard Inquiry Report (June 2004), available from <http://www.bichardinquiry.org.uk/>, identified systemic failures in current vetting and barring systems. These included the following factors:
 - inconsistent decisions were being made by employers on the basis of CRB disclosure information
 - CRB disclosure information is only certain to be accurate on the day of issue
 - there are inconsistencies between List 99, the POCA list and POVA list
 - the current barring system is reactive to harmful behaviour rather than preventative
 - there are inconsistencies between police authorities in the disclosure of police information
6. This Act provides the legislative framework for a new vetting and barring scheme for people who work with children and vulnerable adults. A public consultation for the new scheme, *Making Safeguarding Everybody’s Business: A Post-Bichard Vetting Scheme*

(Ref: 1485-2005DOC-EN), ran from 5 April – 5 July 2005. This consultation paper and a summary of the responses to it can be found at www.dfes.gov.uk/consultations.

7. The purpose of the new scheme is to minimise the risk of harm posed to children and vulnerable adults by those that might seek to harm them through their work (paid or unpaid) (whether they fall into the category of “regulated activity”, see paragraphs 41 to 47, or “controlled activity”, see paragraphs 98 to 103; see also the glossary in Annex A for further explanation). It seeks to do this by barring unsuitable individuals not just on the basis of referrals but also at the earliest possible opportunity as part of a centralised vetting process that all those working closely with children and/or vulnerable adults will need to go through.

Overview

8. The Act provides that:

- There will be two barred lists – one for those who are barred from engaging in regulated activity with children (the “children’s barred list”), and one for those who are barred from engaging in regulated activity with vulnerable adults (the “adults’ barred list”).
- There will be an Independent Barring Board (“IBB”). The IBB will maintain the children’s barred list and adults’ barred list and will make decisions about whether an individual should be included in one or both barred lists.
- There will be a right of appeal to the Care Standards Tribunal, with the permission of the Tribunal, against inclusion in a barred list on a point of law or on a finding of fact made by the IBB.
- There will be four routes to inclusion on one or both of the barred lists (**see diagram at Annex D**).
- Automatic inclusion on one or both of the barred lists as a result of receiving a caution or conviction for specified offences, or other criteria which may be specified (such as orders, foreign orders or directions, and inclusion on a foreign barred list). There will be no right for the individual to make representations nor a right of appeal in these cases.
- Automatic inclusion on one or both of the barred lists as a result of receiving a caution or conviction for certain other specified offences or as a result of having met some certain other specified criteria. There will be a right to make representations and a right of appeal following inclusion.
- Specified behaviour (the term “relevant conduct” is used in the Act) that leads to consideration for inclusion on one or both of the barred lists. This includes, for example, conduct which harms a child in the case of the children’s barred list, or conduct which harms a vulnerable adult in the case of the adults’ barred list, or conduct involving child pornography for both lists.
- Risk of harm: where evidence suggests that an individual may present a risk of harm to children or vulnerable adults, this will lead to consideration for inclusion on the appropriate list.
- An individual who is included in the children’s barred list must not engage in regulated activity in relation to children. An individual who is included in the adults’ barred list must not engage in regulated activity in relation to vulnerable

adults.

- Broadly, regulated activity will cover a range of specified activities that provide an opportunity for close contact with children or vulnerable adults, other activities in key settings such as schools and care homes which provide an opportunity for contact and key positions of responsibility such as the Children’s Commissioner and the Director of Adult Social Services.
- There are a series of criminal offences to:
 - a. prevent barred individuals from engaging in regulated activity in relation to children or vulnerable adults
 - b. ensure that people permitted to engage in regulated activity in relation to children or vulnerable adults with the permission of a “regulated activity provider” are subject to monitoring
 - c. ensure that relevant employers check an individual’s status in the scheme before permitting an individual to engage in regulated activity in relation to children or vulnerable adults
- To become subject to monitoring individuals will need to make an application to the Secretary of State, in the guise of the Criminal Records Bureau (CRB).
- The Act also confers power on the Secretary of State to make regulations about controlled activity. This covers certain activity other than regulated activity. There is no current intention to prevent a barred individual from engaging in controlled activity. But in part the regulations will be used so as to require employers (and others with responsibility for managing controlled activity) to put in place appropriate safeguards to manage the risks posed by barred individuals.
- Broadly, controlled activity covers support work in general health settings, further education settings and adult social care settings. It also covers work which gives a person the opportunity for access to sensitive records about children and vulnerable adults, including education and social services records.

How will the new scheme work?

9. These paragraphs provide a very brief overview of how the new scheme will work and will help to put into context the overview of the legislation given above. **They need to be read in conjunction with the diagram at annex B.**
10. Those who are closely working, or applying to work, with children or vulnerable adults will be required to make an application to the Secretary of State to be “subject to monitoring” (see the glossary at Annex A). This will cover everyone engaging in what the Act refers to as “regulated activity” with the permission of a “regulated activity provider”. (The intention is that employers engaging individuals in “controlled activity” will also in most cases need to ensure that they are subject to monitoring, although this requirement will be placed on employers through regulations). The Act allows for the phasing in of applications from existing members of the workforce.
11. The Secretary of State, using the Criminal Records Bureau (CRB), will then search the Police National Computer for cautions and convictions and make enquiries of local police forces to obtain other relevant information.
12. Where the Secretary of State’s enquiries reveal that a person satisfies one of the criteria

that lead to automatic inclusion in a barred list, he will refer the matter to the IBB so that the person can be included in the relevant barred list. The Secretary of State will also pass details of relevant cautions and convictions together with all information received from local police forces to the IBB, which the IBB can then consider in relation to inclusion in a barred list. Where a person is included in a barred list, he ceases to be subject to monitoring (if he was previously) and is not able to engage in regulated activity. Except in the most serious cases, individuals will have the opportunity to make representations about why they should not be barred on the basis of this information.

13. At appropriate intervals, the Secretary of State must repeat the searches and enquiries referred to above. If new information comes to light about a person who is subject to monitoring, the Secretary of State will give the information to the IBB as outlined above. The IBB may also have cause to consider including a person in a barred list on the basis of referrals from employers, local authorities, professional bodies and supervisory authorities (**see diagram at annex C**). An employer may register to be notified if an employee ceases to be subject to monitoring. Where this is the case the employer will then be informed of this by the Secretary of State, in the guise of the CRB.

TERRITORIAL EXTENT

14. The Act extends to England and Wales. This reflects the current position in relation to POCA, POVA and List 99.
15. The following provisions in the Act extend to Northern Ireland: the establishment of the IBB; provisions relating to the information monitor for the purposes of this Act and the Police Act 1997; provisions amending the Police Act 1997; and, so far as relevant to these provisions, general provisions relating to interpretation and secondary legislation. The intention is that the remainder of the provisions in the Act will be mirrored by separate Northern Ireland legislation. This will enable provisions specific to Northern Ireland to be made.
16. The Act does not extend to Scotland. However it does provide for appropriate information sharing to be established with the parallel scheme that is to be set up in Scotland.
17. The Act may by Order in Council be extended to the Isle of Man or the Channel Islands.
18. These arrangements are intended to enable vetting and barring processes to operate coherently across the UK.

TERRITORIAL APPLICATION: WALES

19. The Act confers various powers to make subordinate legislation. In general, these are exercisable by the Secretary of State. Section 56 alters this general position. In certain cases, power to make subordinate legislation in relation to Wales is exercisable by the Welsh Ministers (instead of by the Secretary of State). In other cases, the power remains exercisable by the Secretary of State but only with the consent of the Welsh Ministers. And in yet other cases, the power remains exercisable by the Secretary of State but he is required to consult the Welsh Ministers before exercising it. Section 56 of the Act sets out which sections of the Act fall into each of these categories.

20. In addition, paragraph 2 (3) (d) of Schedule 8 enables the Welsh Ministers to set the procedure under which certain applications may be made to the General Teaching Council for Wales for registration under the Teaching and Higher Education Act 1998. Finally, there is also provision in paragraph 23 of Schedule 3 for the IBB to provide the Welsh Ministers with information.

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:
- 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.

REGULATED ACTIVITY

Section 5: Regulated activity

41. Section 5 provides that regulated activity relating to children and vulnerable adults is as set out in Schedule 4 to the Act. Broadly speaking, regulated activity includes work (paid and unpaid) which involves certain close contact with children or vulnerable adults. Subsequent sections create a series of offences in relation to regulated activity. So, for example, an individual commits an offence if he engages in regulated activity whilst barred. Other offences relate to the person who permits an individual to engage in regulated activity. For example, an employer may be guilty of an offence if he fails to carry out appropriate checks before permitting an employee to engage in regulated activity.
42. The section allows the Secretary of State to amend the definition of regulated activity by order under the affirmative resolution procedure. Elsewhere in the Act the definition of regulated activity is modified for the purposes of particular provisions so that the frequency of an activity is irrelevant. The power to amend the definition of regulated activity includes the power to amend these modifications.

Schedule 4: Regulated activity

Part 1: Regulated activity relating to children

43. This Part defines regulated activity relating to children. Broadly speaking, the principal activities are -
- a. Certain types of close contact activity (specified in paragraph 2(1)) carried out frequently, on three or more days in a 30-day period, or overnight. Examples include, teaching, supervising, advising, or caring for children. This also includes the moderation of internet chatrooms likely to be used wholly or mainly by children (paragraph 2(1)(e)).
 - b. Any activity carried out frequently or on three or more days in a 30-day period in an establishment specified in paragraph 3(1) which gives a person the opportunity to have contact with children in pursuance of his duties there (e.g. a school secretary).
 - c. The provision of childminding where there is a requirement to be registered under the provisions of the Childcare Act 2006 or there would be a requirement to be registered but for the fact that the individual does not provide childcare for a

child below the age of eight (paragraph 1(3)). Similarly childminders in Wales are also covered, but here the requirement to register arises from the Children Act 1989 (Paragraph 1(6)).

- d. Fostering a child (see below – section 53).
 - e. The exercise of functions of the Children and Family Courts Advisory and Support Services (CAFCASS) support officers and their Welsh equivalent.
 - f. The inspection of establishments specified in paragraph 3(1) (e.g. a school) on behalf of the organisations specified in paragraph 1(10) (e.g. OFSTED; Healthcare Commission) and the inspection of generalist health establishments specified in paragraph 1(12) and 1(13) on behalf of the organisations specified in paragraph 1(11).
 - g. The day-to-day management or supervision on a regular basis of any person carrying out the activities mentioned in a, b, e and f above.
 - h. The exercise of a function of the positions specified in paragraph 4(1) (e.g. school governor, Children’s Commissioner, trustee of a children’s charity, operator of the Information Sharing Index set up under the Children Act 2004).
44. Paragraph 2(2) of Schedule 4 provides that teaching, training, supervising etc. a child in the course of his employment will not be regulated activity. However this will not be the case where the child is under 16 and it is a person’s principal responsibility to be engaged in that particular activity in relation to the child.

Part 2: Regulated Activity Relating to Vulnerable Adults

45. This Part defines regulated activity relating vulnerable adults. Broadly speaking, the principal activities are -
- a. Certain types of activity (specified in paragraph 7(1)) carried out frequently, on three or more days in a 30-day period, or overnight. This includes teaching, training, advising, and caring for vulnerable adults.
 - b. Any activity carried out frequently, or on three or more days in a 30-day period in a care home which gives a person the opportunity to have contact with vulnerable adults as a result of his duties or anything he is allowed to do there.
 - c. The day-to-day management or supervision on a regular basis of any person carrying out the activities mentioned in a and b above.
 - d. The inspection of establishments specified in paragraph 7(7) (e.g. a care home) by an organisation specified in paragraph 7(6) (e.g. the Healthcare Commission).
 - e. The exercise of a function of the positions specified in paragraph 7(9) (e.g. the director of adult social services or a trustee of vulnerable adults’ charity).

Part 3: The period condition

46. This Part defines the period condition for the purposes of regulated activity. The requirements to check and be subject to monitoring kick in primarily when an activity is carried out frequently or the period condition is satisfied. Paragraph 10(1) defines this as activity which takes place on more than two days in a 30-day period. For certain activities, such as caring for children or providing treatment for a vulnerable adult, the requirements to check and be subject to monitoring apply also when the activity takes

place overnight and the individual has the opportunity for face to face contact with children or vulnerable adults.

47. It is important to note that section 58 of the Act prevents any activity within the context of a familial relationship and certain types of activity within the context of a friendship from being a regulated activity relating to children or vulnerable adults for the purpose of the Act.

REGULATED ACTIVITY PROVIDERS

Section 6: Regulated activity providers

48. This section defines “regulated activity provider” for the purpose of the Act, on whom a number of obligations are imposed by its other provisions. A regulated activity provider is an individual or organisation responsible for the management or control of regulated activity, who makes arrangements for a person to engage in that activity. The effect of subsection (2)(b) is that regulated activity providers will be those with the ultimate responsibility for the regulated activity: not every individual in the management chain will be responsible for making the check of a person’s status. There is no need for a contract to be in place for an individual or body to be a regulated activity provider, and the definition applies to both paid and unpaid work. A person who simply uses services provided by another (for example, a nanny who places a child in the care of a supermarket crèche) will not be a regulated activity provider because he will have no responsibility for the management or control of the regulated activity. But the supermarket in this case will be a regulated activity provider.
49. Subsection (3) provides that a person is a regulated activity provider if section 53(4) so provides. Section 53(4) applies where a person arranges for another to foster a child as a private foster parent and has power to terminate the arrangements. The arranger in this case is a regulated activity provider even if he would not otherwise be (i.e. because he does not have control or management of the activity). Subsection (4) states that those with responsibility for adult placement schemes will also be regulated activity providers.
50. Subsection (5) provides that a person who makes arrangements for another to engage in regulated activity for his own benefit, or for a child or vulnerable adult who is a member of his family or is a friend of his (construed in accordance with section 58), is not a “regulated activity provider”. So, for example, a parent who employs a nanny to look after his child will not be a regulated activity provider for the purposes of the Act. This means that certain provisions of the Act will not apply to the parent. For example, although parents will be able to apply for vetting information about potential nannies they will not commit a criminal offence by failing to check a nanny’s status or by failing to ensure that a nanny is subject to monitoring.
51. Subsection (8) provides that a person who appoints, or participates in the appointment of, a person to a position referred to in that subsection is not a regulated activity provider merely by reason of that fact. So, for example, those who elect the trustees of a children’s charity will not be regulated activity providers for the purpose of the Act or subject to the obligations imposed on regulated activity providers.
52. Subsection (10) provides that if a regulated activity provider is an unincorporated association any requirement or liability under the Act will be the liability of the person responsible for the management and control of the association or, if there is more than

one such person, all of them jointly and severally.

RESTRICTIONS ON PARTICIPATING IN REGULATED ACTIVITY

Section 7: Barred person not to engage in regulated activity

53. This section makes it an offence for a barred person to engage in regulated activity, or seek or offer to engage in regulated activity.
54. Subsection (3) provides a defence if the person can prove that he did not know, and could not reasonably be expected to know, that he was barred. A person who, for example, could not be contacted by IBB either when it was considering whether to include him in the list (so as to give him an opportunity to make representations) or when it made known its barring decision might benefit from this defence.
55. Subsection (4) does specify one type of exceptional situation where a person who knows he is barred is able to engage in regulated activity. This is where he reasonably thinks that it is necessary to do so in order to prevent harm coming to a child or vulnerable adult, where he reasonably thinks that there was no-one else around who could engage in the activity for that purpose and he engages in the activity for the shortest amount of time necessary. This would cover a barred doctor providing first aid to a child who had an accident in the street.
56. Subsection (5) modifies the definition of regulated activity for the purposes of section 7. It disapplies the requirements about frequency and the period condition. This means that for the purposes of this section a relevant activity will be regulated activity even if it is carried out once only. So, for example, a person who is barred from regulated activity relating to children will commit an offence if he supervises children on a single occasion.

Section 8: Person not to engage in regulated activity unless subject to monitoring

57. Subsection (1) makes it an offence for a person to engage in regulated activity with the permission of a regulated activity provider unless he is subject to monitoring. (A person may apply to become subject to monitoring under section 24.)
58. Subsection (2) ensures that childminders who are required to be registered under the provisions of the Childcare Act 2006 or who would be required to be registered but for the fact that they do not provide childcare for a child below the age of eight will be required to be subject to monitoring. This applies even where the childminder is engaged in providing services to a person who is not a regulated activity provider (see note on section 6 for definition of regulated activity provider). This requirement also applies to childminders in Wales in similar circumstances.
59. Subsection (3) makes it an offence for a person to act as a member of a governing body of an educational establishment whilst not subject to monitoring. A “member of a governing body” can include not only a person traditionally described as a “governor” but also one who is a member of a body which “governs” an educational establishment, for example, a director or trustee if the board of directors or trustees is the “governing body” of the relevant educational institution.
60. Subsection (6) ensures that this offence does not apply if the individual who engages in the activity is under 16 years old. This will ensure that young people can, for example, undertake work experience in a nursery without being subject to monitoring.

61. Subsections (7) and (11) ensure that those already in post before it becomes an offence for an individual not to be subject to monitoring will not initially be criminalised if they are not subject to monitoring. The implementation of the scheme will be phased and the intention is that, to start with, only new appointments will be subject to its requirements. After a prescribed date however (subsections (9) and (12)) those already in post at the commencement of section 8 will need also to be subject to monitoring.
62. Subsection (8) extends the scope of subsection (7) in certain cases involving NHS employment. It deals with the situation where a person is engaged in relevant NHS employment when the section comes into force and he then engages in another form of relevant NHS employment. In this case, the first NHS employment is caught by subsection (7). The second NHS employment is not caught by subsection (7) as the permission to engage in that activity does not pre-date commencement of the section. Subsection (8) ensures that in this situation the person does not need to apply to be subject to monitoring in respect of the second NHS employment until he needs to apply to be subject to monitoring in respect of the first NHS employment.
63. Subsection (10) ensures that a person does not commit an offence if he engages in regulated activity mentioned in section 16 and that activity is regulated activity relating to vulnerable adults. Section 16 contains miscellaneous exceptions for persons such as prison officers.
64. Subsection (14) will require courts to consider the extent to which guidance issued by the Secretary of State on the definition of “frequently” has been followed when setting the penalty for the commission of the offence in the section. This is intended to protect those individuals who have followed the Secretary of State’s guidance in the event that a court takes a different view to the Secretary of State on the interpretation of frequently.

Section 9: Use of barred person for regulated activity

65. This section makes it an offence for any person to permit an individual to engage in regulated activity if he knows or has reason to believe that the individual is barred from that activity and the person engages in the activity. Subsection (5) makes similar modifications to the definition of regulated activity as are made by section 7(5). So even where the regulated activity is taking place occasionally or for a short period of time, the person giving permission would commit an offence. There is a similar offence in respect of a personnel supplier (defined in section 60) who supplies an individual for regulated activity.
66. Subsection (4) provides a defence where it is necessary for an employer to permit a barred individual to engage in regulated activity to prevent harm. This will only be in rare circumstances where there was no-one else who could engage in the specific activity e.g. a school giving a barred parent who had come to pick up their child consent by phone to look after a stricken child at the school campsite where the sole teacher in charge had been taken ill.

Section 10: Use of person not subject to monitoring for regulated activity

67. This section makes it an offence for a regulated activity provider to permit an individual whom he knows or has reason to believe is not subject to monitoring in relation to regulated activity to engage in that activity. A similar offence is created in relation to a personnel supplier who supplies an individual in these circumstances, though the regulated activity provider will commit the offence only if the individual

actually engages in the activity.

68. Subsection (3) redefines regulated activity, for the purposes of subsection (2), so that it is an offence for a personnel supplier to supply an individual to engage in regulated activity without them being subject to monitoring, even where this activity takes place only briefly or for a short period of time. Again the modifications mirror those made by section 7(5), which are explained more extensively above.
69. Subsection (5) ensures that this offence does not apply if the individual who engages in the activity is under 16 years old. This will ensure that a person will be able to use, for example, young people who are not subject to monitoring for work experience in a nursery.
70. Subsections (6), (8), (11) and (12) have a similar purpose to section 8(7), (9), (11) and (12) (see above).
71. Again, similarly to section 8 for employees and volunteers, subsections (7) and (9) exempt certain providers of regulated activity mentioned in sections 16 and 17 (where certain conditions are met), from the offence of employing someone whom he knows or has reason to believe is not subject to monitoring.
72. Subsection (10) will require courts to consider the extent to which guidance issued by the Secretary of State on the definition of “frequently” has been followed when setting the penalty for the commission of the offence in the section. This is intended to protect employers who have followed the Secretary of State’s guidance in the event that a court takes a different view to the Secretary of State on the interpretation of “frequently”.

Section 11: Regulated activity provider: failure to check

73. This section makes it an offence for a regulated activity provider to permit an individual to engage in regulated activity without first ascertaining that they are subject to monitoring in relation to the activity (the offence only applies if the individual actually engages in the activity). The regulated activity provider must ascertain whether the individual is subject to monitoring in accordance with the relevant Part of Schedule 5 (see below). It is also an offence to knowingly or recklessly provide false written confirmation that is required by Schedule 5 (subsection (8)).
74. Subsection (2) defines what it means to check whether a person is subject to monitoring. The various methods of checking whether a person is subject to monitoring are set out in Schedule 5.
75. This section lists defences which apply in specific circumstances. Subsections (3) and (4) exempt certain providers of regulated activity mentioned in sections 16 and 17 (where certain conditions are met), from the requirement to check that an individual is subject to monitoring.
76. Subsection (5) ensures that this offence does not apply if the individual is under 16 years old. This will ensure that, for example, a care home could give work experience to young people without having to check that they are subject to monitoring.
77. Provision equivalent to that in section 8(7) (see above) is made in subsection (6) for regulated activity providers and covers permission to carry out an activity that was given before commencement of section 11.
78. Subsection (10) will require courts to consider the extent to which guidance issued by the Secretary of State on the definition of “frequently” has been followed when setting

the penalty for the commission of the offence in the section. This is intended to protect employers who have followed the Secretary of State's guidance in the event that a court takes a different view to the Secretary of State on the interpretation of "frequently".

Schedule 5 – Appropriate verification

79. Schedule 5 sets out how a regulated activity provider fulfils the duty to check that a person is subject to monitoring.
80. The default position is that a regulated activity provider must obtain an appropriate verification in accordance with one of the methods set out in Part 1 of the Schedule. In summary the methods are:
 - a. making a check through an application under section 30 (see paragraph 1(1)(a)) that the person is subject to monitoring, and whether he is undergoing assessment (as defined in section 31(4));
 - b. obtaining an enhanced criminal record certificate under the Police Act 1997 in relation to the person (see paragraph 1(1)(b)) containing "suitability information" including whether the person is subject to monitoring, and whether he is being considered for barring (other than automatic barring) (see paragraph 11 of Schedule 5 and paragraph 14 of Schedule 9), or obtaining information derived from such a certificate (see paragraph 2);
 - c. obtaining written confirmation from another regulated activity provider who is also permitting the person to engage in the activity concerned that the other regulated activity provider:
 - i. has no reason to believe that the person is barred or not subject to monitoring in relation to the activity; and
 - ii. is registered to be notified by the Secretary of State if the person ceases to be subject to monitoring in relation to the activity.
 - d. obtaining written confirmation from a personnel supplier who is supplying the person to engage in the activity concerned that the personnel supplier:
 - i. has no reason to believe that the person is barred or not subject to monitoring in relation to the activity; and
 - ii. is registered to be notified by the Secretary of State if the person ceases to be subject to monitoring in relation to the activity.
81. For example where a school hires a building contractor to carry out maintenance work on the school, the school may rely on written confirmation from the contractor. And where an employment agency supplies carers for a care home, the care home may rely on written confirmation from the employment agency.
82. Section 11(8) makes it an offence to provide written confirmation that is false.
83. Part 2 of the Schedule applies only in prescribed cases (see section 11(2)). To make a check under part 2 a regulated activity provider must both check a person is subject to monitoring and have taken prescribed steps to obtain an enhanced criminal record certificate. A regulated activity provider may rely on a check carried out by another regulated activity provider or by a personnel supplier in the same circumstances set out for part 1. But under part 2 the regulated activity provider must obtain from the other regulated activity provider or personnel supplier a copy of an enhanced criminal record

certificate in addition to written confirmation. The written confirmation must include that the regulated activity provider or personnel supplier:

- a. has no reason to believe that the person is barred or not subject to monitoring in relation to the activity;
 - b. is registered to be notified by the Secretary of State if the person ceases to be subject to monitoring in relation to the activity; and
 - c. has not had disclosed to him, in connection with the criminal record certificate, information from the Secretary of State in pursuance of section 113B(6)(b) of the Police Act 1997. This is information which, in the interests of the prevention or detection of crime, the chief officer of a relevant police force did not consider could be included on the criminal record certificate, but could nonetheless be provided to the registered person who countersigned the application for the criminal record certificate.
84. Part 3 of the Schedule also applies only in prescribed cases (see section 11(2)). To make a check under part 3 a regulated activity provider must obtain a copy of an enhanced criminal record certificate. As throughout Schedule 5, the certificate must provide the suitability information referred to in paragraph 11 including, amongst other things, information as to whether the person is barred, being considered for barring (other than automatic barring) and/or is subject to monitoring in relation to the activity. The regulated activity provider may also rely on written confirmation and an enhanced criminal record certificate from another regulated activity provider or a personnel supplier as set out, above, for part 2.

Section 12: Personnel suppliers: failure to check

85. This section refers to Schedule 6 – see below.
86. Subsection (2) enables the Secretary of State to extend the requirement on employment businesses to check an individual's status to other types of personnel supplier (as defined in the Act) by order (subject to the negative resolution procedure).

Schedule 6 – Employment businesses: failure to check

87. This Schedule provides that an employment business will commit an offence if they fail to register an interest in an individual (see section 32) prior to supplying the individual to engage in regulated activity. Registering an interest will ensure that the employment business is informed if the individual ceases to be subject to monitoring. The Schedule also allows the Secretary of State to prescribe circumstances in which it will be an offence for such a business to supply an individual without having obtained an enhanced criminal record certificate in relation to that individual. Moreover, Paragraph 4 has the effect that employment businesses are placed under the requirements of this Schedule even if an individual will only be engaged in regulated activity infrequently, or on fewer than three days in a 30 day period.

Section 13: Educational establishments: checks on members of governing body

88. This section provides that an appropriate officer commits an offence if he fails within a prescribed period to make a check in accordance with section 15 in relation to a person who is appointed to the governing body of an educational establishment mentioned in section 8(5). The "appropriate officer" for each type of educational establishment, e.g. maintained schools, academies, etc. will be prescribed in regulations.

89. Provision is made in subsection (3) not to apply the requirements to appointments made before commencement of section 13. Subsection (4) enables this exemption to be switched off.

Section 14 Office holders: offences

90. Subsection (1) enables the Secretary of State by regulations to provide that a person commits an offence if he engages in regulated activity by holding a specified office and he is not subject to monitoring.
91. Subsection (2) enables the Secretary of State by regulations to provide that a specified person commits an offence if he fails to carry out a check under section 15 in relation to a person appointed to such an office.

Section 15 – sections 13 and 14: checks

92. This section sets out how checks of governors of educational institutions and other officers prescribed by section 14 are to be made. Any of the methods mentioned in subsections (2) and (3) may be used.

EXCEPTIONS

Section 16: Exception to requirement to make monitoring check

93. This section lists regulated activity (in relation to vulnerable adults) in relation to which regulated activity providers are exempted from the obligation to make an appropriate check under section 11, and from the offence under section 10 of employing an individual who is known or suspected not to be subject to monitoring. Subsection (1) sets out the activities in respect of which the exemption applies. These include activities carried out for the purposes of prisons and certain activities targeted at individuals because of their age, health or disability. In cases where the exemptions apply checks may still be made but are not mandatory. The section contains a provision which allows for this list to be amended in the future. A sun-setting subsection provides that the exemptions in relation to recreational, social, sporting or educational activity, housing and prescribed welfare services will only apply for three years after commencement of any provision of the section, or at such later date as the Secretary of State may specify by order.

Section 17: NHS employment

94. This section relates specifically to those regulated activity providers who employ people in relevant NHS employment which is defined as employment with one of the NHS bodies listed in subsection (3). Where a person is employed in relevant NHS employment, and provided that employment continues, he can undertake other such employment without the need for a monitoring check to be made in relation to that other employment. This provision is aimed, for example, at the situation where a person who is employed with the NHS as his main employment, is then supplied by NHS Professionals (the NHS's in-house supplier of staff) or by another agency to work for the NHS on a temporary basis to cover staff absences and holiday etc. The main NHS employment acts as an "umbrella" for any other NHS employment undertaken whilst the main NHS employment continues. This modification of the normal requirements applies to employment (which is relevant NHS employment) with an NHS body, or with a person who provides healthcare for an NHS body.

OFFENCES: SUPPLEMENTARY

Section 18: Offences: companies etc.

95. This section provides that managers, directors, etc of bodies corporate and partners of partnerships can in certain circumstances be liable for specified offences that are committed by the body corporate or partnership. This is intended to ensure that senior people in these organisations take responsibility for the actions of the organisation.

Section 19: Offences: other persons

96. This section provides for the following offences which can be committed by people acting, or appearing to act, on behalf of regulated activity providers and personnel suppliers (such as their employees):

- subsection (1) mirrors the offence in section 10(1) of a regulated activity provider knowingly permitting someone to engage in regulated activity who is not subject to monitoring;
- subsection (2) mirrors the offence in section 9(2) of a personnel supplier knowingly supplying a barred person for regulated activity;
- subsection (3) mirrors the offence in section 10(2) of a personnel supplier knowingly supplying a person who is not subject to monitoring for regulated activity; and
- subsection (6) provides that a person acting or appearing to act on behalf of a regulated activity provider may be held liable for the commission of the offence in section 11 (failure to check) where it is due to the act or reckless default of the person.

Section 20: section 19: exclusions and defences

97. Section 20 provides for defences in relation to the offences in section 19. These mirror the defences for the regulated activity providers and personnel suppliers in sections 10 and 11.

CONTROLLED ACTIVITY

Section 21: Controlled activity relating to children

98. This section defines controlled activity relating to children. Broadly, this is any activity in the further education and health sectors which is carried out frequently, or on three or more days in a 30-day period, and involves the opportunity for contact with children or access to children's medical records but is not a regulated activity.
99. This will include ancillary work in such sectors, such as cleaning, administrative work, etc. and the teaching of adults in further education settings where children are present. Subsection (5) ensures that staff working for a local authority in connection with the making of direct payments who have contact with children are also undertaking controlled activity.
100. An individual who has the frequent opportunity for access to the records specified in subsection (6) (e.g. health, education or social services records) for or on behalf of an organisation specified in subsection (10) (e.g. a local authority) will also be engaged in controlled activity.

101. There is no overlap between the definitions of controlled activity and regulated activity relating to children. This is because subsection (2) provides an activity is a controlled activity relating to children only to the extent that it is not a regulated activity relating to children.
102. The section also allows for the definition of controlled activity in relation to children to be amended in the future.

Section 22: Controlled activity relating to vulnerable adults

103. This section defines controlled activity relating to vulnerable adults. Broadly, this is activity in the health and social care sectors which is carried out frequently, or on three or more days in a 30-day period, and involves the opportunity for contact with vulnerable adults or access to vulnerable adults' health or social care records but is not regulated activity. This will include ancillary work in such sectors, such as cleaning, administrative work, etc. An activity is a controlled activity only to the extent that it is not a regulated activity. The section allows for the list of services (in relation to which controlled activity occurs) to be amended in the future.

Section 23 – Controlled activity: regulations

104. This section provides for a power to make regulations as to the steps employers must take when engaging an individual in controlled activity. It is intended that the regulations will make it a requirement that employers: check individuals they intend to engage in controlled activity; ensure they are subject to monitoring (unless they are barred); and, if they decide to employ a barred person, that they put in place the necessary safeguards in order to minimise any potential risk. To ensure these requirements are appropriately enforced the regulations will make it a criminal offence for employers to fail to comply with them.

MONITORING

Section 24: Monitoring

105. Subsection (1) sets out the criteria that must be satisfied for a person to be subject to monitoring in relation to a regulated activity. In particular, the person must have made a monitoring application. On a monitoring application being made the Secretary of State must make enquiries to obtain relevant information (defined in subsection (8)) which includes information about convictions and cautions and information from police forces that might be relevant in relation to the regulated activity.
106. Section 24 also enables the Secretary of State to set a fee to be paid by applicants for monitoring. It is intended that the Vetting and Barring Scheme will be funded from income from a flat fee to be paid once when applicants first apply to be monitored. The fee is to be waived in the case of volunteers who work with vulnerable groups.

Section 25: Monitoring: fees

107. Section 25 makes further provision relating to fees required to be paid under section 24(1)(d). During the first five years that monitoring is functioning, the Secretary of State will be able to take into account the costs of the Vetting and Barring Scheme over the whole of that period when setting the level of the monitoring fee. This will mean that he can set a fee that will not vary significantly over the first five years of the scheme, and that will enable the scheme to break even over the first five years. This is intended to avoid the risk of excessive fluctuations in the level of the fee that might

have occurred in the early years if the fee had to provide income to meet the scheme's costs in each year.

108. Subsections (2) and (3) ensure that in setting the fee the Secretary of State can take into account the cost of funding IBB and other expenditure incurred in connection with his functions under the Act. In other words, fees need not be limited to what is necessary to recoup expenditure incurred in connection with monitoring.
109. Subsection (3) is also intended to ensure that after the first five years, the fee will be set on the basis of meeting costs incurred each year.

Section 27: Prohibition of requirement to produce certain records

110. This section makes it an offence for employers and others to require an individual (or a third party) to produce the record of information given to an individual under section 24(4). It is also an offence to require the production of that record as a condition of providing or offering to provide goods, facilities or services to the public.
111. An exception is made from this offence for parents and other private employers.

Section 28 Independent monitor

112. This section provides a statutory basis for the current non-statutory monitoring arrangements relating to the disclosure of local police information by the Criminal Records Bureau under Part 5 of the Police Act 1997 and to the disclosure of information under section 24 of the Safeguarding Vulnerable Groups Act 2006.
113. The section provides for an "Independent Monitor" to be appointed by the Secretary of State, and to report to him, on matters connected with the disclosure or non-disclosure of information under certain provisions. The purpose of this review is to ensure compliance with Article 8 of the European Convention on Human Rights.

Section 29: Part 5 of the Police Act 1997: code of practice

114. This section extends the scope of the code of practice issued under section 122 of Part 5 of the Police Act 1997 ("Part 5") which governs the use of information provided to registered persons by the CRB. Registered persons are organisations which (being considered suitable to receive sensitive disclosure information) are registered with the CRB for the purpose of applying for disclosures of conviction information under Part 5, either in their own right or on behalf of others. A person who is not registered must apply for a disclosure via a registered person.
115. Section 29 extends the scope of the code of practice so as to include provisions relating to the carrying out of any function by a body or person registered with the CRB for the purpose of accessing the disclosure service under Part 5. The current scope of the code of practice as it relates to England and Wales is limited to the use of information provided to such bodies or persons.
116. The section also provides for a variety of sanctions for failure to comply with the code of practice. The proposed sanctions are equivalent to sanctions already contained in Part 5 (section 120A) for failure to comply with prescribed conditions of registration.

NOTICES AND INFORMATION

Section 30: Provision of vetting information

117. This section provides for applications to be made to the Secretary of State for relevant

information in relation to an individual by applicants who fall within the table in Schedule 7.

118. An application for relevant information is to be made in the prescribed form and must include an appropriate declaration. This declaration must state that the applicant falls within column 1 of the table in Schedule 7, and so has a right to the information, and that the individual has consented to the check. The consent provision will help to protect the information held by the scheme. Consent is not needed when an application is made by an appropriate officer within the meaning of section 13 who is making a check on a member of a governing body of a school or other educational establishment.

Schedule 7 – Vetting information

119. This Schedule contains a list of those who are eligible to make checks under section 30. Entry 19 of the table allows regulations to add to the categories of person who are eligible to make checks, and paragraph 2 allows the other entries to be amended by order.
120. Sub-paragraph (1) of paragraph 3 changes the definition of regulated activity, for the purposes of this Schedule, so that checks can be made when the activity relates to children under the age of 16 who are in employment or is carried on for the armed forces. Sub-paragraphs (2) and (3) change the definition of regulated and controlled activity, for the purposes of this Schedule, so that checks can be made even where the activity is not frequent. These sub-paragraphs enable those not under any obligation to check an individual to make a check voluntarily of their status. Provision made by this Schedule means that a parent who is considering engaging a babysitter can check the babysitter's status.

Section 31: Meaning of relevant information in section 30

121. This section provides for the information which will be released by the Secretary of State under section 30. The "relevant information" will indicate the individual's status in the scheme to the applicant by showing whether the individual is subject to monitoring (under section 24) and, if so, whether the individual is undergoing assessment. In general terms, an individual is undergoing assessment if the Secretary of State has not yet completed checks and gathering of information carried out on receipt of an application to be subject to monitoring, or if the individual is being considered for barring by the IBB.

Section 32: Notification of cessation of monitoring

122. This section provides for a system for a person to register an interest to be notified if an individual ceases to be subject to monitoring. All those eligible to make checks will be able to register to be notified if the individual ceases to be subject to monitoring (in relation to regulated activity relating to children, vulnerable adults or both) by making an application in the prescribed form which includes an appropriate declaration. This declaration will be similar to the declaration in section 30 and will also state that the applicant has the individual's consent. If the individual has given consent to a section 30 check, then that consent is valid for the purposes of this section.
123. The Secretary of State will be under a duty to notify all those with a registered interest in an individual when that individual ceases to be subject to monitoring in relation to the regulated activity in respect of which the interest was registered. The person who registered the interest will then be able to take action to find out why the individual is

no longer monitored and to prevent them engaging in regulated or controlled activity, if that is appropriate.

Section 33: Cessation of registration

124. This section provides that registration must cease once the Secretary of State has notified the person that the individual is no longer monitored or when the person who registered their interest requests that it ceases. The individual may also request that registration cease in prescribed circumstances.

Section 34: Declarations under 30 and 32

125. This section makes it an offence to make a false declaration under sections 30 and 32. This offence is intended to deter people from trying to access private information about an individual when they are not entitled to that information under the Vetting and Barring Scheme.

Section 35: Regulated activity providers: duty to refer

126. This section relates to referrals of information from employers to the IBB. It sets out the circumstances in which a regulated activity provider and a responsible person (within the meaning of section 23) must provide the IBB with prescribed information about an individual. These are that:

- a. the provider or other person withdraws permission for the individual to engage in a regulated or controlled activity (for example an employer dismisses an employee); and
- b. the permission is withdrawn for one of the specified reasons e.g. that the provider or other person thinks that any of the criteria specified in Schedule 3 for inclusion in a barred list applies.

127. The duty also applies if the provider or other person would or might have withdrawn permission if the individual had not otherwise stopped being engaged in the regulated activity (for example because the employee resigned before he could be dismissed). The duty does not apply to a person who is permitting an individual to engage in activity mentioned in section 16 that is regulated activity relating to vulnerable adults.

Section 36: Personnel suppliers: duty to refer

128. This section sets out the circumstances in which a personnel supplier must provide the IBB with prescribed information about an individual. The first of these circumstances is where the personnel supplier knows that the individual has ceased to be engaged in regulated or controlled activity in the circumstances set out in section 35. The second set of circumstances is that:

- a. the personnel supplier decides to stop supplying the individual for regulated or controlled activity or, in the case of an educational institution, decides that the individual should cease to follow a course at the institution; and
- b. it does this for one of the specified reason e.g. the reason for the decision is that the personnel supplier thinks that the individual satisfies any of the criteria specified in Schedule 3 for inclusion in a barred list.

129. Personnel suppliers are employment agencies and businesses, and educational institutions that supply individuals for regulated or controlled activity, such as teacher training colleges.

Section 38: Duty to provide information offences

130. This section makes it an offence not to comply with the duties in section 35, 36 or 37.

LOCAL AUTHORITY INFORMATION AND REFERRALS

Section 39: Local authorities: duty to refer

131. This section sets out the circumstances in which local authorities must provide the IBB with prescribed information about an individual. Broadly, these circumstances are that the local authority thinks that:

- a. an individual satisfies any of the criteria under which he could be barred or considered for barring under Schedule 3,
- b. the individual is engaged or may engage in a regulated or controlled activity, and
- c. the IBB may consider it appropriate for the individual to be included in a barred list.

PROFESSIONAL BODIES AND SUPERVISORY AUTHORITIES

132. Sections 41 to 44 make provision regarding the professional bodies, and the relevant registers which they keep, listed in section 41(7). Sections 45 to 50 make provision for supervisory authorities, as listed in section 45(7).

Section 41: Registers: duty to refer

133. This section sets out circumstances in which a professional body whose register is specified in section 41(7) is under a duty to provide prescribed information to the IBB. Broadly, these circumstances are that the professional body thinks that:

- a. an individual who appears on its register or list satisfies any of the criteria under which he could be barred or considered for barring under Schedule 3,
- b. the individual is engaged or may engage in a regulated or controlled activity, and
- c. the IBB may consider it appropriate for the individual to be included in a barred list.

134. This section also provides professional bodies with a power to refer information to the IBB. This power applies where the professional body thinks that a person has engaged in relevant conduct before commencement of the section, that the information may lead to the person's inclusion in a barred list and that the person is engaged or may engage in regulated or controlled activity.

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

135. This section makes provision for the sharing of information by the Secretary of State and the IBB with the General Teaching Councils for England and Wales, the General Social Care Council and the Care Council for Wales. The section places a duty on the Secretary of State to inform the body if an individual that he thinks is on the body's register becomes barred. In this case, the Secretary of State must also require the IBB to provide the body with all the information on which the IBB relied in coming to its decision to bar. This will enable the body to make a decision about whether to remove an individual from its register or place conditions on the individual's registration. Similarly the Secretary of State must inform these professional or regulatory bodies if

an individual that he thinks is on the register ceases to be subject to monitoring.

136. The IBB must also provide the General Teaching Councils for England and Wales, the General Social Care Council and the Care Council for Wales with relevant information that it holds about an individual who it thinks is on the body's register. This applies regardless of whether the information has led the IBB to bar the individual. For this duty to be invoked, the information must be relevant to the protection of children or vulnerable adults and to the exercise of the functions of the body concerned. The duty does not apply to:
- a. information that the IBB must not consider in making a barring decision because the police do not think that it would be in the interests of the prevention or detection of crime to disclose it to the person whom the IBB is considering barring;
 - b. information that a person has been included on a barred list or an equivalent Northern Ireland or Scottish list; the information leading to such inclusion; or information that a person has otherwise ceased to be subject to monitoring. Section 43(2) already ensures that this information is provided to the General Teaching Councils in England and Wales, the General Social Care Council and the Care Council for Wales.

Section 44: Registers: power to apply for vetting information

137. This section provides that the Secretary of State must provide, on request, the General Teaching Councils for England and Wales, the General Social Care Council and the Care Council for Wales with information about a person who appears on the body's register or whom the body is considering including on its register. The information that the Secretary of State must provide is:
- a. whether the person is barred,
 - b. whether the person is being considered for barring at the IBB's discretion,
 - c. whether the person is subject to monitoring,
 - d. if the person is subject to monitoring, whether the Secretary of State has (i) notified the person whether the enquiries required under Section 24(3) have produced any disclosable information and provided that information to him and (ii) issued an enhanced criminal records certificate in relation to the person following a simultaneous application both for such a certificate and to become subject to monitoring. Obviously the Secretary of State will not be able to provide such notification until all the relevant information has been obtained about an individual.

Section 45: Supervisory authorities: duty to refer

138. This section relates to the authorities that are set out in subsection (7). The section provides for the circumstances when such a supervisory authority is under a duty to provide prescribed information to the IBB. Broadly, these circumstances are that the supervisory authority thinks that:
- a. the individual satisfies any of the criteria under which he could be barred or considered for barring under Schedule 3,
 - b. the individual is engaged, or may engage, in a regulated or controlled activity,

and

- c. the IBB may consider it appropriate for the individual to be included in a barred list.

139. This section allows for the list of supervisory authorities to be amended in the future.

140. This section also provides a supervisory authority with a power to refer prescribed information to the IBB. This power applies where supervisory authority thinks that a person has engaged in relevant conduct before commencement of the section, that the information may lead to the person's inclusion in a barred list and that the person is engaged or may engage in regulated or controlled activity.

Section 47: supervisory authorities: power to apply for vetting information

141. This section provides that, on the request of a supervisory authority, the Secretary of State must provide it with information required in connection with its functions. The information that the Secretary of State must provide is:

- d. whether the person is barred,
- e. whether the person is being considered for barring at the IBB's discretion, rather than as a result of fulfilling a criterion for automatic barring,
- f. whether the person is subject to monitoring,
- g. if the person is subject to monitoring, whether the Secretary of State has finished obtaining all the relevant information about the person as specified in section 24(3) and notified him in accordance with section 24(4). (See comments above regarding barring in the commentary on section 44).

Section 48: Supervisory authorities: notification of barring etc in respect of children

142. This section provides the mechanism for supervisory authorities to be notified when a person is newly included on the children's barred list or an equivalent list in Scotland or Northern Ireland, or a person ceases to be subject to monitoring in relation to regulated activity relating to children. If a supervisory authority wants to be notified in future if the person is barred or ceases to be subject to monitoring it must register an interest in that person by making an application to the Secretary of State (section 48(3)(a)). A supervisory authority may later withdraw its application in relation to the person (section 48(3)(b)). It may only register an interest in a person where it needs to be notified of changes in that person's circumstances in connection with its functions (section 48(4)).

Section 49: Supervisory authorities: notification of barring etc in respect of vulnerable adults

143. This section is equivalent to section 48, but in relation to vulnerable adults.

Section 50: Provision of information to supervisory authorities

144. Under this section the IBB must provide a supervisory authority with relevant information that it holds about an individual. This applies regardless of whether the information has led the IBB to bar the individual. Relevant information is defined as information which relates to the protection of children or vulnerable adults and which is relevant to the exercise of the functions of the authority concerned. The section does not apply to:

- a. information that the IBB must not consider in making a barring decision because the police do not think that it would be in the interests of the prevention or detection of crime to disclose to the person whom the IBB is considering barring;
- b. information that a person has been included on a barred list or an equivalent Northern Ireland or Scottish list, or has otherwise ceased to be subject to monitoring. Sections 48 and 49 already ensure that this information is provided to supervisory authorities.

CROWN

Section 51: Crown application

145. This section provides that the duties in the Act apply to the Crown. The Crown itself may not be prosecuted for an offence under the Act but that is not the case for a Crown employee.
146. The section also provides that the definition of a regulated activity provider in section 6(2) should be disregarded in relation to the Crown. Instead each government department or other Crown body should be regarded as the regulated activity provider in relation to any regulated activity in which it is engaged.

MISCELLANEOUS

Section 53 – Fostering

147. This section, in conjunction with section 7 and paragraph 1(5) of Schedule 4, ensure that it is an offence for a barred person to act as a local authority foster carer, foster carer employed by a voluntary organisation, or a person who fosters a child for reward or through the arrangements made by a person other than a member of the child's family. Any organisation that arranges (and has the power to terminate) a placement will be required to check the carer's status, and an offence will be committed if the check is not made or if the child is knowingly placed with a barred individual or someone who is not subject to monitoring. In these situations the carer will also commit an offence if he or she is not subject to monitoring. This will cover, for example, private fostering arrangements and host families provided by a language school. Sections 6(7) and 53(10) also ensure that the foster carer is able to take day to day decisions concerning their foster child, as would a parent, without being treated as a "regulated activity provider" and being required to check every individual who helps care for the child.
148. Paragraph 12 of Schedule 9 ensures that individuals are disqualified from private fostering if they are on the children's barred list or they live with a person on the children's barred list.

Section 54 – Devolution: alignment

149. Section 54 provides a general power to make amendments to any legislation having regard to Scottish or Northern Ireland legislation equivalent to this Act.
150. The reference to "monitoring provision" in section 54 will allow for provision to be made in future so that a person who is subject to monitoring (or its equivalent) by Scottish Ministers, or who has made an application to become subject to monitoring under Northern Ireland legislation (see section 55), is also treated as if

subject to monitoring in England and Wales. This will reduce the administrative burden of repeat applications for workers who cross borders within the UK.

Section 55 – Northern Ireland

151. Section 55 is a technical provision that will only be relevant whilst the Northern Ireland Assembly continues to be suspended and section 1 of the Northern Ireland Act 2000 is in force. Whilst that is the case, an Order in Council making Northern Ireland legislation for purposes equivalent to those of this Act is subject to the negative resolution procedure.

Section 56 – Devolution: Wales

152. This section provides that certain secondary legislation-making powers in the Act, to the extent that they affect Wales, transfer to Welsh Ministers. These include:

- a. setting the period within which a check must be made on a governor of an educational establishment, following his appointment;
- b. defining the steps which must be taken when employing a person in controlled activity;
- c. requiring local authorities to tell direct payments recipients about the vetting and barring scheme;
- d. setting the date by which all checks with the barring scheme must have been made for the vulnerable groups workforce, where these are required.

153. This section also provides that the Secretary of State must obtain the agreement of Welsh Ministers before exercising secondary legislation-making powers that provide for:

- a. the information to be provided by the National Assembly for Wales (in its capacity as a supervisory authority) when making referrals to the IBB;
- b. the procedure for applications made by the Assembly (again in its capacity as a supervisory authority) to the Secretary of State for certain information;
- c. changes to the status of the Assembly as a supervisory authority (to which requirements apply relating to the provision of information);
- d. the status of the Assembly as an “interested supervisory authority” (eligible to be notified of certain information) to be altered.

154. The section also states that, in exercising other significant secondary legislation-making powers in the Act, the Secretary of State must consult Welsh Ministers.

GENERAL

Section 57 – Damages

155. Subsection (1)(a) and (b) provide that no claim for damages may be made as result of a person’s inclusion in, or the fact that he is not included in a barred list. Subsection (1)(c) makes it clear that no claim for defamation may be brought by the subject of any information which is provided to the IBB by those under a duty to refer or provide information

156. But subsection (2) provides that people or bodies which refer or provide information to the IBB which they know to be untrue and which they create, or cause another to

create, will not be protected from damages claims. This subsection ensures that defamation claims may be made in respect of malicious referrals under provisions mentioned in subsection (1)(c).

Section 58: Family and personal relationships

157. This section excludes from the scope of the Act activity carried out during the course of family relationships. Activity carried out within the context of a personal relationship which is not carried out for commercial consideration is also excluded. This means, for example, that a person included in the children's barred list could look after his grandchildren. This section also includes a power to prescribe in regulations circumstances which may fall inside or outside of the definitions of "family relationship" or "personal relationship".

Section 59: Vulnerable adults

158. This section defines vulnerable adult for the purposes of the Act. A person is vulnerable in the context of the setting in which they are situated or the service they receive as follows:

- Those in residential accommodation provided in connection with care or nursing or in receipt of domiciliary care services
- Those receiving health care
- Those in lawful custody or under the supervision of a probation officer
- Those receiving a welfare service of a prescribed description or direct payments from a social services authority
- Those receiving services, or taking part in activities, aimed at people with disabilities or special needs because of their age or state of health
- Those who need assistance in the conduct of their affairs.

Section 61: Orders and regulations

159. This section provides for most of the powers in the Act to make subordinate legislation to be subject to the negative resolution procedure. The exceptions that have to be subject to the affirmative resolution procedure are instruments:

- a. varying the definition of regulated activity;
- b. extending the period during which those engaged in the activities set out in section 16(1)(b) to (e) are exempt from the requirement to become subject to monitoring. In the Act this period is set at three years from commencement of any part of section 16;
- c. varying the definition of controlled activity in relation to children;
- d. varying the definition of controlled activity in relation to vulnerable adults;
- e. making provision for who may engage in controlled activity, the steps that a person must take in engaging another person in controlled activity, and the circumstances in which a person must not engage another person in controlled activity;
- f. amending any Act or conferring a power to make subordinate legislation in consequence of or having regard to Scottish or Northern Ireland legislation

that makes provision equivalent to that in this Act;

- g. amending, repealing or revoking any enactment through the powers to make supplementary, incidental, consequential, transitory, transitional or saving provision under section 64(1) and (2);
- h. prescribing the criteria for automatic inclusion in a barred list;
- i. prescribing the conditions under which a person's case should be considered by Scottish Ministers and not by the IBB;
- j. amending what constitutes obtaining appropriate verification (that a person is subject to monitoring) in Schedule 5 for the purpose of section 11.

Section 62: Transitional provision

160. This section gives effect to Schedule 8, which provides powers to transfer individuals who are barred under current schemes to the new barred lists as appropriate.

Schedule 8: Transitional provisions

161. This Schedule provides powers to ensure a transition can take place from the current barring schemes to the new barred lists. Paragraph 1 allows the Secretary of State to get advice from the IBB when taking decisions under the current schemes. Paragraphs 2 and 3 set out the provision that may be included in regulations governing a transition for those currently barred.

Section 63: Amendments and repeals

162. This section introduces Schedules 9 and 10.

Schedule 9: Amendments

163. Paragraph 1 amends the Children Act 1989 so that regulations may prescribe that a person who appears on the children's barred list may not be registered as a childminder or daycare provider.
164. Paragraph 3 repeals the duty on the General Teaching Council for England to respond to requests for advice from the Secretary of State. This provision was required so that the GTC could advise the Secretary of State on professional misconduct cases in relation to List 99. List 99 is repealed under this Act so this advice is no longer required.
165. Paragraph 4 amends the Teaching and Higher Education Act 1998 so that a person who appears on the children's barred list may not register as a teacher with the General Teaching Councils for England and Wales.
166. Paragraphs 5 and 6 amend the duties in the Teaching and Higher Education Act 1998 to refer information to the General Teaching Councils for England and Wales. These changes reflect that sections 142 to 144 of the Education Act 2002 (which provided for "List 99" directions) are being repealed by this Act and that references to sections 142 to 144 must therefore be removed from the Teaching and Higher Education Act 1998.
167. Paragraph 8 repeals the duty on the Secretary of State to keep the list under the Protection of Children Act 1999 (the "POCA list"). This list is superseded by the children's barred list set up under this Act.
168. Paragraph 9 repeals the duty on the Secretary of State to keep the protection of

- vulnerable adults (POVA) list. This list is superseded by the adults' barred list set up under this Act.
169. Paragraph 10 amends the Childcare Act 2006 so that regulations may prescribe that a person who appears on the children's barred list may not be registered as a childminder or daycare provider.
 170. Paragraphs 11 and 13 amend the Police Pensions Act 1976 and the Police Act 1996 so that a member of the police force may continue to be part of the police pension scheme while on secondment to the IBB.
 171. Paragraph 14 amends the Police Act 1997. The amendments made by subparagraph (2) enable the Secretary of State to amend the existing definitions of "central records" and "relevant matter" which comprise the information routinely disclosed on standard criminal record certificates and enhanced criminal record certificates. This will enable the Secretary of State to provide for the routine disclosure of various additional types of information that have become available to the prosecuting and judicial authorities since the original definitions in the Police Act were enacted.
 172. Subparagraph (3) amends section 113B of the Police Act to make clear that an enhanced criminal record certificate can only be applied for if, in addition to meeting such other qualifying criteria as may be prescribed, the position, employment or licensing application in question is included within those listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.
 173. Subparagraph (4) introduces three new sections into the Police Act to provide for enhanced criminal record certificates issued under Part 5 of the Police Act to include 'suitability information' relating to children or to vulnerable adults. This includes information as to: whether a person is barred and such details as are prescribed of the circumstances surrounding that fact; whether a person is subject to monitoring and/or whether the IBB is considering whether to include the person in the barred list.
 174. Subparagraph (7) amends section 119 of the Police Act to require those who hold records of convictions and cautions for police forces to make these available to the Secretary of State, and to require chief officers of police to supply the Secretary of State with relevant information in response to requests made by the Secretary of State in relation to his functions under this Act. This enables the Secretary of State to perform his monitoring functions under section 24.
 175. Paragraph 15 amends section 56 of the Data Protection Act 1998. The result of the amendment is that it is a criminal offence to require a person to produce a record of information that the person has obtained through a subject access request to the Secretary of State or the IBB (with regard to their functions under the SVG Act), where the requirement is in connection with the employment of the person or the provision of goods, facilities or services to the person.
 176. Paragraph 16 amends section 58 of the Care Standards Act 2000 in order to permit the General Social Care Council, or the Care Council for Wales to have regard to the fact that a person is included in a barred list when deciding whether a person is of good character for the purposes of registration with either Council.

COMMENCEMENT DATES

177. Section 65 provides for the Act (other than that section and section 55) to be

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

commenced by order of the Secretary of State. This provision and section 61(5) allow for different dates when parts of the Act can come into force so that trials of the scheme and an incremental roll-out may take place.

Hansard References

178. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	Date	Hansard reference
<i>House of Lords</i>		
Introduction	28 February 2006	Vol. 679 Col 136
Second Reading	28 March 2006	Vol. 680 Cols. 721-761
Committee	2 and 3 May 2006	Vol. 681 Cols.159-222GC and Cols.223-282GC
Report	24 May 2006	Vol. 682 Cols. 827-895
Third Reading	7 June 2006	Vol. 682 Cols. 1336-1353
<i>House of Commons</i>		
Introduction	8 June 2006	Votes and Proceedings
Second Reading	19 June 2006	Vol. 447 Cols. 1083-1154
Committee	11 and 13 July 2006	Hansard Standing Committee B
Report/ Third reading	23 October 2006	Vol. 450 Cols. 1233-1352
Lords' Consideration of Commons Amendments	1 November 2006	Vol. 686 Cols. 365 - 396
Commons Consideration of Lords Amendments	6 November 2006	Vol. 451 Cols. 664 - 666

Royal Assent – 8 November 2006

House of Lords Hansard Vol. 686 Col 750

House of Commons Hansard Vol. 451 Col. 825

ANNEX A – GLOSSARY OF TERMS

Italics indicate terms defined elsewhere in the glossary

Automatic inclusion on a barred list

Barring which is as a result of a person meeting a criterion for automatic barring, as prescribed under Schedule 3, paras 1(1), 2(1), 7(1) or 8(1). Depending on the gravity of the offence which leads to automatic inclusion, a person may have the right to make representations for removal from a barred list (see annex D). C.f. *discretionary barring* and annex D.

Controlled activity

Controlled activity is intended to cover activity in which a person must not employ another person without following certain steps. These steps may be prescribed in regulations under section 23. The Act does not prohibit a barred person from working in controlled activity, although the intention is that regulations will specify that appropriate safeguards must be in place. Broadly controlled activity covers support work in further education and health settings and activities that give a person access to sensitive data, as specified in the Act. See sections 21 to 23. C.f. *regulated activity*.

Discretionary barring

Barring which is not as a result of a person meeting a criterion for *automatic inclusion in a barred list*. A person may be barred on the basis of previous behaviour (Schedule 3, paras 3 and 9) or future risk of harm (Schedule 3, paras 5 and 11). A person must be given the right to make representations before he is included in a barred list on this basis (see annex D).

Frequently

The term “frequently” is used in relation to the definition of regulated activity (Schedule 4, paras 1(1)(b), 1(2)(a), 7(1) and 7(4)(a)) and controlled activity (Section 21(3), (4) and (6) and Section 22(2)). The term is not defined in the legislation as it is intended to take its normal, everyday meaning, although guidance will be issued before the implementation of the scheme setting out the Secretary of State’s broad interpretation of the meaning of the word. C.f. the period condition (Schedule 4, para 10).

Harm

The term “harm” is used in relation to the thresholds for barring (Schedule 3, paras 4, 5, 10 and 11) and for the duties to refer information to the IBB (sections 35, 36, 39, 41 and 45). The term is not defined in the legislation as it is intended to take its normal, everyday meaning.

Independent Barring Board

The IBB will be an independent statutory body, which will make decisions about whether to include a person on a barred list and whether to remove the person following representations or a review. Information is to be supplied to the IBB by the Secretary of State and via

referrals from employers, professional bodies and others.

List 99

A list of those who must not be employed in the education sector or have had restrictions imposed their ability to be employed in that sector. The provision for including a person on List 99 in the Education Act 2002 is repealed under Schedule 10 of this Act.

POCA list

A list of those who barred from working with children. The provision for the list kept under the Protection of Children Act 1999 is repealed under Schedule 10 of this Act.

POVA list

A list of those who barred from working with vulnerable adults. The provision for the list kept under the Care Standards Act 2000 is repealed under Schedule 10 of this Act.

Regulated activity

Regulated activity defines activity which barred individuals must not carry out. Also a *regulated activity provider* must check that a person who he engages in regulated activity is *subject to monitoring*. Broadly regulated activity includes work (paid and unpaid) which involves close contact with children or vulnerable adults. Schedule 4 sets out the definition of regulated activity.

Regulated activity provider

Broadly the term regulated activity provider covers employers who employ a person to work (paid or unpaid) in regulated activity. An important exception to this is a person who makes arrangements for another to engage in regulated activity for his own benefit or for a child or vulnerable adult who is a member of his family or is a friend. The precise definition of a regulated activity provider is set out in section 6.

Representations

A person whom the IBB is considering including in a barred list via a *discretionary barring* must be given the opportunity to make representations before he is included. In the case of *automatic inclusion in a barred list*, a person may have the right to make representations for removal from the barred list, depending on the gravity of the offence which leads to automatic inclusion (see annex D). Any information which the IBB proposes to use or has used to make a barring decision is to be made available to the individual to give the individual an opportunity to make representations as to why he should not be barred.

Review

A person included in a barred list may apply to the IBB to have his case reviewed after the minimum prescribed period has elapsed. A review may happen only with the IBB's permission which will be granted only if the IBB considers that the person's circumstances have changed since he was included in the list.

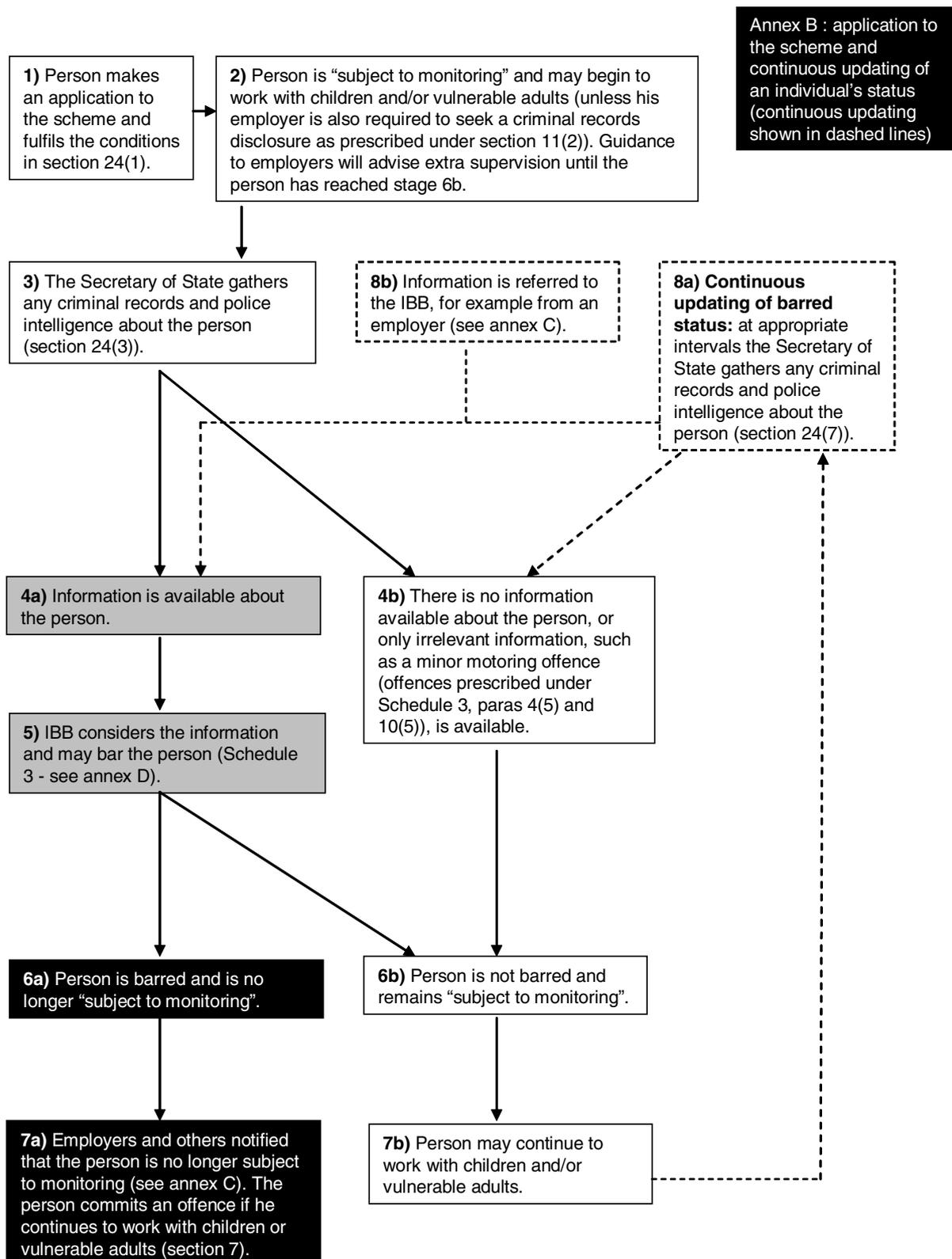
Subject to monitoring

A person acquires the status of being “subject to monitoring” once he has made an application to the Secretary of State to become subject to monitoring, provided that he is not barred and satisfies any other preliminary requirements which may be prescribed (see section 24(1)). The Secretary of State will then make enquiries as to whether information that could lead to barring exists about the person (section 24(3)) and will repeat those enquiries at appropriate intervals (section 24(7)). The Secretary of State will pass relevant information obtained by this process to the IBB to make a barring decision (Schedule 3, para 20(2)). If a person is barred he loses his status as being subject to monitoring

Undergoing assessment

A person is “undergoing assessment” (as defined in section 31(4)) if he is *subject to monitoring* and either:

1. he has recently made an application to become *subject to monitoring* and satisfied the initial criteria to become *subject to monitoring* (steps 1 and 2 in Annex B diagram), but the Secretary of State is still making full inquiries about whether any information exists that could lead to the person’s inclusion on a barred list (steps 3 to 6 in Annex B diagram); or
2. he is being considered for *discretionary barring*.



Annex C: information referrals to the scheme and notification following barring

