

2009 No. 12

**CHILDREN AND YOUNG PERSONS, ENGLAND AND
WALES**

**PROTECTION OF VULNERABLE ADULTS, ENGLAND
AND WALES**

**The Safeguarding Vulnerable Groups Act 2006 (Transitory
Provisions) Order 2009**

Made - - - - 13th January 2009

Coming into force in accordance with article 1

The Secretary of State for Children, Schools and Families makes the following Order in exercise of the powers conferred by section 64(1), (2)(a) and (3) of the Safeguarding Vulnerable Groups Act 2006(a):

In accordance with section 56(3)(o) of that Act he has consulted the Welsh Ministers:

A draft of this Order was laid before Parliament in accordance with section 61(3) of that Act and approved by resolution of each House of Parliament.

PART 1

Introduction

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Safeguarding Vulnerable Groups Act 2006 (Transitory Provisions) Order 2009 and comes into force seven days after the day on which it is made.

(2) In this Order—

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

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

“the 2000 Act” means the Care Standards Act 2000(c);

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

(a) 2006 c. 47.
(b) 1999 c. 14.
(c) 2000 c. 14.
(d) 2002 c. 32.

“the relevant period” means the period starting on the day on which this Order comes into force and ending on the day on which section 3 of the Act comes into force for all purposes.

PART 2

Consideration of cases

Consideration of cases arising before the relevant period

2.—(1) The Secretary of State must refer a person (X) to IBB if each of the following conditions is satisfied.

(2) The first condition is that before the start of the relevant period—

- (a) X has been referred to the Secretary of State by virtue of a provision specified in paragraph (5), or
- (b) information relating to X has been provided to the Secretary of State or the Welsh Ministers in accordance with a provision specified in paragraph (6).

(3) The second condition is that X is not provisionally included in the list kept under—

- (a) section 1(a) of the 1999 Act, or
- (b) section 81(b) of the 2000 Act.

(4) The third condition is that before the start of the relevant period the Secretary of State has not sent a notice to X inviting X to make representations as to why X should not be—

- (a) included in the list kept under section 1 of the 1999 Act;
- (b) included in the list kept under section 81 of the 2000 Act;
- (c) made subject to a direction under section 142(c) of the 2002 Act.

(5) The provisions are—

- (a) section 2(d), 2A(e) or 2D(f) of the 1999 Act;
- (b) section 82, 83 or 84(g) of the 2000 Act.

(6) The provisions are—

- (a) regulation 4 or 6 of the Education (Supply of Information) (Wales) Regulations 2003(h);
- (b) regulation 4 of the Education (Prohibition from Teaching or Working with Children) Regulations 2003(i).

Consideration of cases arising during the relevant period

3.—(1) This article applies during the relevant period.

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- (a) Section 1 was amended by sections 95(2), 96(2), 97(2) and 98(4) of the Care Standards Act 2000 (c. 14) (“the 2000 Act”). It is to be repealed by paragraphs 8(1) and (2) of Part 1 of Schedule 9 and by Schedule 10 to the Safeguarding Vulnerable Groups Act 2006 (c. 47) (“the 2006 Act”).
 - (b) Section 81 is to be repealed by paragraph 9 of Part 1 of Schedule 9 and by Schedule 10 to the 2006 Act.
 - (c) Section 142 is to be repealed by Schedule 10 to the 2006 Act.
 - (d) Section 2 was amended by sections 94(1)(a) and (b), 94(2) and 95(3) of, and by paragraph 26(1) and (2)(a) and (b) of Schedule 4 to, the 2000 Act. It was repealed in part by Schedule 6 to the 2000 Act and is to be repealed in full by Schedule 10 to the 2006 Act.
 - (e) Section 2A was inserted by section 95(1) of the 2000 Act. It was amended by paragraph 14 of Schedule 9 to the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), paragraph 37 of Schedule 2 to the Childcare Act 2006 (c. 21) and by paragraph 36 of Schedule 14 to the Education and Inspections Act 2006 (c. 40). It is to be repealed by paragraphs 8(1) and (2) of Part 1 of Schedule 9 and by Schedule 10 to the 2006 Act.
 - (f) Section 2D was inserted by section 98(1) of the 2000 Act. It is to be repealed by paragraphs 8(1) and (2) of Part 1 of Schedule 9 and by Schedule 10 to the 2006 Act.
 - (g) Sections 82 to 84 of the 2000 Act are to be repealed by paragraph 9 of Part 1 of Schedule 9 and by Schedule 10 to the 2006 Act.
 - (h) S.I. 2003/542 (W. 76).
 - (i) S.I. 2003/1184.

(2) Paragraph (3) applies if, by virtue of a provision specified in paragraph (13), a person must or may—

- (a) refer a person to the Secretary of State;
- (b) provide information relating to a person to the Secretary of State.

(3) The referral is to be made, or the information provided, to IBB instead of to the Secretary of State.

(4) Accordingly, a requirement in any enactment or subordinate legislation that the event specified in paragraph (5) be notified to a person also applies to a referral made to IBB in accordance with paragraph (3).

(5) The event is the referral of a person to the Secretary of State by virtue of a provision specified in paragraph (13).

(6) The Welsh Ministers must refer to IBB any information that they receive, in accordance with regulation 4 or 6 of the Education (Supply of Information) (Wales) Regulations 2003, on a ground—

- (a) that a person is considered to be unsuitable to work with children;
- (b) relating to the person's health where a relevant issue is raised.

(7) In paragraph (6) "relevant issue" has the same meaning as in regulation 3 of those Regulations.

(8) In relation to a person in relation to whom information is provided to IBB in accordance with paragraph (3), Schedule 1 to the Education (Prohibition from Teaching or Working with Children) Regulations 2003 has effect as if—

- (a) in paragraph 7 of Part 1, for "of the Secretary of State's functions under section 142 of the 2002 Act" there were substituted "by the Independent Barring Board established under section 1 of the Safeguarding Vulnerable Groups Act 2006 of its functions under Schedule 3 to that Act", and
- (b) in paragraph 7 of Part 2, for "of the Secretary of State's functions under section 142 of the 2002 Act" there were substituted "by the Independent Barring Board established under section 1 of the Safeguarding Vulnerable Groups Act 2006 of its functions under Schedule 3 to that Act".

(9) Subject to paragraph (12), section 2B(a) of the 1999 Act and section 85(b) of the 2000 Act must be ignored.

(10) Paragraph (11) applies if it appears to the Secretary of State that a person who held a relevant inquiry has found a person guilty of relevant misconduct.

(11) The Secretary of State must refer the person to IBB unless the Secretary of State is satisfied that IBB—

- (a) is considering the case of the person, and
- (b) is aware of the relevant misconduct.

(12) In paragraphs (10) and (11) "relevant inquiry" and "relevant misconduct" have the same meaning as in—

- (a) section 2B of the 1999 Act;
- (b) section 85 of the 2000 Act.

(13) The provisions are—

- (a) sections 2, 2A and 2D of the 1999 Act;
- (b) sections 82, 83 and 84 of the 2000 Act;

(a) Section 2B was inserted by section 96(1) of the 2000 Act. It was amended by paragraph 94 of Schedule 3 to the Adoption and Children Act 2002 (c. 38) and by paragraph 18 of Part 1 of Schedule 2 to the Inquiries Act 2005 (c. 12). It is to be repealed by paragraphs 8(1) and (2) of Part 1 of Schedule 9 and by Schedule 10 to the 2006 Act.

(b) Section 85 was amended by paragraph 19 of Part 1 of Schedule 2 to the Inquiries Act 2005. It is to be repealed by paragraph 9 of Part 1 of Schedule 9 and by Schedule 10 to the 2006 Act.

- (c) regulation 4 of the Education (Prohibition from Teaching or Working with Children) Regulations 2003, as modified by this Order.

Functions under section 142 of the Education Act 2002 during the relevant period

- 4.—(1) This article applies during the relevant period.
- (2) Subject to paragraphs (3) to (5), the following provisions in section 142 of the 2002 Act must be ignored—
- (a) in subsection (2), paragraphs (a) to (c);
 - (b) subsection (3);
 - (c) in subsection (4), paragraphs (a), (b), (d) and (e).
- (3) Paragraph (2) does not apply in relation to a person (X) where, before the start of the relevant period, the Secretary of State or the Welsh Ministers—
- (a) had given X the right to make representations, or
 - (b) had otherwise exercised functions under section 142 of the 2002 Act in relation to X.
- (4) Paragraph (2) does not apply for the purposes of article 6.
- (5) Paragraph (2) does not apply for the purposes of construing a reference in any enactment or subordinate legislation to work to which section 142 of the 2002 Act applies.
- (6) The Education (Prohibition from Teaching or Working with Children) Regulations 2003 have effect as if—
- (a) in regulation 4, paragraphs (1)(a)(ii), (2)(a)(ii) and (3) were omitted, and
 - (b) in paragraph 12 of Part 1(a) of Schedule 2, for “an offence if he has been”, there were substituted “an offence if he does not satisfy any of the criteria prescribed for the purposes of paragraph 1 or 2 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 and he has been”.

Consideration by IBB

- 5.—(1) For the purposes of this Order, Schedule 3 to the Act has effect subject to the following modifications.
- (2) In paragraph 1, for sub-paragraphs (2) and (3) substitute—
- “(2) If IBB is satisfied that this paragraph applies to the person it must include the person in the children’s barred list.”.
- (3) In paragraph 2, for sub-paragraphs (2) and (3) substitute—
- “(2) If IBB is satisfied that this paragraph applies to the person it must—
- (a) include the person in the children’s barred list;
 - (b) give the person an opportunity to make representations as to why he should be removed from the children’s barred list.”.

(4) In paragraph 3(4), for the words “, having considered whether to make a disqualification order, decided not to” substitute “considered whether to make a disqualification order”.

(5) In paragraph 7, for sub-paragraphs (2) and (3) substitute—

“(2) If IBB is satisfied that this paragraph applies to the person it must include the person in the adults’ barred list.”.

(6) In paragraph 8, for sub-paragraphs (2) and (3) substitute—

“(2) If IBB is satisfied that this paragraph applies to the person it must—

 - (a) include the person in the adults’ barred list;

(a) Part 1 of Schedule 2 was substituted by S.I. 2007/195.

- (b) give the person an opportunity to make representations as to why he should be removed from the adults' barred list.”.

Effect of listing by IBB: children

6.—(1) This article applies if IBB, in exercise of its functions under this Order, includes a person (X) in the children's barred list.

(2) Subject to paragraph (4) X must be treated for all purposes as if X—

- (a) is included in the list maintained under section 1 of the 1999 Act;
- (b) is subject to a direction under section 142 of the 2002 Act.

(3) Accordingly, a reference in any enactment or subordinate legislation to a person included in that list or subject to such a direction includes a reference to a person included in the children's barred list.

(4) Paragraphs (2) and (3) do not apply for the purposes of—

- (a) section 1(3) or 4(a) of the 1999 Act;
- (b) section 144(b) of the 2002 Act;
- (c) article 2 or 3 of the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008(c).

Effect of listing by IBB: adults

7.—(1) This article applies if IBB, in exercise of its functions under this Order, includes a person (X) in the adults' barred list.

(2) Subject to paragraph (4) X must be treated for all purposes as if X was included in the list kept under section 81 of the 2000 Act.

(3) Accordingly, a reference in any enactment or subordinate legislation to a person included in that list includes a reference to a person included in the adults' barred list.

(4) Paragraphs (2) and (3) do not apply for the purposes of—

- (a) section 81(3), 86 or 87(d) of the 2000 Act;
- (b) article 4 of the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008.

Information provided to IBB

8.—(1) This article applies for the purpose of IBB's functions under this Order.

(2) A person who holds records of convictions or cautions for the use of police forces generally must make those records available to IBB.

(3) In its consideration as to whether a person should be included in the children's barred list IBB shall consider the information specified in paragraph (4).

(4) The information is any information that it receives in relation to the person from whatever source or of whatever nature.

(5) In its consideration as to whether a person should be included in the adults' barred list IBB shall consider the information specified in paragraph (6).

(6) The information is any information that—

(a) Section 4 is to be repealed by paragraphs 8(1) and (2) of Part 1 of Schedule 9 and by Schedule 10 to the Safeguarding Vulnerable Groups Act 2006 (c. 47) (“the 2006 Act”).
(b) Section 144 is to be repealed by Schedule 10 to the 2006 Act.
(c) S.I. 2008/473.
(d) Sections 86 and 87 are to be repealed by paragraph 9 of Part 1 of Schedule 9 and by Schedule 10 to the 2006 Act.

- (a) it receives by virtue of article 3(3) in its application to the provisions set out in article 3(13)(b);
- (b) it has considered in relation to its consideration as to whether the person should be included in the children’s barred list.

(7) Paragraphs (3) and (5) do not, without more, require IBB to give a person the opportunity to make representations as to why that person should not be included in a barred list.

Information provided by IBB

9.—(1) IBB may provide to either of the persons specified in paragraph (2) any information specified in paragraph (3).

(2) The persons are—

- (a) the Secretary of State for the purposes of his functions under the Teachers’ Pensions Regulations 1997(a), Part V of the Police Act 1997(b) and article 10;
- (b) the Scottish Ministers for the purposes of their functions under Part V(c) of the Police Act 1997.

(3) The information is—

- (a) information provided to IBB under paragraph 20 of Schedule 3 to the Act;
- (b) the fact that a person is included in a barred list under the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008;
- (c) the fact that a person is included in a barred list otherwise than as described in sub-paragraph (b);
- (d) the fact that IBB is considering including a person in a barred list;
- (e) the personal details of any person referred to in sub-paragraph (b), (c) or (d);

(4) In paragraph (3) “personal details” includes the name (including any former name or alias), address, gender and date of birth of a person together with such further details as IBB consider are necessary to identify the person in question.

(5) IBB may, at the request of a person (X) who meets the requirement specified in paragraph (7), inform that person whether a person (Y) falls within paragraph (6).

(6) Y falls within this paragraph if Y is—

- (a) included in the list kept under section 1 of the 1999 Act;
- (b) subject to a direction under section 142 of the 2002 Act;
- (c) included in a barred list.

(7) The requirement is that X satisfies IBB that X has a legitimate interest in knowing whether Y falls within paragraph (6).

(8) If IBB—

- (a) knows or thinks that a person appears on the register of teachers maintained under section 3(d) of the Teaching and Higher Education Act 1998(e), and
- (b) becomes aware of relevant information relating to that person,

it must provide that information to the General Teaching Council for England(a) or General Teaching Council for Wales(b), as the case may be.

(a) S.I. 1997/3001.

(b) 1997 c. 50.

(c) By virtue of section 53 of the Scotland Act 1998 (c. 46), the functions of the Secretary of State under Part V of the Police Act 1997 (c. 50) are exercised by the Scottish Ministers.

(d) Section 3 was amended by paragraphs 1 and 3(1) to (6) of Part 1 of Schedule 12 to the Education Act 2002 (c. 32) (“the 2002 Act”) and by paragraph 76(b) of Schedule 21 to that Act. It was repealed in part by paragraph 76(a) of Schedule 21 and by Part 3 of Schedule 22 to the 2002 Act. It is to be further amended by paragraphs 2 and 4 of Part 1 of Schedule 9 to the 2006 Act and repealed in part by Schedule 10 to that Act.

(e) 1998 c. 30.

- (9) In paragraph (8) “relevant information” is information which—
- (a) relates to the protection of children or vulnerable adults in general, or
 - (b) is relevant to the exercise of any function of the General Teaching Council for England or the General Teaching Council for Wales,
- and includes information specified in paragraph (3).

Information provided by the Secretary of State

10.—(1) The Secretary of State may, at the request of a person (X) who meets the requirement specified in paragraph (2), inform that person whether a person (Y) falls within article 9(6).

(2) The requirement is that X satisfies the Secretary of State that X has a legitimate interest in knowing whether Y falls within article 9(6).

PART 3

Supplementary and Consequential Provision

Application of articles 12 to 14

11.—(1) Articles 12 to 14 apply in relation to a person falling within paragraph (2).

(2) A person falls within this paragraph if—

- (a) the person has been referred to IBB in accordance with article 2 or 3(3);
- (b) information relating to the person has been provided to IBB in accordance with article 3(3).

Teachers’ pensions - entitlement to payment of retirement benefits

12.—(1) The Teachers’ Pensions Regulations 1997 (“the 1997 Regulations”) have effect subject to the provisions of this article.

(2) In regulation E4 Case C is met if the requirements of paragraph (4)(a) to (d)(c) of that regulation are met and—

- (a) the Secretary of State has notified the person in writing that the requirements specified in paragraphs (3) and (4) below are met, or
- (b) the requirement specified in paragraph (7) below is met.

(3) The requirement is that IBB has not included, and is not considering including, the person in a barred list.

(4) The requirement is that neither the General Teaching Council for England nor the General Teaching Council for Wales has made a prohibition order in relation to the person on the grounds—

- (a) of unacceptable professional conduct, or
- (b) that the person has been convicted (at any time) of a relevant offence.

(5) The General Teaching Council for England and the General Teaching Council for Wales must, at the request of the Secretary of State, inform the Secretary of State whether they have made a prohibition order in relation to a particular person on the grounds—

- (a) of unacceptable professional conduct, or
- (b) that the person has been convicted (at any time) of a relevant offence.

(a) The General Teaching Council for England is established under section 1 of the Teaching and Higher Education Act 1998 (c. 30).
(b) The General Teaching Council for Wales is established under S.I. 1998/2911.
(c) Paragraph (4) was amended by S.I. 2004/587, S.I. 2006/2214, S.I. 2006/3122 and by S.I. 2008/541.

(6) In paragraphs (4) and (5) “unacceptable professional misconduct”, “relevant offence” and “prohibition order” have the same meaning as in Schedule 2(a) to the Teaching and Higher Education Act 1998.

(7) The requirement is that IBB has included, or is considering including, the person in a barred list but the Secretary of State is satisfied that there are exceptional circumstances relating to the person which make it appropriate that the person should fall within Case C.

(8) Accordingly, in Case C the entitlement takes effect—

- (a) where, immediately before the person became incapacitated the person was in excluded employment, on the day after the last day of the person’s excluded employment; and
- (b) in any other case, as soon as the person falls within the Case or as soon as the person would have fallen within the Case had there not been a requirement that the Secretary of State notify that person that the requirements specified in paragraphs (3) and (4) are met,

or (in all cases), if later, 6 months before the date of the last of any medical reports considered by the Secretary of State in determining under regulation H9 of the 1997 Regulations that the person had become incapacitated.

(9) In paragraph (8) “excluded employment” has the same meaning as in the 1997 Regulations.

Modifications to the General Teaching Council for England (Disciplinary Functions) Regulations 2001

13.—(1) The General Teaching Council for England (Disciplinary Functions) Regulations 2001(b) have effect subject to the modifications set out in this article.

(2) Regulation 9(c) has effect as if—

(a) for paragraph (1)(b) there were substituted—

“(b) the Independent Barring Board established under section 1 of the Safeguarding Vulnerable Groups Act 2006 (“IBB”) has included or is considering whether to include a registered teacher in either of the barred lists maintained under section 2 of that Act”;

(b) in paragraph (3), for “the Secretary of State for his consideration” there were substituted “IBB”;

(c) in paragraph (4), for “the Secretary of State for his consideration” there were substituted “IBB”;

(d) in paragraph (5), for “the Secretary of State for him to consider the further exercise of his own powers” there were substituted “IBB”.

Modifications to the General Teaching Council for Wales (Disciplinary Functions) Regulations 2001

14.—(1) The General Teaching Council for Wales (Disciplinary Functions) Regulations 2001(d) have effect subject to the modifications set out in this article.

(2) The English text of regulation 9 has effect as if for paragraph (1)(b)(e) there were substituted—

“(b) the Independent Barring Board, established under section 1 of the Safeguarding Vulnerable Groups Act 2006, has included, or is considering whether to include, a

(a) Schedule 2 was amended by paragraphs 1 and 12(1) to (3) of Part 1 of Schedule 12 and by paragraph 86(1) and (2) of Schedule 21 to the 2002 Act. It was repealed in part by paragraph 86(1) and (3) Schedule 21 and by Part 3 of Schedule 22 to the 2002 Act. It is to be amended by paragraphs 2 and 7 of Part 1 of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006 (c. 47).

(b) S.I. 2001/1268.

(c) Regulation 9 was amended by S.I. 2003/1186.

(d) S.I. 2001/1424 (W. 99).

(e) Regulation 9(1) was amended by S.I. 2003/503 (W. 71).

registered teacher in either of the barred lists maintained under section 2 of that Act”.

(3) The Welsh text of regulation 9 has effect as if for paragraph (1)(b) there were substituted—

“(b) bod y Bwrdd Gwahardd Annibynnol, a sefydlwyd o dan adran 1 o Ddeddf Diogelu Grwpiau Hawdd eu Niweidio 2006, wedi cynnwys, neu ei fod yn ystyried a ddylid cynnwys, athro cofrestredig neu athrawes gofrestredig yn unrhyw un o'r rhestrau gwahardd a gynhelir o dan adran 2 o'r Ddeddf honno”.

13th January 2009

Delyth Morgan
Parliamentary Under Secretary of State
Department for Children, Schools and Families

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the Safeguarding Vulnerable Groups Act 2006 (“the Act”), makes provision relating to the functions of the Independent Barring Board (“IBB”) (which is established under section 1 of the Act) during the “relevant period”. The relevant period is defined in article 1 as the period starting on the day after the Order is made and ending on the day that section 3 of the Act comes into force for all purposes. The beginning of that period marks the point from which IBB starts to replace the Secretary of State as the body which decides who should be barred from working with children and/or vulnerable adults.

Article 2 requires the Secretary of State to refer to IBB certain people whose cases the Secretary of State would otherwise have considered under the Protection of Children Act 1999 (“the 1999 Act”), the Care Standards Act 2000 (“the 2000 Act”) and/or the Education Act 2002 (“the 2002 Act”). The people who must be referred are those in relation to whom the Secretary of State or the Welsh Ministers have received referrals or information in accordance with any of the provisions specified in paragraphs (5) and (6) and who are not included provisionally in either of the lists specified in paragraph (3). The duty to refer a person only applies if this information has been received before the start of the relevant period and the Secretary of State has not, by that point, written to the person to invite representations from them as to why they should not be included in either of the specified lists or made subject to a direction under section 142 of the 2002 Act. Where the Secretary of State has written to invite representations, has provisionally included a person in either of the lists specified in paragraph (3), or has made the person subject to a direction under section 142 of the 2002 Act in accordance with regulation 8 of the Education (Prohibition from Teaching or Working with Children) Regulations 2003 (S.I.2003/1184) (“the 2003 Regulations”), that person will be considered in accordance with the 1999 Act, 2000 Act and/or 2002 Act, as appropriate.

Article 3 relates to cases arising during the relevant period. Where a person, A, would formerly have been required to refer or provide information about another person, B, to the Secretary of State in accordance with any of the provisions specified in paragraph (13), this duty takes effect as one to refer B to IBB for consideration in accordance with the Act. Under paragraph (6), the Welsh Ministers must also refer to IBB any information that they receive about a person in accordance with regulation 4 or 6 of the Education (Supply of Information) (Wales) Regulations 2003 (S.I.2003/542) and under paragraph (11) the Secretary of State must refer to IBB any person found guilty of “relevant misconduct” by a “relevant inquiry” (both terms having the meanings given by section 2B of the 1999 Act and section 85 of the 2000 Act). However, the duty under paragraph (11) does not apply if the Secretary of State is satisfied that IBB is already considering the person and knows about the conduct in question. Paragraph (9) ensures that the Secretary of State may not separately consider such a person for inclusion in either of the lists specified in article 2(3), whilst paragraphs (4) and (5) make provision consequential to the redirection of referrals under the 1999 and 2000 Acts effected by paragraph (3).

Article 4 modifies the effect of section 142 of the 2002 Act. The effect of paragraph (2) is that, in relation to any case arising during the relevant period, the Secretary of State may only make a direction under that section to prohibit a person from participating in the management of an independent school and he may do so only on the grounds of that person’s misconduct. The effect of paragraph (6) is that during the relevant period the duty under regulation 4 of the 2003 Regulations does not apply where an employer has ceased to use a person’s services, or an agent has terminated arrangements with a person, on a ground relating to that person’s misconduct. Paragraph (6) also has the effect that regulation 8 of those Regulations will not apply to a person if that person is included automatically in either of the barred lists maintained under section 2 of the Act. The remaining provisions of the article disapply the modification introduced by paragraph (2) in so far as this is necessary (a) to ensure that where, before the start of the relevant period, the Secretary of State had invited representations or exercised any other functions under section 142 he may continue to consider the case of the person in question and (b) so that it does not affect the interpretation of any reference elsewhere in legislation to the work to which section 142 applies (see, for example, section 169 of the 2002 Act).

Article 5 modifies the effect of Schedule 3 to the Act during the relevant period. As a result, IBB is not to include a person in the children's barred list under paragraph 3 of the Schedule if the only conduct it has to consider has already been considered by a court and that court has also considered whether to impose a disqualification order on the person in relation to the conduct in question (a disqualification order is an order under section 28, 29 or 29A of the Criminal Justice and Court Services Act 2000). The other change effected by article 5 is that a person is not to be included automatically in either of the barred lists unless IBB, rather than the Secretary of State, is satisfied that criteria prescribed for the purposes of paragraphs 1, 2, 7 or 8 are met. IBB will satisfy itself of this by accessing the information made available to it under article 8(2) and by exercising the powers provided for under paragraph 19(1) of Schedule 3 to the Act.

Articles 6 and 7 provide for the effect of inclusion in the children's and adults' barred lists under this Order. Anyone included in the children's barred list is to be treated as if they were included in the list kept under section 1 of the 1999 Act and were also subject to a direction under section 142 of the 2002 Act. Anyone included in the adults' barred list is to be treated as if they were included in the list kept under section 81 of the 2000 Act. As a result, any reference elsewhere in legislation to a person who is included in the list kept under the 1999 Act or the 2000 Act, or who is subject to a direction under section 142 of the 2002 Act, is to be read as including anyone included in the children's or adults' barred list, as appropriate. However, this does not apply for the purposes of the provisions specified in paragraph (4) of either article (so, for example, where a person is included in the children's barred list, they do not have a right to appeal under section 144 of the 2002 Act; their right to appeal is provided for under section 4 of the Act).

Article 8 makes provision in relation to the information to be made available to IBB and that which is to be considered by IBB for the purpose of its functions under this Order. The effect of paragraphs (3) to (6) is that, when considering whether to include a person in the adults' barred list, IBB is to consider only information referred to it under section 82(1), 83(1) or 84(1) of the 2000 Act or information which it has considered in relation to the question of whether the person should be included in the children's barred list. When considering whether to include a person in the children's barred list, IBB is to consider any information that it receives in relation to the inclusion of that person in that list.

Article 9 makes provision for IBB to provide information to other persons during the relevant period. This will enable IBB to provide the Criminal Records Bureau and its equivalents in Scotland and Northern Ireland with information about people who are included in the barred lists, the lists kept under the 1999 and 2000 Acts, and who are subject to directions under section 142 of the 2002 Act. IBB will be able to provide similar information to the Secretary of State, for example, for the purposes of his functions under the Teachers' Pensions Regulations 1997 (S.I.1997/3001). It will also be able to confirm to the General Teaching Councils for England and Wales and employers or prospective employers of teachers and other school staff whether a person is subject to any of the disqualifications set out in paragraph (6), and under article 10 the Secretary of State will continue to be able to confirm to those employers whether teachers and school staff are barred from working with children or vulnerable adults. By these means, where anyone was bound to check, for example, whether a person was included in the list kept under section 1 of the 1999 Act before employing them, a check carried out in the same manner will reveal whether the person is included in the children's barred list.

Articles 12 to 14 make supplementary and consequential provision. Article 12 modifies the effect of the Teachers' Pensions Regulations 1997 in relation to applications from people referred to IBB under this Order for ill health pensions, whilst articles 13 and 14 have the effect that the functions of an investigating committee of the General Teaching Council for England or for Wales are excluded where IBB has included or is considering including a teacher in either of the barred lists.

STATUTORY INSTRUMENTS

2009 No. 12

**CHILDREN AND YOUNG PERSONS, ENGLAND AND
WALES**

**PROTECTION OF VULNERABLE ADULTS, ENGLAND
AND WALES**

The Safeguarding Vulnerable Groups Act 2006 (Transitory
Provisions) Order 2009

£5.00