

Safeguarding Vulnerable Groups Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Education and Skills, are published separately as HL Bill 79 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

The Lord Adonis has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Safeguarding Vulnerable Groups Bill [HL] are compatible with the Convention rights.

Safeguarding Vulnerable Groups Bill [HL]

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Make provision in connection with the protection of children and vulnerable adults.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Barring

1 Independent Barring Board

- (1) There shall be a body corporate to be known as the Independent Barring Board (“IBB”).
- (2) Schedule 1 makes provision relating to IBB. 5

2 Barred lists

- (1) IBB must establish and maintain—
- (a) the children's barred list;
 - (b) the adults' barred list.
- (2) Part 1 of Schedule 2 applies for the purpose of determining whether an individual is included in the children's barred list. 10
- (3) Part 2 of that Schedule applies for the purpose of determining whether an individual is included in the adults' barred list.
- (4) Part 3 of that Schedule contains supplementary provision.
- (5) In respect of an individual who is included in a barred list, IBB must keep other information of such description as is prescribed. 15
- (6) No claim for damages shall lie in respect of any loss or damage suffered by any person in consequence of—
- (a) the fact that an individual is included in a barred list;
 - (b) the fact that an individual is not included in a barred list. 20

3 Barred persons

- (1) A reference to a person being barred from regulated activity must be construed in accordance with this section.
- (2) A person is barred from regulated activity relating to children if he is –
- (a) included in the children’s barred list; 5
 - (b) included in a list maintained under the law of Scotland or Northern Ireland which the Secretary of State specifies by order as corresponding to the children’s barred list.
- (3) A person is barred from regulated activity relating to vulnerable adults if he is – 10
- (a) included in the adults’ barred list;
 - (b) included in a list maintained under the law of Scotland or Northern Ireland which the Secretary of State specifies by order as corresponding to the adults’ barred list.

4 Appeals 15

- (1) An individual who is included in a barred list may appeal on a point of law to the Tribunal against –
- (a) a decision under paragraph 2 or 7 of Schedule 2 not to remove him from the list;
 - (b) a decision under paragraph 3, 5, 8 or 10 of that Schedule to include him in the list; 20
 - (c) a decision under paragraph 13, 14 or 15 of that Schedule not to remove him from the list.
- (2) For the purposes of subsection (1)(a), if IBB fails to decide whether to remove a person from the list within the prescribed period beginning with the date on which he makes representations in accordance with paragraph 2 or 7 of Schedule 2 (as the case may be), IBB must be treated as if it had made a decision not to remove him. 25
- (3) An appeal under subsection (1) may be made only with the leave of the Tribunal. 30
- (4) On an appeal the Tribunal may –
- (a) confirm the decision of IBB;
 - (b) remit the matter to IBB for a new decision;
 - (c) direct IBB to remove the person from the list.
- (5) If the Tribunal remits a matter to IBB under subsection (4)(b) the person must be removed from the list until IBB makes its new decision, unless the Tribunal directs otherwise. 35
- (6) The Secretary of State may by regulations make provision as to the procedure of the Tribunal (including provision as to the award of costs by the Tribunal).
- (7) A person may appeal on a point of law to the Court of Appeal against a decision of the Tribunal. 40
- (8) An appeal under subsection (7) may be made only with the leave of the Court of Appeal.

- (9) In this section “the Tribunal” means the Tribunal established under section 9 of the Protection of Children Act 1999 (c. 14).

Regulated activity

5 Regulated activity

- (1) A reference to regulated activity relating to children must be construed in accordance with Part 1 of Schedule 3. 5
- (2) A reference to regulated activity relating to vulnerable adults must be construed in accordance with Part 2 of that Schedule.
- (3) The Secretary of State may by order amend that Schedule so as to vary the meaning of – 10
- (a) regulated activity relating to children;
 - (b) regulated activity relating to vulnerable adults.

Regulated activity providers

6 Regulated activity providers

- (1) A reference to a regulated activity provider must be construed in accordance with this section. 15
- (2) A person (P) is a regulated activity provider if –
- (a) he has responsibility for the management or control of regulated activity, and
 - (b) he makes arrangements (whether in connection with a contract of service or for services or otherwise) for another person to engage in that activity. 20
- (3) P is not a regulated activity provider if he is an individual and the arrangements he makes are private arrangements.
- (4) Arrangements are private arrangements if the regulated activity is for, or for the benefit of, P himself. 25
- (5) Arrangements are private arrangements if the regulated activity is for, or for the benefit of, a child or vulnerable adult who is –
- (a) a member of P’s family;
 - (b) a friend of P. 30
- (6) A person does not make arrangements for another to engage in a regulated activity merely because he (alone or together with others) appoints that person to a position mentioned in paragraph 4(1)(a), (b), (g), (h), (i), (j), (m) or (n) of Schedule 3.
- (7) If a regulated activity provider is an unincorporated association any requirement of or liability (including criminal liability) under this Act must be taken to be a requirement on or liability of – 35
- (a) the person responsible for the management and control of the association, or
 - (b) if there is more than one such person, all of them jointly and severally. 40

- (8) “Family” and “friend” must be construed in accordance with section 42.

Restrictions on participating in regulated activity

7 Barred person not to engage in regulated activity

- (1) An individual commits an offence if he—
- (a) seeks to engage in regulated activity from which he is barred; 5
 - (b) offers to engage in regulated activity from which he is barred;
 - (c) engages in regulated activity from which he is barred.
- (2) A person guilty of an offence under subsection (1) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or to a fine, or to both; 10
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine, or to both.
- (3) It is a defence for a person charged with an offence under subsection (1) to prove that he did not know, and could not reasonably be expected to know, that he was barred from that activity. 15

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

- (1) An individual commits an offence if—
- (a) he engages in regulated activity with the permission of a regulated activity provider, and
 - (b) he is not subject to monitoring in relation to that activity. 20
- (2) An individual commits an offence if—
- (a) he acts as a member of the governing body of an educational establishment mentioned in subsection (4), and
 - (b) he is not subject to monitoring in relation to regulated activity relating to children. 25
- (3) A person guilty of an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) The establishments are—
- (a) an educational institution which is exclusively or mainly for the provision of full-time education to children; 30
 - (b) a maintained nursery school (within the meaning of section 39 of the Education Act 2002 (c. 32)).
- (5) A person does not commit an offence under subsection (1) if, in relation to any continuous period for which he is permitted to engage in the activity—
- (a) the permission is first given before the commencement of this section, and 35
 - (b) it continues to have effect after such commencement.
- (6) Subsection (5) does not apply in respect of permission which continues to have effect after such date as the Secretary of State specifies by order.
- (7) A person does not commit an offence under subsection (1) if— 40
- (a) the activity is a regulated activity relating to children by virtue of paragraph 1(2) of Schedule 3, and

- (b) he is permitted to engage in regulated activity in the establishment mentioned in that paragraph only on an occasional basis.
- (8) A person does not commit an offence under subsection (2) if, in relation to any continuous period for which he acts as a governor—
- (a) his appointment as a governor first took effect before the commencement of this section, and 5
- (b) it continues to have effect after such commencement.
- (9) Subsection (8) does not apply in respect of an appointment which continues to have effect after such date as the Secretary of State specifies by order.
- 9 Use of barred person for regulated activity 10**
- (1) A regulated activity provider commits an offence if—
- (a) he permits an individual (B) to engage in regulated activity from which B is barred, and
- (b) he knows or has reason to believe that B is barred from that activity.
- (2) A personnel supplier commits an offence if— 15
- (a) he supplies an individual (B) to a regulated activity provider,
- (b) he knows or has reason to believe that the regulated activity provider will make arrangements for B to engage in regulated activity from which B is barred, and
- (c) he knows or has reason to believe that B is barred from that activity. 20
- (3) An individual commits an offence if—
- (a) pursuant to private arrangements (within the meaning of section 6(4) or (5)), he permits B to engage in regulated activity from which B is barred, and
- (b) he knows or has reason to believe that B is barred from that activity. 25
- (4) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or to a fine, or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine, or to both. 30
- 10 Use of person not subject to monitoring for regulated activity**
- (1) A regulated activity provider commits an offence if—
- (a) he permits an individual (B) to engage in regulated activity in relation to which B is not subject to monitoring, and
- (b) he knows or has reason to believe that B is not subject to monitoring in relation to that activity. 35
- (2) A personnel supplier commits an offence if—
- (a) he supplies an individual (B) to a regulated activity provider,
- (b) he knows or has reason to believe that the regulated activity provider will make arrangements for B to engage in regulated activity in relation to which B is not subject to monitoring, and 40
- (c) he knows or has reason to believe that B is not subject to monitoring in relation that activity.

- (3) A person guilty of an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) A person does not commit an offence under subsection (1) if—
- (a) the activity is a regulated activity relating to children by virtue of paragraph 1(2) of Schedule 3, and 5
 - (b) B is permitted to engage in regulated activity in the establishment mentioned in that paragraph only on an occasional basis.
- (5) A person does not commit an offence under subsection (1) if, in relation to any continuous period for which B is permitted to engage in the regulated activity— 10
- (a) the permission is first given before the commencement of this section, and
 - (b) it continues to have effect after such commencement.
- (6) Subsection (5) does not apply in respect of permission which continues to have effect after such date as the Secretary of State specifies by order. 15

11 Regulated activity provider: failure to check

- (1) A regulated activity provider commits an offence if he permits an individual (B) to engage in regulated activity without making an appropriate check.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale. 20
- (3) A regulated activity provider makes an appropriate check if he obtains relevant information (within the meaning of Schedule 4) relating to B.
- (4) A person does not commit an offence under subsection (1) if he falls within section 14 or 15.
- (5) A person does not commit an offence under subsection (1) if— 25
- (a) the activity is regulated activity relating to children by virtue of paragraph 1(2) of Schedule 3, and
 - (b) B is permitted to engage in regulated activity in the establishment mentioned in that paragraph only on an occasional basis.
- (6) A person does not commit an offence under subsection (1) if, before the permission takes effect, he obtains written confirmation from another regulated activity provider (C) who also permits B to engage in the regulated activity— 30
- (a) that C has made an appropriate check, and
 - (b) that C has no reason to believe that B either has become barred from the activity or is no longer subject to monitoring in relation to it. 35
- (7) A person does not commit an offence under subsection (1) if, in relation to any continuous period for which B is permitted to engage in the regulated activity— 40
- (a) the permission is first given before the commencement of this section, and
 - (b) it continues to have effect after such commencement.
- (8) Subsection (7) does not apply in respect of permission which continues to have effect after such date as the Secretary of State specifies by order.

- (9) For the purposes of subsection (3) and (6)(a) a regulated activity provider obtains the relevant information only if –
- (a) he obtains it as part of an enhanced criminal record certificate relating to the individual issued in relation to him under section 113B of the Police Act 1997 (c. 50) during the prescribed period, or 5
 - (b) in that period he obtains the information by making an application under Schedule 4.
- (10) For the purposes of subsection (9)(a) an enhanced criminal record certificate is issued in relation to a regulated activity provider only if –
- (a) he countersigned the application for the certificate as a registered person for the purposes of Part 5 of the Police Act 1997, or 10
 - (b) the application was countersigned on his behalf by such a registered person.
- 12 Educational establishments: check on members of governing body**
- (1) The appropriate officer commits an offence if he fails in the prescribed period to obtain relevant information (within the meaning of Schedule 4) relating to any person (B) who is appointed to the governing body of an educational establishment mentioned in section 8(4). 15
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale. 20
- (3) A person does not commit an offence under subsection (1) if, in relation to any continuous period for which B is a member of the governing body of the establishment –
- (a) the appointment first took effect before the commencement of this section, and 25
 - (b) it continues to have effect after such commencement.
- (4) Subsection (3) does not apply in respect of an appointment which continues to have effect after such date as the Secretary of State specifies by order.
- (5) An appropriate officer is such person as is prescribed.
- 13 Personnel suppliers and regulated activity** 30
- (1) A regulated activity provider (A) does not commit an offence under section 11 if –
- (a) he permits an individual (B) to engage in regulated activity without making an appropriate check (within the meaning of that section),
 - (b) B is supplied to A by a personnel supplier, 35
 - (c) the permission does not have continuous effect for a period exceeding the prescribed period, and
 - (d) the condition in subsection (2) is satisfied.
- (2) The condition is that, in the prescribed period, A obtains written confirmation from the personnel supplier –
- (a) that the personnel supplier has ascertained in accordance with subsection (3) that B is not barred from the activity and is subject to monitoring in relation to the activity, and 40

- (b) that the personnel supplier has no reason to believe that B either has become barred from the activity or is no longer subject to monitoring in relation to it.
- (3) A personnel supplier ascertains in accordance with this subsection that B is not barred and is subject to monitoring only if— 5
- (a) he obtains the relevant information (within the meaning of Schedule 4) relating to B as part of an enhanced criminal record certificate relating to B issued in relation to the personnel supplier under section 113B of the Police Act 1997 (c. 50) during the prescribed period, or
- (b) in that period he obtains the information by making an application under Schedule 4. 10
- (4) For the purposes of subsection (3)(a) an enhanced criminal record certificate is issued in relation to a personnel supplier only if—
- (a) he countersigned the application for the certificate as a registered person for the purposes of Part 5 of the Police Act 1997, or 15
- (b) the application was countersigned on his behalf by such a registered person.
- (5) A personnel supplier commits an offence if—
- (a) he provides the written confirmation mentioned in subsection (2), and
- (b) the condition in subsection (6) or (7) is satisfied in relation to him. 20
- (6) The condition is that the personnel supplier has not ascertained in accordance with subsection (3) that B is not barred and is subject to monitoring.
- (7) The condition is that—
- (a) the personnel supplier has ascertained these matters in accordance with subsection (3), and 25
- (b) before he gives the written confirmation he has reason to believe that B has become barred or is no longer subject to monitoring.
- (8) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- 14 Exception to requirement to make monitoring check 30**
- (1) A regulated activity provider in relation to vulnerable adults falls within this section if—
- (a) he provides complementary or alternative therapy;
- (b) he is responsible for the control or management of a prison;
- (c) he is responsible for the control or management of the provision of a probation service; 35
- (d) it is an organisation which provides recreational, social, sporting or educational activities;
- (e) he provides wholly or mainly to vulnerable adults a course of education or instruction which is of a prescribed description; 40
- (f) he is responsible for the control or management of the provision of housing (including sheltered housing);
- (g) he provides qualifying welfare services;
- (h) he makes arrangements for the appointment of a person or the provision of a service as mentioned in section 43(1)(h) or (8). 45

- (2) A regulated activity provider which is a local authority does not fall within this section by virtue of paragraph (d) or (f) of subsection (1) if the authority makes the provision in pursuance of any enactment.
- (3) A person provides qualifying welfare services if—
- (a) he provides welfare services, 5
 - (b) a local authority contribute or will contribute to the expenditure incurred by him in providing those services, and
 - (c) that contribution is or will be derived (in whole or in part) from any grant which is or will be paid to the authority under a relevant enactment. 10
- (4) A relevant enactment is an enactment specified by the Secretary of State by order which authorises payment of grant towards expenditure incurred by the recipient—
- (a) in providing, or contributing to the provision of, welfare services, or
 - (b) in connection with such welfare services. 15
- (5) In subsection (3) a local authority is—
- (a) in relation to England, a county council, a district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;
 - (b) in relation to Wales, a county council or a county borough council. 20
- (6) In this section “welfare services”—
- (a) includes services which provide support, assistance, advice or counselling to individuals with particular needs;
 - (b) does not include community care services within the meaning of section 46 of the National Health Service and Community Care Act 1990 (c. 19). 25
- (7) The Secretary of State may by order amend subsection (1) by inserting a paragraph or amending or omitting a paragraph for the time being contained in the subsection.
- 15 NHS employment** 30
- (1) A regulated activity provider falls within this section if—
- (a) he permits a person (E) to engage in regulated activity in pursuance of arrangements made by another person,
 - (b) immediately before the permission takes effect E is engaged in relevant NHS employment, 35
 - (c) for the duration of the permission E continues to be engaged in that relevant NHS employment, and
 - (d) the regulated activity is also relevant NHS employment.
- (2) Relevant NHS employment is employment with an NHS body in—
- (a) a child care position (within the meaning of the Protection of Children Act 1999 (c. 14)); 40
 - (b) a care position (within the meaning of section 80 of the Care Standards Act 2000 (c. 14)).
- (3) Each of the following is an NHS body—
- (a) a National Health Service trust; 45

- (b) a Strategic Health Authority;
- (c) an NHS foundation trust;
- (d) a Health Authority;
- (e) a Local Health Board;
- (f) a Special Health Authority; 5
- (g) a Primary Care Trust.

16 Offences: companies etc.

- (1) If an offence under section 9, 10 or 11 is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of – 10
 - (a) a director, manager, secretary or other similar officer of the body, or
 - (b) a person purporting to act in such a capacity,
 he (as well as the body) commits the offence.
- (2) If an offence under section 9, 10 or 11 is committed by a partnership (whether or not a limited partnership) and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of – 15
 - (a) a partner, or
 - (b) a person purporting to act as a partner,
 he (as well as the partnership) commits the offence.
- (3) In subsection (1), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body. 20

17 Offences: employees

- (1) If the commission of an offence under section 9, 10 or 11 is due to the act or default of an employee of a regulated activity provider or personnel supplier, the employee is guilty of the offence; and the employee may be proceeded against and punished whether or not proceedings are also taken against his employer. 25
- (2) For the purposes of subsection (1), an employee includes a person who acts in an unpaid capacity under the direction of the officers of an unincorporated body. 30

Controlled activity

18 Controlled activity relating to children

- (1) A reference to a controlled activity relating to children must be construed in accordance with this section.
- (2) An activity which falls within any of subsections (3) to (5) is a controlled activity to the extent that it is not a regulated activity relating to children. 35
- (3) An activity falls within this subsection if –
 - (a) it consists in or is carried out in connection with any form of health care, treatment or therapy to which subsection (6) applies,
 - (b) it is carried out frequently by the same person, and 40
 - (c) it gives the person an opportunity mentioned in subsection (7).

- (4) An activity falls within this subsection if –
- (a) it is carried out in a further education institution (within the meaning of section 140(3) of the Education Act 2002 (c. 32)),
 - (b) it is carried out frequently by the same person, and
 - (c) it gives the person the opportunity mentioned in subsection (7)(a). 5
- (5) An activity falls within this subsection if it consists in or involves on a regular basis the day to day management or supervision of a person carrying out an activity which falls within subsection (3) or (4).
- (6) This subsection applies to health care, treatment or therapy which is provided for a child – 10
- (a) in pursuance of arrangements made by or under an enactment,
 - (b) in an establishment in relation to which a requirement to register arises under section 11 of the Care Standards Act 2000 (c. 14), or
 - (c) by an agency in relation to which such a requirement arises.
- (7) The opportunities are – 15
- (a) opportunity to have any form of contact with children;
 - (b) opportunity to have access to the medical records of children.

19 Controlled activity relating to vulnerable adults

- (1) A reference to a controlled activity relating to vulnerable adults must be construed in accordance with this section. 20
- (2) An activity which is ancillary to or is carried out wholly or mainly in relation to an activity which falls within subsection (4) is a controlled activity to the extent that it is not a regulated activity relating to vulnerable adults if –
- (a) it is carried out frequently by the same person, and
 - (b) it gives the person an opportunity mentioned in subsection (5). 25
- (3) An activity which consists in or involves on a regular basis the day to day management or supervision of a person carrying out an activity mentioned in subsection (2) is also a controlled activity relating to vulnerable adults.
- (4) Each of the following falls within this section – 30
- (a) the provision of primary care services;
 - (b) the provision of hospital services;
 - (c) the provision of domiciliary care;
 - (d) the making of arrangements in connection with an adult placement scheme;
 - (e) the provision of community care services. 35
- (5) The opportunities are –
- (a) opportunity to have any form of contact with a vulnerable adult;
 - (b) opportunity to have access to the medical records of a vulnerable adult;
 - (c) opportunity to have access to such other information as may be prescribed relating to a vulnerable adult. 40
- (6) In this section –
- “adult placement scheme” means a scheme –

- (a) under which an individual agrees with the person carrying on the scheme to provide care or support (which may include accommodation) to an adult who is in need of it, and
- (b) in respect of which a requirement to register arises under section 11 of the Care Standards Act 2000 (c. 14); 5
- “community care services” has the same meaning as in section 46(3) of the National Health Service and Community Care Act 1990 (c. 19);
- “domiciliary care” must be construed in accordance with section 43(3) and (4);
- “hospital services” means in-patient or out-patient services provided by – 10
- (a) a National Health Service trust;
- (b) an NHS foundation trust;
- (c) a Primary Care Trust;
- (d) an independent hospital (within the meaning of section 2 of the Care Standards Act 2000); 15
- (e) an independent clinic (within the meaning of that section);
- (f) an independent medical agency (within the meaning of that section);
- “primary care services” means any of the following –
- (a) primary medical services provided in pursuance of section 16CC of the National Health Service Act 1977 (c. 49); 20
- (b) primary dental services provided in pursuance of section 16CA or 28K of that Act;
- (c) personal dental services provided in accordance with an agreement made in pursuance of section 28C of that Act; 25
- (d) general ophthalmic services provided in accordance with section 38 of that Act;
- (e) pharmaceutical services provided in pursuance of arrangements made under section 3, 41 or 41A of that Act or under Schedule 8A to that Act or section 28 of the Health and Social Care Act 2001 (c. 15); 30
- (f) a service which corresponds to a service mentioned in any of paragraphs (a) to (e) but which is provided otherwise than by virtue of arrangements made pursuant to an enactment mentioned in that paragraph. 35

20 Controlled activity: guidance

- (1) The appropriate authority may issue guidance as to the steps to be taken by a person who falls within subsection (3) in relation to permitting another person to engage in controlled activity.
- (2) A person who falls within subsection (3) must have regard to guidance issued under subsection (1). 40
- (3) These are the persons –
- (a) a Strategic Health Authority;
- (b) a Health Authority;
- (c) a Special Health Authority; 45
- (d) a Primary Care Trust;
- (e) a Local Health Board;
- (f) a National Health Service trust;

- (g) an NHS foundation trust;
 - (h) a local authority within the meaning of the Local Government Act 1972 (c. 70);
 - (i) a person carrying on or managing an establishment or agency in relation to which a requirement to register arises under section 11 of the Care Standards Act 2000 (c. 14); 5
 - (j) a person carrying on or managing an activity in respect of which a requirement to register arises under that section as modified by regulations under section 42 of that Act;
 - (k) a further education institution (within the meaning of section 140(3) of the Education Act 2002 (c. 32)). 10
- (4) The appropriate authority is –
- (a) in so far as any function of a person falling within subsection (3) is exercisable in relation to Wales, the National Assembly for Wales;
 - (b) in any other case, the Secretary of State. 15

Monitoring

21 Monitoring

- (1) An individual is subject to monitoring in relation to regulated activity if –
- (a) he is not barred from engaging in the activity,
 - (b) he makes a monitoring application, 20
 - (c) he satisfies the prescribed identification requirements, and
 - (d) he pays the prescribed fee.
- (2) A monitoring application must specify whether it is in respect of –
- (a) regulated activity relating to children, or
 - (b) regulated activity relating to vulnerable adults. 25
- (3) On a monitoring application being made the Secretary of State must –
- (a) make such enquiries as he thinks appropriate to ascertain whether any relevant information exists in relation to the individual;
 - (b) provide the individual with any such information (except information to which subsection (6) applies) unless he thinks that the individual has already been provided with the information. 30
- (4) The Secretary of State must also ensure that at such intervals as he thinks appropriate such enquiries are made as he thinks appropriate to ascertain whether any new relevant information exists in relation to the individual.
- (5) Relevant information is – 35
- (a) the prescribed details of relevant matter (within the meaning of section 113A of the Police Act 1997);
 - (b) information which the chief officer of a relevant police force thinks might be relevant in relation to the regulated activity concerned;
 - (c) such other information as may be prescribed. 40
- (6) This subsection applies to information mentioned in subsection (5)(b) which the chief officer of a relevant police force thinks it would not be in the interests of the prevention or detection of crime to disclose to an individual subject to monitoring.

- (7) For the purposes of subsection (1)(a) an individual is to be regarded as being barred from regulated activity by virtue of paragraph 2 or 7 of Schedule 2 only after IBB has decided under paragraph 2(4) or 7(4) not to remove him from the barred list.
- (8) A monitoring application is an application made to the Secretary of State in the prescribed form and manner. 5
- (9) If the prescribed identification requirements include a requirement that the applicant has his fingerprints taken at such place and in such manner as may be prescribed, the regulations may make provision requiring their destruction in specified circumstances and by specified persons. 10
- (10) For the purpose of verifying evidence of identity supplied in pursuance of the prescribed identification requirements the Secretary of State may obtain such information as he thinks is appropriate from data held –
- (a) by the United Kingdom Passport Agency;
 - (b) by the Driver and Vehicle Licensing Agency; 15
 - (c) by the Secretary of State in connection with keeping records of national insurance numbers;
 - (d) by such other persons or for such purposes as is prescribed.
- (11) Relevant information is new if it was not discovered when any earlier inquiries under this section were carried out. 20
- (12) References to a relevant police force must be construed in accordance with section 113B of the Police Act 1997 (c. 50).

22 Ceasing monitoring

- (1) The Secretary of State may cease monitoring as mentioned in section 21 in relation to an individual in such circumstances as are prescribed. 25
- (2) The Secretary of State must cease such monitoring in relation to an individual who –
- (a) satisfies the Secretary of State that he is not engaged in the regulated activity concerned or the corresponding controlled activity, and
 - (b) requests the Secretary of State to cease monitoring. 30
- (3) In subsection (2)(a) the corresponding controlled activity is –
- (a) if the regulated activity is regulated activity relating to children, controlled activity relating to children;
 - (b) if the regulated activity is regulated activity relating to vulnerable adults, controlled activity relating to vulnerable adults. 35

23 Information monitor

After section 119A of the Police Act 1997 (further sources of information: Scotland) insert –

“119B Information monitor

- (1) There is to be an information monitor for the purposes of this Part. 40
- (2) The information monitor is a person appointed by the Secretary of State
- (a) for such period, not exceeding three years, as the Secretary of State decides;

- (b) on such terms as the Secretary of State decides.
- (3) A person may be appointed for a further period or periods.
- (4) The Secretary of State may terminate the appointment of the information monitor before the end of the period mentioned in subsection (2)(a) by giving the monitor notice of the termination not less than three months before it is to take effect. 5
- (5) The information monitor must review –
- (a) all cases in which information is disclosed to a registered person in pursuance of section 113B(6)(b);
- (b) a sample of cases in which a certificate issued under section 113B has included information in pursuance of subsection (4)(b) of that section; 10
- (c) a sample of cases in which the chief officer of a police force has decided that information must not be included in a certificate or report in pursuance of section 113B(4)(b) or disclosed in pursuance of section 113B(5)(c) and (6)(b). 15
- (6) The purpose of a review under subsection (5) is to ensure compliance with Article 8 of the European Convention of Human Rights.
- (7) The information monitor must in relation to each year make a report to the Secretary of State about the performance of police forces in exercising their functions under this Part. 20
- (8) The information monitor may make recommendations to the Secretary of State as to –
- (a) any guidance issued by the Secretary of State or which the monitor thinks it would be appropriate for the Secretary of State to issue; 25
- (b) any changes to any enactment which the monitor thinks may be appropriate.
- (9) The chief officer of a police force must provide to the information monitor such information as the monitor reasonably requires in connection with the exercise of his functions under this section.” 30

24 Part 5 of the Police Act 1997: code of practice

- (1) Section 122 of the Police Act 1997 (c. 50) (code of practice) is amended as follows.
- (2) In subsection (1) after “information provided to” insert “, or the discharge of any function by,”. 35
- (3) In subsection (3) for the words from “The Secretary of State” to “application” substitute “Subsection (3A) applies if the Secretary of State thinks that the registered person who countersigned an application for a certificate under section 113A, or 113B”. 40
- (4) After subsection (3) insert –
- “(3A) The Secretary of State may –
- (a) refuse to issue the certificate;
- (b) suspend the registration of the person;

- (c) cancel the registration of the person.
- (3B) Section 120AB applies if the Secretary of State proposes to suspend or cancel a person’s registration under subsection (3A) above as it applies if he proposes to suspend or cancel a person’s registration by virtue of section 120AA.”

5

Notices and information

25 Provision of vetting information

Schedule 4 has effect in relation to the provision of certain information relating to individuals.

26 Notice of barring and cessation of monitoring

10

- (1) Subsection (2) applies if the Secretary of State knows or reasonably thinks that a person (A) is permitting another person (B) to engage in regulated activity or controlled activity and either –
- (a) B is newly included in the appropriate barred list or the Secretary of State becomes aware that B is subject to a relevant disqualification, or
- (b) having been subject to appropriate monitoring, B ceases to be so subject by virtue of section 22.
- (2) The Secretary of State must notify A of the circumstances mentioned in paragraph (a) or (b) (as the case may be) of subsection (1).
- (3) Subsection (4) applies if the Secretary of State knows or reasonably thinks that –
- (4) a person (B)
- (a) is engaged in regulated activity or controlled activity in circumstances other than where B is permitted to do so by a regulated activity provider or a person having responsibility for the management or control of controlled activity (as the case may be), and
- (b) paragraph (a) or (b) of subsection (1) applies to B.
- (5) The Secretary of State must notify each supervisory authority he thinks appropriate of the circumstances mentioned in paragraph (a) or (b) (as the case may be) of subsection (1).
- (6) The appropriate barred list is –
- (a) if the regulated activity or controlled activity in which B is engaged relates to children, the children’s barred list;
- (b) if the regulated activity or controlled activity in which B is engaged relates to vulnerable adults, the adults’ barred list.
- (7) Appropriate monitoring is –
- (a) if the regulated activity or controlled activity in which B is engaged relates to children, monitoring in relation to regulated activity relating to children;
- (b) if the regulated activity or controlled activity in which B is engaged relates to vulnerable adults, monitoring in relation to regulated activity relating to vulnerable adults.
- (8) A person is subject to a relevant disqualification if –

- (a) he is included in a list maintained under the law of Scotland or Northern Ireland which the Secretary of State specifies by order as corresponding to a barred list;
 - (b) he is subject to a disqualification order under section 28, 29 or 29A of the Criminal Justice and Court Services Act 2000 (c. 43). 5
- (9) The reference in subsection (4) to a supervisory authority must be construed in accordance with section 35(6).
- (10) This section does not affect any power of the Secretary of State by virtue of any enactment or rule of law to inform any person about the circumstances mentioned in subsection (1)(a) or (b). 10

27 Regulated activity providers: duty to refer

- (1) Subsection (2) applies to—
- (a) a regulated activity provider who holds any prescribed information in relation to a person (P) engaged in regulated activity provided by him;
 - (b) a person having any responsibility for the management or control of controlled activity who holds any prescribed information in relation to a person (P) whom he permits to engage in controlled activity. 15
- (2) A person to whom this subsection applies must provide IBB with the information if—
- (a) he withdraws permission for P to engage in the activity for a reason mentioned in subsection (4), or 20
 - (b) he does not withdraw permission for such a reason but would or might have done so if P had not otherwise ceased to engage in the activity.
- (3) An employment agency or employment business must provide IBB with any prescribed information it holds in relation to a person (P) for whom the agency or business acts if— 25
- (a) P ceases to be engaged in regulated activity or controlled activity in the circumstances mentioned in subsection (2)(a) or (b),
 - (b) the agency or business determines to cease to act for P for a reason mentioned in subsection (4), or 30
 - (c) it does not determine to cease to act for P for such a reason but would or might have done so if its arrangement with, or employment of, him had not otherwise come to an end.
- (4) The reasons are that the person to whom subsection (2) applies or, as the case may be, the employment agency or employment business thinks— 35
- (a) that paragraph 1, 2, 6 or 7 of Schedule 2 applies to P,
 - (b) that P has engaged in relevant conduct (within the meaning of paragraph 4 or 9 of Schedule 2), or
 - (c) that the harm test is satisfied.
- (5) The harm test is that P may— 40
- (a) harm a child or vulnerable adult,
 - (b) cause a child or vulnerable adult to be harmed,
 - (c) put a child or vulnerable adult at risk of harm,
 - (d) attempt to harm a child or vulnerable adult, or
 - (e) incite another to harm a child or vulnerable adult. 45

- (6) If a person whom subsection (2) applies falls within section 14, that subsection must be read as if for “must” there is substituted “may”.
- (7) No claim for damages shall lie in respect of any loss or damage suffered by any person in consequence of –
- (a) the provision of prescribed information in pursuance of this section; 5
 - (b) any failure to provide such information.
- (8) An employment agency acts for a person if it makes arrangements with him with a view to –
- (a) finding him employment with an employer, or
 - (b) supplying him to employers for employment by them. 10
- (9) An employment business acts for a person if it employs him to act for and under the control of other persons in any capacity.
- (10) In this section “employment” has the same meaning as in the Employment Agencies Act 1973 (c. 35).
- (11) This section does not apply if the conditions specified in subsection (2) or (3) are fulfilled before the section is commenced. 15
- 28 Regulated activity providers: duty to provide information on request**
- (1) This section applies if IBB is considering –
- (a) whether to include any person in a barred list;
 - (b) whether to remove any person from a barred list. 20
- (2) IBB may require –
- (a) any regulated activity provider who has made arrangements for that person to engage in regulated activity (whether or not the arrangements are still in place),
 - (b) any person having any responsibility for the management or control of controlled activity who permits or has permitted that person to engage in controlled activity, or
 - (c) any employment agency or employment business which acts for or has acted for that person,
- to provide IBB with any prescribed information he or it holds relating to the person. 30
- (3) An employment agency acts for a person if it makes arrangements with him with a view to –
- (a) finding him employment with an employer, or
 - (b) supplying him to employers for employment by them. 35
- (4) An employment business acts for a person if it employs him to act for and under the control of other persons in any capacity.
- (5) In this section “employment” has the same meaning as in the Employment Agencies Act 1973.
- 29 Duty to provide information: offences** 40
- (1) A person commits an offence if –
- (a) he is required under section 27(2) or (3) or in pursuance of section 28 to provide information to IBB, and

- (b) he fails, without reasonable excuse, to provide the information.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Local authority information and referrals

- 30 Local authorities: duty to refer** 5
- (1) A local authority must provide IBB with any prescribed information they hold relating to a person if the first and second conditions are satisfied.
- (2) The first condition is that the local authority think –
- (a) that paragraph 1, 2, 6 or 7 Schedule 2 applies to the person,
 - (b) that the person has engaged in relevant conduct (within the meaning of paragraph 4 or 9 of Schedule 2) occurring after the commencement of this section, or
 - (c) that the harm test is satisfied.
- (3) The harm test is that the person may –
- (a) harm a child or vulnerable adult,
 - (b) cause a child or vulnerable adult to be harmed,
 - (c) put a child or vulnerable adult at risk of harm,
 - (d) attempt to harm a child or vulnerable adult,
 - (e) incite another to harm a child or vulnerable adult.
- (4) The second condition is that the local authority think –
- (a) that the person is engaged or may engage in regulated activity or controlled activity, and
 - (b) (except in a case where paragraph 1, 2, 6 or 7 of Schedule 2 applies) that IBB may consider it appropriate for the person to be included in a barred list.
- (5) For the purposes of subsection (2)(b) or (c), it is immaterial whether there is a finding of fact in any proceedings.
- (6) A local authority may provide IBB with any prescribed information they hold relating to a person if –
- (a) the local authority think that a person has engaged in relevant conduct (within the meaning of paragraph 4 or 9 of Schedule 2) occurring before the commencement of this section, and
 - (b) the condition in subsection (4) is satisfied.
- (7) “Local authority” has the same meaning as in section 1 of the Local Authorities (Goods and Services) Act 1970 (c. 39).
- (8) No claim for damages lies in respect of any loss or damage suffered by any person in consequence of –
- (a) the provision of prescribed information in pursuance of this section;
 - (b) any failure to provide such information.
- 31 Local authorities: duty to provide information on request** 40
- (1) This section applies if IBB is considering –

- (a) whether to include any person in a barred list;
 - (b) whether to remove any person from a barred list.
- (2) If IBB thinks that a local authority hold any prescribed information relating to the person, it may require the authority to provide it with the information.
- (3) The local authority must comply with a requirement under subsection (2). 5
- (4) “Local authority” has the same meaning as in section 1 of the Local Authorities (Goods and Services) Act 1970 (c. 39).

Professional and supervisory bodies

32 Registers: duty to refer

- (1) A keeper of a relevant register must provide IBB with any prescribed information he holds relating to a person if the first and second conditions are satisfied. 10
- (2) The first condition is that the keeper thinks –
- (a) that paragraph 1, 2, 6 or 7 of Schedule 2 applies to the person,
 - (b) that the person has engaged in relevant conduct (within the meaning of paragraph 4 or 9 of Schedule 2) occurring after the commencement of this section, or 15
 - (c) that the harm test is satisfied.
- (3) The harm test is that the person may –
- (a) harm a child or vulnerable adult,
 - (b) cause a child or vulnerable adult to be harmed,
 - (c) put a child or vulnerable adult at risk of harm,
 - (d) attempt to harm a child or vulnerable adult, or
 - (e) incite another to harm a child or vulnerable adult. 20
- (4) The second condition is that the keeper thinks –
- (a) that the person is engaged or may engage in regulated activity or controlled activity, and
 - (b) (except in a case where paragraph 1, 2, 6 or 7 of Schedule 2 applies) that IBB may consider it appropriate for the person to be included in a barred list. 25 30
- (5) For the purposes of subsection (2)(b) or (c) it is immaterial whether there is a finding of fact in any proceedings.
- (6) A keeper of a relevant register may provide IBB with any prescribed information he holds relating to a person if –
- (a) he thinks that the person has engaged in relevant conduct (within the meaning of paragraph 4 or 9 of Schedule 2) occurring before the commencement of this section, and
 - (b) the condition in subsection (4) is satisfied. 35
- (7) No claim for damages lies in respect of any loss or damage suffered by any person in consequence of –
- (a) the provision of prescribed information in pursuance of this section;
 - (b) any failure to provide such information. 40

- (8) References to a relevant register and the keeper of a relevant register must be construed in accordance with section 34(5).

33 Registers: duty to provide information on request

- (1) This section applies if IBB is considering –
- (a) whether to include in a barred list a person who appears on a relevant register; 5
 - (b) whether to remove such a person from a barred list.
- (2) IBB may require the keeper of the register to provide it with any prescribed information he holds relating to the person.
- (3) The keeper of the register must comply with a requirement under subsection (2). 10
- (4) References to a relevant register and the keeper of a relevant register must be construed in accordance with section 34(5).

34 Registers: notice of barring and cessation of monitoring

- (1) Subsection (2) applies if the Secretary of State knows or thinks that a person (A) appears on a relevant register and either – 15
- (a) A is newly included in a barred list or the Secretary of State becomes aware that A is subject to a relevant disqualification, or
 - (b) having been subject to monitoring, A ceases to be so subject by virtue of section 22. 20
- (2) The Secretary of State must –
- (a) notify the keeper of the register of the circumstances mentioned in paragraph (a) or (b) (as the case may be) of subsection (1), and
 - (b) in a case where A is newly included in a barred list, provide the keeper with all the information on which IBB relied in deciding to include A in the list. 25
- (3) If the Secretary of State –
- (a) knows or thinks that a person appears on a relevant register; and
 - (b) becomes aware of relevant information relating to that person,
- he may provide the keeper of the register with that information. 30
- (4) In subsection (3), relevant information is information which –
- (a) relates to the protection of children or vulnerable adults in general, or of any child or vulnerable adult in particular, and
 - (b) is relevant to the exercise of any function of the keeper of the register.
- (5) In this section – 35
- (a) a relevant register is a register appearing in column 1 of the following Table, and
 - (b) in relation a relevant register, the keeper of the register is the corresponding person appearing in column 2 of the Table.

<i>Relevant register</i>	<i>Keeper of the register</i>	
The register of teachers maintained under section 3 of the Teaching and Higher Education Act 1998 (c. 30)	The General Teaching Council for England or the General Teaching Council for Wales, as the case may be	5
The register of pharmaceutical chemists maintained under section 2 of the Pharmacy Act 1954 (c. 61)	The registrar appointed under section 1 of that Act	
Either of the lists of medical practitioners kept under section 2 of the Medical Act 1983 (c. 54)	The registrar of the General Medical Council	10
The dentists register kept under section 14 of the Dentists Act 1984 (c. 24) or the dental care professionals register kept under section 36B of that Act	The registrar appointed under section 14 of that Act	15
The register of optometrists or the register of dispensing opticians maintained under section 7 of the Opticians Act 1989 (c. 44), or the register of persons undertaking training as optometrists or the register of persons undertaking training as dispensing opticians maintained under section 8A of that Act	The registrar of the General Optical Council	20
The register of osteopaths maintained under section 2 of the Osteopaths Act 1993 (c. 21)	The Registrar of Osteopaths	25
The register of chiropractors maintained under section 2 of the Chiropractors Act 1994 (c. 17)	The Registrar of Chiropractors	30
The register of social workers and social care workers maintained under section 56 of the Care Standards Act 2000 (c. 14)	The General Social Care Council or the Care Council for Wales, as the case may be	
The register of qualified nurses and midwives maintained under Article 5 of the Nursing and Midwifery Order 2001 (S.I. 2002/253)	The registrar appointed under Article 4 of that Order	35
The register of members of relevant professions maintained under Article 5 of the Health Professions Order 2001 (S.I. 2002/254)	The registrar appointed under Article 4 of that Order	40

(6) A person is subject to a relevant disqualification if –

- (a) he is included in a list maintained under the law of Scotland or Northern Ireland which the Secretary of State specifies by order as corresponding to a barred list;
 - (b) he is subject to a disqualification order under section 28, 29 or 29A of the Criminal Justice and Court Services Act 2000 (c. 43). 5
 - (7) This section does not affect any power of the Secretary of State by virtue of any enactment or rule of law to—
 - (a) inform any person about the circumstances mentioned in subsection (1)(a) or (b);
 - (b) provide any person with the information mentioned in subsection (3)(b). 10
 - (8) In its application to Scotland, this section does not have effect in relation to a profession in so far as provision may be made for the regulation of the profession by an Act of the Scottish Parliament.
- 35 Supervisory authorities: duty to refer** 15
- (1) A supervisory authority must provide IBB with any prescribed information it holds relating to a person if the first and second conditions are satisfied.
 - (2) The first condition is that the supervisory authority thinks, on the basis of relevant evidence—
 - (a) that paragraph 1, 2, 6 or 7 of Schedule 2 applies to the person, 20
 - (b) that the person has engaged in relevant conduct (within the meaning of paragraph 4 or 9 of Schedule 2) occurring after the commencement of this section, or
 - (c) that the harm test is satisfied.
 - (3) The harm test is that the person may— 25
 - (a) harm a child or vulnerable adult,
 - (b) cause a child or vulnerable adult to be harmed,
 - (c) put a child or vulnerable adult at risk of harm,
 - (d) attempt to harm a child or vulnerable adult, or
 - (e) incite another to harm a child or vulnerable adult. 30
 - (4) The second condition is that the supervisory authority thinks—
 - (a) that the person is engaged or may engage in regulated activity or controlled activity, and
 - (b) (except in a case where paragraph 1, 2, 6 or 7 of Schedule 2 applies) that IBB may consider it appropriate for the person to be included in a barred list. 35
 - (5) The supervisory authority may provide IBB with any prescribed information it holds relating to a person if—
 - (a) it thinks, on the basis of relevant evidence, that the person has engaged in relevant conduct (within the meaning of paragraph 4 or 9 of Schedule 2) occurring before the commencement of this section, and 40
 - (b) the condition in subsection (4) is satisfied.
 - (6) A supervisory authority is—
 - (a) a registration authority within the meaning of section 5 of the Care Standards Act 2000 (c. 14) in respect of its functions under Part 2 of that Act; 45

- (b) the Commission for Healthcare Audit and Inspection in respect of its functions under Chapter 3 of Part 2 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43);
 - (c) the Commission for Social Care Inspection in respect of its functions under Chapter 5 of Part 2 of that Act; 5
 - (d) the National Assembly for Wales in respect of its functions under Chapters 4 and 6 of Part 2 of that Act;
 - (e) Her Majesty’s Chief Inspector of Schools in England in the exercise of his functions.
 - (7) Relevant evidence is evidence obtained by the supervisory authority in the exercise of the functions mentioned in subsection (6). 10
 - (8) No claim for damages lies in respect of any loss or damage suffered by any person in consequence of –
 - (a) the provision of prescribed information in pursuance of this section;
 - (b) any failure to provide such information. 15
- 36 Supervisory authorities: duty to provide information on request**
- (1) This section applies if IBB is considering –
 - (a) whether to include in a barred list a person in relation to whom IBB thinks that a supervisory authority may have prescribed information;
 - (b) whether to remove such a person from a barred list. 20
 - (2) IBB may require the supervisory authority to provide it with any prescribed information it holds relating to the person.
 - (3) The supervisory authority must comply with a requirement under subsection (2).
 - (4) The references to a supervisory authority must be construed in accordance with section 35(6). 25
- 37 Provision of information to supervisory authorities**
- (1) This section applies if IBB –
 - (a) has reason to believe that a person (A) is engaged in regulated activity or controlled activity in circumstances other than where he is permitted to do so by a regulated activity provider or a person having responsibility for the management or control of controlled activity (as the case may be), and
 - (b) has information relating to A which is relevant to a supervisory authority. 30
 - (2) IBB must provide the supervisory authority with the information.
 - (3) Information is relevant to a supervisory authority if –
 - (a) it is relevant to the functions of the authority mentioned in section 35(6), and
 - (b) it relates to the protection of children or vulnerable adults. 40
 - (4) References to a supervisory authority must be construed in accordance with section 35(6).

*Miscellaneous***38 Power to require certain information to be obtained**

The Secretary of State may provide that in prescribed circumstances such of the following provisions of this Act as are prescribed do not apply –

- (a) section 11(9)(b); 5
- (b) section 13(3)(b).

39 National Assembly for Wales

No act or omission by the National Assembly for Wales or any member, officer or employee of the Assembly gives rise to –

- (a) liability for any offence under this Act; 10
- (b) any civil liability arising in consequence of this Act.

40 Northern Ireland

An Order in Council under paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) (legislation for Northern Ireland during suspension of devolved government) which contains a statement that it is made only for purposes corresponding to those of this Act – 15

- (a) is not subject to paragraph 2 of that Schedule (affirmative resolution of both Houses of Parliament), but
- (b) is subject to annulment in pursuance of a resolution of either House of Parliament. 20

*General***41 Damages**

Nothing in this Act affects section 8 of the Human Rights Act 1998 (c. 42) as it relates to the power of a court to award damages in respect of an unlawful act of a public authority (within the meaning of that Act). 25

42 Family and personal relationships

- (1) This Act does not apply to any activity which is carried out in the course of a family relationship.
- (2) This Act does not apply to any activity which is carried out – 30
 - (a) in the course of a personal relationship, and
 - (b) for no commercial consideration.
- (3) A family relationship includes a relationship between two persons who –
 - (a) live in the same household, and
 - (b) treat each other as though they were members of the same family.
- (4) A personal relationship is a relationship between or among friends. 35
- (5) A friend of a person (A) includes a person who is a friend of a member of A's family.

43 Vulnerable adults

- (1) A person is a vulnerable adult if he has attained the age of 18 and –
- (a) he is in residential accommodation,
 - (b) he is in sheltered housing,
 - (c) he receives domiciliary care, 5
 - (d) he receives any form of health care,
 - (e) he is detained in lawful custody,
 - (f) he is by virtue of an order of a court under supervision by a person exercising functions for the purposes of Part 1 of the Criminal Justice and Court Services Act 2000 (c. 43), 10
 - (g) he receives any service or participates in any activity provided specifically for persons who fall within subsection (7),
 - (h) payments are made to him in pursuance of arrangements under section 57 of the Health and Social Care Act 2001 (c. 15), or
 - (i) he requires assistance in the conduct of his own affairs. 15
- (2) Residential accommodation is accommodation provided for a person in connection with –
- (a) any care or nursing which he requires;
 - (b) any education or training which he is undertaking.
- (3) Domiciliary care is care of any description or assistance falling within subsection (4) whether provided continuously or not which a person receives in a place where he is, for the time being, living. 20
- (4) Assistance falls within this subsection if it is (to any extent) provided to a person by reason of –
- (a) his age; 25
 - (b) his health;
 - (c) any disability he has.
- (5) Health care includes treatment, therapy or palliative care of any description.
- (6) A person is in lawful custody if he is –
- (a) detained in a prison (within the meaning of the Prison Act 1952 (c. 52)); 30
 - (b) detained in a remand centre, young offender institution or secure training centre (as mentioned in section 43 of that Act);
 - (c) detained in an attendance centre (within the meaning of section 53(1) of that Act);
 - (d) a detained person (within the meaning of Part 8 of the Immigration and Asylum Act 1999 (c. 33)) who is detained in a removal centre or short-term holding facility (within the meaning of that Part) or in pursuance of escort arrangements made under section 156 of that Act. 35
- (7) A person falls within this subsection if –
- (a) he is elderly; 40
 - (b) he has any form of disability;
 - (c) he has a physical or mental problem of such description as is prescribed;
 - (d) she is an expectant or nursing mother.
- (8) A person requires assistance in the conduct of his own affairs if – 45

- (a) a lasting power of attorney is or is to be granted in respect of him in accordance with section 9 of the Mental Capacity Act 2005 (c. 9);
 - (b) a deputy is or is to be appointed in respect of him under section 16 of that Act;
 - (c) an independent mental capacity advocate is or is to be appointed in respect of him in pursuance of arrangements under section 35 of that Act; 5
 - (d) independent advocacy services (within the meaning of section 19A of the National Health Service Act 1977 (c. 49)) are or are to be provided in respect of him; 10
 - (e) a representative is or is to be appointed to receive payments on his behalf in pursuance of regulations made under the Social Security Administration Act 1992 (c. 5).
- (9) The Secretary of State may by order provide that a person specified in the order or of a description so specified who falls within subsection (1) is not to be treated as a vulnerable adult. 15

44 Interpretation

- (1) In this Act –
- “the adults’ barred list” must be construed in accordance with section 2(1)(b); 20
 - “barred list” means the children’s barred list or the adults’ barred list;
 - “child” means a person who has not attained the age of 18;
 - “the children’s barred list” must be construed in accordance with section 2(1)(a);
 - “employment agency” and “employment business” have the same meaning as in the Employment Agencies Act 1973 (c. 35); 25
 - “personnel supplier” means –
 - (a) a person carrying on an employment agency or an employment business, or
 - (b) if B is a student following a course at an educational institution, that institution; 30
 - “prescribed” means prescribed by regulations made by the Secretary of State;
 - “vulnerable adult” must be construed in accordance with section 43.
- (2) A reference (however expressed) to a person being barred must be construed in accordance with section 3. 35
- (3) A reference to a person being subject to monitoring in relation to a regulated or controlled activity must be construed in accordance with section 21.

45 Orders and regulations

- (1) Any power under this Act to make orders or regulations is exercisable by statutory instrument. 40
- (2) Subject to subsections (3) and (4), orders or regulations under this Act are subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) An instrument containing provision made – 45

- (a) by order under section 5(3),
 (b) by order under section 47(2), or
 (c) in regulations under paragraph 19 of Schedule 2,
 must not be made unless a draft of the instrument is laid before and approved by a resolution of each House of Parliament. 5
- (4) Subsection (2) does not apply to an order made under section 48, including such an order which contains provision made under section 47 (except subsection (2) of that section).
- (5) A power to make an order or regulations may be exercised so as to make different provision for different purposes. 10
- 46 Amendments**
- Schedule 5 contains amendments.
- 47 Supplementary, incidental, consequential etc. provision**
- (1) The Secretary of State may by order make –
 (a) such supplementary, incidental or consequential provision, or 15
 (b) such transitory, transitional or saving provision,
 as he considers appropriate for the general purposes, or any particular purpose, of this Act, or in consequence of, or for giving full effect to, any provision made by this Act.
- (2) An order under subsection (1) may amend, repeal, revoke or otherwise modify 20
 any enactment (including this Act).
- (3) Nothing in this Act affects the generality of the power conferred by this section.
- 48 Commencement**
- This Act (except this section and section 40) comes into force on such day as the Secretary of State appoints by order. 25
- 49 Extent**
- (1) Subject to subsections (2) to (5), the preceding provisions of this Act extend only to England and Wales.
- (2) Sections 34 and 40 and, so far as relating to those sections, sections 43 to 45 and 48 also extend to Scotland and Northern Ireland. 30
- (3) Sections 1, 23 and 24 and Schedule 1 and, so far as relating to those provisions, sections 43 to 45 and 48 also extend to Northern Ireland.
- (4) The amendment of an enactment in Schedule 5 has the same extent as the enactment amended, but the amendments made by paragraph 7 of that Schedule do not extend to Scotland. 35
- (5) Her Majesty may by Order in Council direct that this Act extends, with such modifications as appear to Her Majesty to be appropriate, to any of the Channel Islands or the Isle of Man.

50 Short title

This Act may be cited as the Safeguarding Vulnerable Groups Act 2006.

SCHEDULES

SCHEDULE 1

Section 1

INDEPENDENT BARRING BOARD

Membership

- | | | |
|---|---|----|
| 1 | (1) IBB shall consist of— | 5 |
| | (a) a chairman; | |
| | (b) such number of other members as the Secretary of State decides. | |
| | (2) The chairman and other members— | |
| | (a) are to be appointed by the Secretary of State; | |
| | (b) must appear to the Secretary of State to have knowledge or experience of any aspect of child protection or the protection of vulnerable adults. | 10 |

Tenure of office

- | | | |
|---|---|----|
| 2 | (1) The chairman and members hold and must vacate office as such in accordance with the terms of their respective appointments. | 15 |
| | (2) The appointment of a person to hold office is for a term not exceeding five years. | |
| | (3) A person holding office may at any time resign that office by giving notice in writing to the Secretary of State. | |
| | (4) The Secretary of State may by notice in writing remove a person from office if satisfied that any of the following applies to him— | 20 |
| | (a) he has, without reasonable excuse, failed, for a continuous period of three months, to carry out his functions; | |
| | (b) he has been convicted (whether before or after his appointment) of a criminal offence; | 25 |
| | (c) he is an undischarged bankrupt or his estate has been sequestrated and he has not been discharged; | |
| | (d) he is the subject of a bankruptcy restrictions order or an interim order under Schedule 4A to the Insolvency Act 1986 (c. 45) or an order to the like effect made under any corresponding enactment in force in Scotland or Northern Ireland; | 30 |
| | (e) he has made a composition or arrangement with, or granted a trust deed for, his creditors; | |
| | (f) he has failed to comply with the terms of his appointment; | |
| | (g) he is otherwise unable or unfit to carry out his functions as chairman or member. | 35 |

- (5) A person who ceases to be chairman or a member is eligible for re-appointment, except where he is removed from office under sub-paragraph (4).

Remuneration, pension etc. of members

- 3 (1) IBB must pay to the chairman and each of the other members such remuneration and allowances as may be determined by the Secretary of State. 5
- (2) IBB must, if required to do so by the Secretary of State—
- (a) pay such pension, allowances or gratuities as may be determined by the Secretary of State to or in respect of a person who is or has been the chairman or a member, or 10
- (b) make such payments as may be so determined towards provision for the payment of a pension, allowances or gratuities to or in respect of such a person.
- (3) If the Secretary of State thinks that there are special circumstances which make it right for a person ceasing to hold office as chairman or a member to receive compensation, IBB must pay to him a sum by way of compensation of such amount as may be determined by the Secretary of State. 15
- (4) Service as chairman of IBB is included among the kinds of service to which a scheme under section 1 of the Superannuation Act 1972 (c. 11) can apply, and accordingly in Schedule 1 to that Act (in which those kinds of service are listed) insert at the appropriate place— 20
- “Chairman of the Independent Barring Board.”
- (5) IBB must pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to sub-paragraph (4) in the sums payable out of money provided by Parliament under that Act. 25

Staff

- 4 (1) IBB shall have—
- (a) a chief executive; 30
- (b) such other employees as it may appoint.
- (2) The chairman may be appointed as chief executive.
- (3) IBB may make arrangements for persons to be seconded to IBB to serve as members of its staff.
- (4) A member of a police force on temporary service with IBB shall be under the direction and control of IBB. 35

Remuneration, pensions etc. of staff

- 5 (1) IBB must pay to its employees such remuneration and allowances as it may determine.
- (2) IBB may pay, or make payments in respect of, such pensions, allowances or gratuities to or in respect of its employees or former employees as it may determine. 40

- (3) Employment with IBB is included among the kinds of employment to which a scheme under section 1 of the Superannuation Act 1972 (c. 11) can apply, and accordingly in Schedule 1 to that Act (in which those kinds of employment are listed) insert at the appropriate place –
“Employment by the Independent Barring Board.” 5
- (4) If any person –
(a) on ceasing to be employed by IBB becomes or continues to be one of its members, and
(b) was, by reference to his employment, a participant in a scheme under section 1 of that Act, 10
the Minister for the Civil Service may determine that his service as a member of IBB is to be treated for the purposes of the scheme as if his service as a member were service as an employee of IBB (whether or not any benefits are payable to or in respect of him by virtue of paragraph 3).
- (5) IBB must pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to this paragraph in the sums payable out of money provided by Parliament under that Act. 15

Delegation of functions

- 6 (1) IBB may to such extent as it may determine delegate any of its functions to – 20
(a) one of its members;
(b) a member of its staff;
(c) a committee consisting of some of its members, members of its staff or both members and members of staff.
- (2) A committee mentioned in sub-paragraph (1)(c) which consists of both members and members of staff must be chaired by a member. 25
- 7 (1) IBB may to such extent as it may determine delegate any of its functions, other than a core function, to –
(a) a person who is neither a member nor a member of staff;
(b) a committee (including a committee which includes persons who are neither members nor members of staff). 30
- (2) A committee mentioned in sub-paragraph (1)(b) must be chaired by a member or member of staff.
- 8 A core function is – 35
(a) determining whether it is appropriate for a person to be included in a barred list;
(b) determining whether to remove a person from a barred list;
(c) considering representations made for the purposes of Schedule 2.

Reports

- 9 (1) As soon as possible after the end of each financial year IBB must issue a report of the exercise of its functions during that year. 40
- (2) IBB must arrange for the report to be published in such manner as it considers appropriate.

- 10 The Secretary of State may direct IBB to submit a report to him on any matter regarding the exercise of IBB’s functions as may be specified in the direction.

Accounts

- 11 (1) IBB must keep its accounts in such form as the Secretary of State determines.
- (2) IBB must prepare annual accounts in respect of each financial year in such form as the Secretary of State decides. 5
- (3) Before the end of the specified period following the end of each financial year to which the annual accounts relate IBB must send a copy of the accounts to the Secretary of State and the Comptroller and Auditor General.
- (4) The Comptroller and Auditor General must – 10
- (a) examine, certify and report on the annual accounts;
- (b) lay a copy of the accounts and of his report before each House of Parliament.
- (5) The financial year is –
- (a) the period starting on the day IBB is established and ending on the next 31st March; 15
- (b) each succeeding period of 12 months.
- (6) The specified period is such period as the Secretary of State directs.

Status

- 12 (1) IBB is not to be regarded – 20
- (a) as the servant or agent of the Crown, or
- (b) as enjoying any status, immunity or privilege of the Crown.
- (2) IBB’s property is not to be regarded as property of, or property held on behalf of, the Crown.

Incidental powers 25

- 13 (1) In connection with the exercise of any of its functions IBB may –
- (a) enter into contracts and other agreements (whether legally binding or not);
- (b) acquire and dispose of property (including land);
- (c) borrow money; 30
- (d) do such other things as IBB thinks necessary or expedient.
- (2) The power conferred by sub-paragraph (1)(b) includes accepting –
- (a) gifts of money, and
- (b) gifts or loans of other property, 35
- on such terms as IBB thinks appropriate.
- (3) But IBB may exercise the power conferred by sub-paragraph (1)(b) or (c) only with the consent of the Secretary of State.
- (4) Such consent may be given –
- (a) with respect to a particular case or with respect to a class of cases;
- (b) subject to such conditions as the Secretary of State thinks 40
- appropriate.

Documents

- 14 A document purporting to be signed on behalf of IBB shall be received in evidence and, unless the contrary is proved, be taken to be so signed.

SCHEDULE 2

Section 2

BARRED LISTS

5

PART 1

CHILDREN'S BARRED LIST

Automatic inclusion

- 1 (1) This paragraph applies to a person if it appears to the Secretary of State that any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person. 10
- (2) If this paragraph applies to a person the Secretary of State must refer the matter to IBB.
- (3) On the reference being made, IBB must include the person in the children's barred list. 15

Inclusion subject to consideration of representations

- 2 (1) This paragraph applies to a person if it appears to the Secretary of State that any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person.
- (2) If this paragraph applies to a person the Secretary of State must refer the matter to IBB. 20
- (3) On the reference being made, IBB must—
- (a) include the person in the children's barred list;
 - (b) give the person the opportunity to make representations as to why he should be removed from the children's barred list. 25
- (4) If it appears to IBB that it is not appropriate for the person to be included in the list, it must remove him from the list.

Behaviour

- 3 (1) This paragraph applies to a person if—
- (a) it appears to IBB that the person has (at any time) engaged in relevant conduct, and
 - (b) IBB proposes to include him in the children's barred list. 30
- (2) IBB must give the person the opportunity to make representations as to why he should not be included in the children's barred list.
- (3) If it appears to IBB that it is appropriate to do so, it must include the person in the children's barred list. 35

- (4) This paragraph does not apply to a person if the relevant conduct consists only of an offence committed against a child and the court, having considered whether to make a disqualification order, decided not to.
- (5) In sub-paragraph (4) –
- (a) the reference to an offence committed against a child must be construed in accordance with Part 2 of the Criminal Justice and Court Services Act 2000 (c. 43);
 - (b) a disqualification order is an order under section 28, 29 or 29A of that Act.
- 4 (1) For the purposes of paragraph 3 relevant conduct is –
- (a) conduct which endangers a child or is likely to endanger a child;
 - (b) conduct which, if repeated against or in relation to a child, would endanger that child or would be likely to endanger him;
 - (c) conduct involving child pornography, if it appears to IBB that the conduct is inappropriate;
 - (d) conduct of a sexual nature involving a child, if it appears to IBB that the conduct is inappropriate.
- (2) A person’s conduct endangers a child if he –
- (a) harms a child,
 - (b) causes a child to be harmed,
 - (c) puts a child at risk of harm,
 - (d) attempts to harm a child, or
 - (e) incites another to harm a child.
- (3) A person does not engage in relevant conduct merely by committing an offence prescribed for the purposes of this sub-paragraph.
- (4) For the purposes of sub-paragraphs (1)(c) and (d), IBB must have regard to guidance issued by the Secretary of State as to conduct which is inappropriate.

Risk of harm

- 5 (1) This paragraph applies to a person if –
- (a) it appears to IBB that the person falls within sub-paragraph (4), and
 - (b) IBB proposes to include him in the children’s barred list.
- (2) IBB must give the person the opportunity to make representations as to why he should not be included in the children’s barred list.
- (3) If it appears to IBB that it is appropriate to do so, it must include the person in the children’s barred list.
- (4) A person falls within this sub-paragraph if he may –
- (a) harm a child,
 - (b) cause a child to be harmed,
 - (c) put a child at risk of harm,
 - (d) attempt to harm a child or
 - (e) incite another to harm a child.

PART 2

ADULTS’ BARRED LIST

Automatic inclusion

- 6 (1) This paragraph applies to a person if it appears to the Secretary of State that any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person. 5
- (2) If this paragraph applies to a person the Secretary of State must refer the matter to IBB.
- (3) On the reference being made, IBB must include the person in the adults’ barred list. 10

Inclusion subject to consideration of representations

- 7 (1) This paragraph applies to a person if it appears to the Secretary of State that any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person.
- (2) If this paragraph applies to a person the Secretary of State must refer the matter to IBB. 15
- (3) On the reference being made, IBB must—
- (a) include the person in the adults’ barred list;
 - (b) give the person the opportunity to make representations as to why he should be removed from the adults’ barred list. 20
- (4) If it appears to IBB that it is not appropriate for the person to be included in the list, it must remove him from the list.

Behaviour

- 8 (1) This paragraph applies to a person if—
- (a) it appears to IBB that the person has (at any time) engaged in relevant conduct, and
 - (b) IBB proposes to include him in the adults’ barred list. 25
- (2) IBB must give the person the opportunity to make representations as to why he should not be included in the adults’ barred list.
- (3) If it appears to IBB that it is appropriate to do so, it must include the person in the adults’ barred list. 30
- 9 (1) For the purposes of paragraph 8 relevant conduct is—
- (a) conduct which endangers a vulnerable adult or is likely to endanger a vulnerable adult;
 - (b) conduct which, if repeated against or in relation to a vulnerable adult, would endanger that adult or would be likely to endanger him; 35
 - (c) conduct involving pornography, if it appears to IBB that the conduct is inappropriate;
 - (d) sexual behaviour with or towards a vulnerable adult which appears to IBB to be inappropriate. 40

-
- (2) A person’s conduct endangers a vulnerable adult if he –
- (a) harms a vulnerable adult,
 - (b) causes a vulnerable adult to be harmed,
 - (c) puts a vulnerable adult at risk of harm,
 - (d) attempts to harm a vulnerable adult, or
 - (e) incites another to harm a vulnerable adult.
- (3) A person does not engage in relevant conduct merely by committing an offence prescribed for the purposes of this sub-paragraph.
- (4) For the purposes of sub-paragraph (1)(c) and (d), IBB must have regard to guidance issued by the Secretary of State as to conduct which is inappropriate.

Risk of harm

- 10 (1) This paragraph applies to a person if –
- (a) it appears to IBB that the person falls within sub-paragraph (4), and
 - (b) IBB proposes to include him in the adults’ barred list.
- (2) IBB must give the person the opportunity to make representations as to why he should not be included in the adults’ barred list.
- (3) If it appears to IBB that it is appropriate to do so, it must include the person in the adults’ barred list.
- (4) A person falls within this sub-paragraph if he may –
- (a) harm a vulnerable adult,
 - (b) cause a vulnerable adult to be harmed,
 - (c) put a vulnerable adult at risk of harm,
 - (d) attempt to harm a vulnerable adult, or
 - (e) incite another to harm a vulnerable adult.

PART 3

SUPPLEMENTARY

Procedure

- 11 (1) The Secretary of State may, by regulations, make provision as to the procedure to be followed for the purposes of any decision IBB is required or authorised to take under this Schedule.
- (2) Such provision may include provision as to the time within which anything is to be done.

Representations

- 12 (1) A person who is, by virtue of any provision of this Schedule, given an opportunity to make representations must have the opportunity to make representations in relation to all of the information on which IBB intends to rely in taking a decision under this Schedule.

-
- (2) Any requirement of this Schedule to give a person an opportunity to make representations does not apply if IBB does not know and cannot reasonably ascertain the whereabouts of the person.
- (3) The opportunity to make representations does not include the opportunity to make representations that findings of fact made by a competent body were wrongly made. 5
- (4) Findings of fact made by a competent body are findings of fact made in proceedings before one of the following bodies or any of its committees –
- (a) the General Teaching Council for England;
 - (b) the General Teaching Council for Wales; 10
 - (c) the Council of the Pharmaceutical Society of Great Britain;
 - (d) the General Medical Council;
 - (e) the General Dental Council;
 - (f) the General Optical Council;
 - (g) the General Osteopathic Council; 15
 - (h) the General Chiropractic Council;
 - (i) the Nursing and Midwifery Council;
 - (j) the Health Professions Council;
 - (k) the General Social Care Council;
 - (l) the Care Council for Wales. 20
- 13 (1) This paragraph applies to a person who is included in a barred list (except a person included in pursuance of paragraph 1 or 6) if, before he was included in the list, IBB was unable to ascertain his whereabouts.
- (2) This paragraph also applies to a such a person if –
- (a) he did not, before the end of any time prescribed for the purpose, make representations as to why he should not be included in the list, and 25
 - (b) IBB grants him leave to make such representations out of time.
- (3) If a person to whom this paragraph applies makes such representations after the prescribed time – 30
- (a) IBB must consider the representations, and
 - (b) if it thinks that it is not appropriate for the person to be included in the list concerned, it must remove him from the list.
- (4) For the purposes of this paragraph, it is immaterial that any representations mentioned in sub-paragraph (3) relate to a time after the person was included in the list concerned. 35

Review

- 14 (1) A person who is included in a barred list may apply to IBB for a review of his inclusion.
- (2) An application for a review may be made only with the leave of IBB. 40
- (3) A person may apply for leave only if –
- (a) the application is made after the end of the minimum barred period, and
 - (b) in the prescribed period ending with the time when he applies for leave, he has made no other such application. 45

- (4) IBB must not grant leave unless it thinks –
- (a) that the person’s circumstances have changed since he was included in the list or since he last applied for leave (as the case may be), and
 - (b) that the change is such that leave should be granted.
- (5) On a review of a person’s inclusion, if IBB is satisfied that it is no longer appropriate for him to be included in the list it must remove him from it; otherwise it must dismiss the application. 5
- (6) The minimum barred period is the prescribed period beginning with such of the following as may be prescribed –
- (a) the date on which the person was first included in the list; 10
 - (b) the date on which any criterion prescribed for the purposes of paragraph 1, 2, 6 or 7 is first satisfied;
 - (c) where the person is included in the list on the grounds that he has been convicted of an offence in respect of which a custodial sentence (within the meaning of section 76 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)) was imposed, the date of his release; 15
 - (d) the date on which the person made any representations as to why he should not be included in the list.
- 15 (1) Sub-paragraph (2) applies if a person is included in the children’s barred list –
- (a) in pursuance of paragraph 1 or 2 where the only criterion satisfied in relation to him was that he committed an offence against a child, or
 - (b) in pursuance of paragraph 3 where the relevant conduct consists only of a conviction for such an offence. 20
- (2) IBB must remove a person from the list if it is subsequently satisfied that the court, having considered whether to make a disqualification order, decided not to. 25
- (3) In this paragraph –
- (a) the reference to an offence committed against a child must be construed in accordance with Part 2 of the Criminal Justice and Court Services Act 2000 (c. 43); 30
 - (b) a disqualification order is an order under section 28, 29 or 29A of that Act.

Information

- 16 (1) IBB may require – 35
- (a) any person who holds records of convictions or cautions for the use of police forces generally to provide to it any relevant information relating to a person to whom any of paragraphs 1 to 5 or 6 to 10 above apply;
 - (b) the chief officer of a relevant police force to provide to it any such relevant information; 40
 - (c) any person who holds information prescribed for the purposes of section 21(5)(c) to provide to it any such information relating to a person to whom any of paragraphs 1 to 5 or 6 to 10 above apply.
- (2) For the purposes of sub-paragraph (1)(a), relevant information relating to a person is information which the person holding the records thinks might be relevant in relation to the regulated activity concerned. 45

- (3) For the purposes of sub-paragraph (1)(b), relevant information relating to a person is information which the Secretary of State could require the chief officer to provide in relation to the person if the person had made an application for the purposes of section 113B of the Police Act 1997 (c. 50) (enhanced criminal record certificate). 5
- (4) In this paragraph –
“caution” has the same meaning as in section 126 of the Police Act 1997;
“relevant police force” must be construed in accordance with subsection (9) of section 113B of that Act as if the person had made an application for the purposes of that section. 10
- 17 The Secretary of State may provide to IBB any information relating to a person which is held by him in connection with his functions under –
(a) the Protection of Children Act 1999 (c. 14), except section 9 (the Tribunal);
(b) Part 7 of the Care Standards Act 2000 (c. 14); 15
(c) sections 142 to 144 of the Education Act 2002 (c. 32);
(d) this Act (except information he holds relating to an offence prescribed for the purposes of paragraph 4(3) or 9(3) of this Schedule).
- 18 IBB must provide the Secretary of State with the prescribed information relating to a person if – 20
(a) it includes that person in a barred list;
(b) it is considering whether to include him in a barred list.

Prescribed criteria

- 19 (1) The criteria which may be prescribed for the purposes of paragraphs 1, 2, 6 and 7 include – 25
(a) that a person has been convicted of, or cautioned in relation to, an offence of a specified description;
(b) that an order of a specified description requiring the person to do or not to do anything has been made against him. 30
- (2) Provision may be made for the criteria to apply differently in different circumstances.
- (3) The power to specify offences for the purposes of sub-paragraph (1) includes power to specify offences under – 35
(a) the law of Scotland, Northern Ireland, the Channel Islands or the Isle of Man;
(b) section 70 of the Army Act 1955 (3 & 4 Eliz. 2 c. 18);
(c) section 70 of the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19);
(d) section 42 of the Naval Discipline Act 1957 (c. 53).
- (4) The criteria which may be prescribed for the purposes of paragraph 1 or 2 must not consist only of circumstances in which the person has committed an offence against a child if the court, having considered whether to make a disqualification order, decided not to. 40
- (5) In sub-paragraph (4) –

- (a) the reference to an offence committed against a child must be construed in accordance with Part 2 of the Criminal Justice and Court Services Act 2000 (c. 43);
- (b) a disqualification order is an order under section 28, 29 or 29A of that Act.

5

SCHEDULE 3

Section 5

REGULATED ACTIVITY

PART 1

REGULATED ACTIVITY RELATING TO CHILDREN

- Regulated activity: general* 10
- 1 (1) An activity is a regulated activity relating to children if—
 - (a) it is mentioned in paragraph 2(1), and
 - (b) it is carried out frequently by the same person.
 - (2) An activity is a regulated activity relating to children if—
 - (a) it is mentioned in paragraph 2(1), and
 - (b) it is carried out in an establishment mentioned in paragraph 3(1). 15
 - (3) An activity is a regulated activity relating to children if—
 - (a) it is carried out frequently by the same person,
 - (b) it is carried out in an establishment mentioned in paragraph 3(1), and
 - (c) it gives that person the opportunity, in consequence of anything he is permitted or required to do in connection with the activity, to have contact with children. 20
 - (4) The exercise of a function of a person mentioned in paragraph 4(1) is a regulated activity relating to children.
 - (5) The exercise of a function of any of the following so far as it relates to the inspection of an establishment mentioned in paragraph 3(1) is a regulated activity relating to children— 25
 - (a) HM Chief Inspector of Schools in England;
 - (b) HM Chief Inspector of Education and Training in Wales;
 - (c) a body approved in pursuance of section 163(1)(b) of the Education Act 2002 (c. 32) to inspect a registered independent school; 30
 - (d) HM Chief Inspector of Prisons;
 - (e) the Commission for Social Care Inspection;
 - (f) the Commission for Healthcare Audit and Inspection;
 - (g) the National Assembly for Wales. 35
 - (6) Any activity which consists in or involves on a regular basis the day to day management or supervision of a person carrying out an activity mentioned in sub-paragraph (1), (2), (3) or (5) is a regulated activity relating to children.

Activities

- 2 (1) The activities referred to in paragraph 1(1) and (2) are—
- (a) any form of teaching, training or instruction of children, unless the teaching, training or instruction is merely part of or incidental to teaching, training or instruction of persons who are not children; 5
 - (b) any form of care for or supervision of children, unless the care or supervision is merely part of or incidental to care for or supervision of persons who are not children;
 - (c) any form of advice or guidance provided wholly or mainly for children, if the advice or guidance relates to their physical, emotional or educational well-being; 10
 - (d) any form of treatment or therapy provided for a child;
 - (e) moderating a public interactive communication service which is likely to be used wholly or mainly by children.
- (2) Sub-paragraph (1)(a), (b), (c) and (d) do not include— 15
- (a) teaching, training or instruction provided to a child in the course of his employment;
 - (b) care for or supervision of a child in the course of his employment;
 - (c) advice or guidance provided for a child in the course of his employment; 20
 - (d) treatment or therapy provided for a child in the course of his employment.
- (3) Sub-paragraph (2) does not apply if—
- (a) the child has not attained the age of 16, and
 - (b) the activity is carried out by a person in respect of whom arrangements are made principally for that purpose. 25
- (4) For the purposes of sub-paragraph (1)(e) a person moderates a public electronic interactive communication service if, for the purpose of protecting children, he has any function relating to—
- (a) monitoring the content of matter which forms any part of the service, 30
 - (b) removing matter from, or preventing the addition of matter to, the service, or
 - (c) controlling access to, or use of, the service.

Establishments

- 3 (1) The establishments referred to in paragraph 1(2), (3) and (5) are— 35
- (a) an educational institution which is exclusively or mainly for the provision of full-time education to children;
 - (b) a hospital which is exclusively or mainly for the reception and treatment of children;
 - (c) an institution which is exclusively or mainly for the detention of children; 40
 - (d) a care home (for the purposes of the Care Standards Act 2000 (c. 14)) which is exclusively or mainly for children;
 - (e) a children's home (within the meaning of section 1 of that Act);
 - (f) a home provided in pursuance of arrangements under section 82(5) of the Children Act 1989 (c. 41); 45
 - (g) relevant childcare premises.

- (2) Relevant childcare premises are any part of premises on which a person carries on—
- (a) any form of childcare (within the meaning of section 18 of the Childcare Act 2006) in respect of which he must be registered under that Act; 5
 - (b) any form of such childcare in respect of which he may be registered under that Act, whether or not he is so registered;
 - (c) any form of childminding or day care (within the meaning of section 79A of the Children Act 1989 (c. 41)) in respect of which he must be registered under that Act. 10

Positions

- 4 (1) The persons referred to paragraph 1(4) are—
- (a) member of the governing body of an educational establishment mentioned in section 8(4);
 - (b) member of a relevant local government body; 15
 - (c) director of children’s services of a local authority in England;
 - (d) director of adult social services of a local authority in England;
 - (e) director of social services of a local authority in Wales;
 - (f) chief education officer of a local authority in Wales;
 - (g) charity trustee of a children’s charity; 20
 - (h) member of the Youth Justice Board for England and Wales;
 - (i) Children’s Commissioner or deputy Children’s Commissioner appointed under Part 1 of the Children Act 2004 (c. 31);
 - (j) Children’s Commissioner for Wales or deputy Children’s Commissioner for Wales; 25
 - (k) operator of a database established in pursuance of section 12(1)(a) or (b) or 29(1)(a) or (b) of the Children Act 2004;
 - (l) member of a Local Safeguarding Children Board established under section 13 or 31 of that Act;
 - (m) member or chief executive of the Children and Family Court Advisory and Support Service; 30
 - (n) member or chief executive of IBB.
- (2) For the purposes of sub-paragraph (1)(b), a person is a member of a relevant local government body if—
- (a) he is a member of a local authority and discharges any education functions, or social services functions, of a local authority; 35
 - (b) he is a member of an executive of a local authority which discharges any such functions;
 - (c) he is a member of a committee of an executive of a local authority which discharges any such functions; 40
 - (d) he is a member of an area committee, or any other committee, of a local authority which discharges any such functions.
- (3) Any reference in sub-paragraph (2) to a committee includes a reference to any sub-committee which discharges any functions of that committee.
- (4) A charity is a children’s charity if the individuals who are workers for the charity normally include individuals engaging in regulated activity relating to children. 45

- (5) An individual is a worker for a charity if he does work under arrangements made by the charity; but the arrangements referred to in this sub-paragraph do not include any arrangements made for purposes which are merely incidental to the purposes for which the charity is established.
- (6) In this paragraph – 5
- “area committee” has the same meaning as in section 18 of the Local Government Act 2000 (c. 22),
- “charity” and “charity trustee” have the same meanings as in the Charities Act 1993 (c. 10),
- “education functions”, in relation to a local authority, means any functions with respect to education which are conferred on the authority in its capacity as a local education authority, 10
- “executive”, in relation to a local authority, has the same meaning as in Part 2 of the Local Government Act 2000,
- “local authority” has the same meaning as in the Education Act 1996 (c. 56), 15
- “social services functions”, in relation to a local authority, has the same meaning as in the Local Authority Social Services Act 1970 (c. 42).

PART 2

REGULATED ACTIVITY RELATING TO VULNERABLE ADULTS 20

- 5 (1) Each of the following is a regulated activity relating to vulnerable adults if it is carried out frequently by the same person –
- (a) any form of training, teaching or instruction provided wholly or mainly for vulnerable adults;
- (b) any form of care for or supervision of vulnerable adults; 25
- (c) any form of assistance, advice or guidance provided wholly or mainly for vulnerable adults;
- (d) any form of treatment or therapy provided for a vulnerable adult;
- (e) anything done on behalf of a vulnerable adult in such circumstances as are prescribed. 30
- (2) An activity carried out in a care home (for the purposes of the Care Standards Act 2000 (c. 14)) which is exclusively or mainly for vulnerable adults is a regulated activity relating to vulnerable adults if –
- (a) it is carried out at the establishment frequently by the same person, and 35
- (b) it gives that person the opportunity, in consequence of anything he is permitted or required to do in connection with the activity, to have contact with vulnerable adults.
- (3) Any activity which consists in or involves on a regular basis the day to day management or supervision of a person carrying out an activity mentioned in sub-paragraph (1) or (2) is a regulated activity relating to vulnerable adults. 40
- (4) The exercise by a body specified in sub-paragraph (5) of a function under Chapter 3, 4, 5 or 6 of Part 2 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) (inspection of health care and social services) is a regulated activity relating to vulnerable adults. 45
- (5) These are the bodies –

- (a) the Commission for Healthcare Audit and Inspection;
 - (b) the Commission for Social Care Inspection;
 - (c) the National Assembly for Wales.
- (6) The exercise of the functions of the director of social services of a local authority (within the meaning of section 1 of the Local Authority Social Services Act 1970 (c. 42)) is a regulated activity relating to vulnerable adults. 5

SCHEDULE 4

Section 25

VETTING INFORMATION

- 1 (1) The Secretary of State must provide a person who falls within column 1 of the table below (A) with the information which relates to another person (B) as specified in the corresponding entry in column 2 of that table if the conditions in sub-paragraph (2) are satisfied. 10
- (2) The conditions are –
- (a) A makes an application for the purposes of this Schedule containing a declaration in the prescribed form or manner specifying the respect in which he falls within column 1, and 15
 - (b) B consents in the prescribed form and manner to the provision of the information to A.

<i>Applicant</i>	<i>Vetting Information</i>	
Person who is considering whether to permit B to engage in regulated activity relating to children	Relevant information relating to children	20
Person who is considering whether to permit B to engage in regulated activity relating to vulnerable adults	Relevant information relating to vulnerable adults	25
Person who is considering whether to permit B to engage in controlled activity relating to children	Relevant information relating to children	
Person who is considering whether to permit B to engage in controlled activity relating to vulnerable adults	Relevant information relating to vulnerable adults	30
Personnel supplier who is considering whether to supply B to a regulated activity provider for B to engage in regulated activity relating to children	Relevant information relating to children	35
Personnel supplier who is considering whether to supply B to a regulated activity provider for B to engage in regulated activity relating to vulnerable adults	Relevant information relating to vulnerable adults	

<i>Applicant</i>	<i>Vetting Information</i>	
Personnel supplier who is considering whether to supply B to a person responsible for the management or control of controlled activity for B to engage in controlled activity relating to children	Relevant information relating to children	5
Personnel supplier who is considering whether to supply B to a person responsible for the management or control of controlled activity for B to engage in controlled activity relating to vulnerable adults	Relevant information relating to vulnerable adults	10
Person who exercises regulatory functions in respect of the provision of childcare services who is considering whether B is suitable to live in premises with a person who provides childcare on those premises	Relevant information relating to children	15
Local authority (within the meaning of the Children Act 1989 (c. 41)) which is considering whether B is suitable to live in premises in which a child is being fostered	Relevant information relating to children	20
Person who is considering whether to permit B to have frequent access to health or educational records relating to a child	Relevant information relating to children	
Person who is considering whether to permit B to have frequent access to health records relating to a vulnerable adults	Relevant information relating to vulnerable adults	25
The Commission for Healthcare Audit and Inspection	Relevant information relating to children and relevant information relating to vulnerable adults	30
The Commission for Social Care Inspection	Relevant information relating to children and relevant information relating to vulnerable adults	
The National Assembly for Wales	Relevant information relating to children and relevant information relating to vulnerable adults	35
The Public Guardian	Relevant information relating to vulnerable adults	40
The keeper of a register specified in section 34(5)	Relevant information relating to children and relevant information relating to vulnerable adults	

<i>Applicant</i>	<i>Vetting Information</i>	
Person of a prescribed description who is performing a prescribed function in connection with B in such circumstances as are prescribed	Prescribed relevant information	5
2	Sub-paragraph (b) of paragraph 1(2) does not apply if— (a) A is a supervisory authority (within the meaning of section 35(6)), and (b) the information is required in connection with the exercise of a function of the authority mentioned in that section.	10
3	(1) In the first entry in the table the reference to regulated activity must be construed by disregarding sub-paragraph (2) of paragraph 2 of Schedule 3 if the activity A is considering whether to permit B to engage in— (a) relates to a child who has not attained the age of 16, or (b) is carried on for the purposes of the armed forces of the Crown. (2) In the first and second entries in the table the reference to regulated activity includes a reference to an activity which would be a regulated activity if it were carried out frequently.	15
4	(1) Relevant information relating to children is— (a) whether B is barred from regulated activity relating to children; (b) whether B is subject to monitoring in relation to regulated activity relating to children; (c) whether, at the time the information is provided, IBB is considering whether to include B in the children’s barred list in pursuance of paragraph 3 or 5 of Schedule 2; (d) whether B is subject to a children’s direction and, if he is subject to such a direction, such details as may be prescribed of the circumstances in which the direction was given. (2) Relevant information relating to vulnerable adults is— (a) whether B is barred from regulated activity relating to vulnerable adults; (b) whether B is subject to monitoring in relation to regulated activity relating to vulnerable adults; (c) whether, at the time the information is provided, IBB is considering whether to include B in the adults’ barred list in pursuance of paragraph 8 or 10 of that Schedule.	20 25 30
	(3) Prescribed relevant information is such information corresponding to the information mentioned in sub-paragraph (1) or (2) as is prescribed.	35
5	The Secretary of State may by order amend sub-paragraphs (1) and (2) of paragraph 4 so as to add, remove or vary any paragraph for the time being contained in them.	40
6	(1) A children’s direction is— (a) a direction under section 142 of the Education Act 2002 (c. 32) (prohibition from teaching, etc);	

- (b) anything which the Secretary of State specifies by order which he thinks corresponds to such a direction and which is done for the purposes of the law of Scotland or of Northern Ireland or of a country or territory outside the United Kingdom.
- (2) An order under sub-paragraph (1)(b) may make such modifications of paragraph 4(1)(d) as the Secretary of State thinks necessary or expedient in consequence of the order. 5
- 7 Childcare must be construed in accordance with section 18 of the Childcare Act 2006.

SCHEDULE 5

Section 46

10

AMENDMENTS

Pharmacy Act 1954 (c. 61)

- 1 In section 8 of the Pharmacy Act 1954 after subsection (1) insert –
- “(1ZA) For the purposes of subsection (1), misconduct includes a decision by the Independent Barring Board that the person is to be included in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006).” 15

Medical Act 1983 (c.54)

- 2 In section 35C(2) of the Medical Act 1983 (functions of the Investigation Committee), omit “or” at the end of paragraph (d) and after paragraph (e) insert “; or
- (f) a decision by the Independent Barring Board that the person is to be included in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006).” 20

Dentists Act 1984 (c. 24)

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- 3 (1) The Dentists Act 1984 is amended as follows.
- (2) In section 27(2) (allegations), omit “or” at the end of paragraph (f) and after paragraph (g) insert “; or
- (h) a decision by the Independent Barring Board that the person is to be included in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006).” 30
- (3) In section 36N(2) (allegations), omit “or” at the end of paragraph (f) and after paragraph (g) insert “; or
- (h) a decision by the Independent Barring Board that the person is to be included in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006).” 35
- (4) In their application to Scotland, the amendments made by this paragraph do not have effect in relation to a profession in so far as provision may be made for the regulation of the profession by an Act of the Scottish Parliament.

Opticians Act 1989 (c. 44)

- 4 In section 13D(2) of the Opticians Act 1989 (allegations), omit “or” at the end of paragraph (f) and after paragraph (g) insert “; or
- (h) a decision by the Independent Barring Board that the person is to be included a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006).” 5

Osteopaths Act 1993 (c. 21)

- 5 In section 20(1) of the Osteopaths Act 1993 (professional conduct and fitness to practise), omit “or” at the end of paragraph (c) and after paragraph (d) insert “; or
- (e) a decision has been taken by the Independent Barring Board that the person is to be included in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006).” 10

Chiropractors Act 1994 (c. 17)

- 6 In section 20(1) of the Chiropractors Act 1994 (professional conduct and fitness to practise), omit “or” at the end of paragraph (c) and after paragraph (d) insert “; or
- (e) a decision has been taken by the Independent Barring Board that the person is to be included in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006).” 20

Police Act 1997 (c. 50)

- 7 (1) The Police Act 1997 is amended as follows.
- (2) In section 113A (criminal record certificates) after subsection (6) insert –
- “(7) The Secretary of State may by order amend the definitions of “central records” and “relevant matter” in subsection (6).” 25
- (8) The power to make an order under subsection (7) is exercisable by statutory instrument, but no such order may be made unless a draft of the instrument containing the order is laid before and approved by resolution of each House of Parliament.”
- (3) In section 113B (enhanced criminal record certificates) – 30
- (a) in subsection (2)(b) after “required” insert “for the purposes of an exempted question asked”;
- (b) after subsection (3) insert –
- “(3A) In such cases as are prescribed, an enhanced criminal record certificate must also include relevant information (within the meaning of Schedule 4 of the Safeguarding Vulnerable Groups Act 2006) relating to the individual.” 35
- (4) In section 119 (sources of information) –
- (a) in subsection (1), for the words from “his functions” to the end substitute “a relevant function”; 40
- (b) in subsection (2) after “or 116” insert “or for the purposes of section 21(4) of the Safeguarding Vulnerable Groups Act 2006”;

(c) after subsection (7) insert –

“(8) In this section a relevant function is a function of the Secretary of State –

- (a) under this Part in relation to any application for a certificate or for registration; 5
- (b) under this Part in relation to the determination of whether a person should continue to be a registered person;
- (c) under Schedule 2 to the Safeguarding Vulnerable Groups Act 2006 in relation to the inclusion of a person in a barred list (within the meaning of that Act); 10
- (d) under section 21 of that Act in relation to monitoring a person in relation to a regulated activity (within the meaning of that Act).” 15

Care Standards Act 2000 (c. 14)

8 In section 58 of the Care Standards Act 2000, after subsection (3) insert –

“(4) For the purposes of subsection (1)(a), in considering whether a person is of good character, the Council may have regard to whether he is included in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006).” 20

Nursing and Midwifery Order 2001 (S.I. 2002/253)

9 (1) The Nursing and Midwifery Order 2001 is amended as follows.

(2) In Article 5, after paragraph (2) insert –

“(2A) For the purposes of paragraph (2)(b), in considering whether a person is of good character, the Council may have regard to whether he is included in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006).” 25

(3) In Article 22, in paragraph (1) –

- (a) omit “or” after sub-paragraph (a)(iv); 30
- (b) after sub-paragraph (a)(v) insert “or
 - (vi) a decision has been taken by the Independent Barring Board that the person is to be included in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006).” 35

Health Professions Order 2001 (S.I. 2002/254)

10 (1) The Health Professions Order 2001 is amended as follows.

(2) In Article 5, after paragraph (2) insert – 40

“(2A) For the purposes of paragraph (2)(b), in considering whether a person is of good character, the Council may have regard to whether

he is included in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006).”

(3) In Article 22, in paragraph (1) –

(a) omit “or” after sub-paragraph (a)(iv);

(b) after sub-paragraph (a)(v) insert “or

(vi) a decision has been taken by the Independent Barring Board that the person is to be included in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006).”

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(4) In their application to Scotland, the amendments made by this paragraph do not have effect in relation to a profession in so far as provision may be made for the regulation of the profession by an Act of the Scottish Parliament.

Safeguarding Vulnerable Groups Bill [HL]

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B I L L

To make provision in connection with the protection of children and vulnerable adults.

The Lord Adonis

Ordered to be Printed, 28th February 2006

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LONDON – THE STATIONERY OFFICE LIMITED
Printed in the United Kingdom by
The Stationery Office Limited
£x.xx

HL Bill 79

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