

Draft Order laid before Parliament under section 61(3) of the Safeguarding Vulnerable Groups Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2008 No.

**CHILDREN AND YOUNG
PERSONS, ENGLAND AND WALES
PROTECTION OF VULNERABLE
ADULTS, ENGLAND AND WALES**

The Safeguarding Vulnerable Groups Act 2006
(Prescribed Criteria) (Foreign Offences) Order 2008

Made - - - - 2008
Coming into force - - *In accordance with*
article 1

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

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

A draft of this Order was laid before Parliament in accordance with section 61(3) of the Safeguarding Vulnerable Groups Act 2006 and approved by resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria) (Foreign Offences) Order 2008 and comes into force on the day after the day on which it is made.

(2) In this Order the “the Act” means the Safeguarding Vulnerable Groups Act 2006.

Amendment to paragraph 24 of Schedule 3

2.—(1) Paragraph 24 of Schedule 3 (prescribed criteria) to the Act is amended as follows.

(2) For paragraph (a) of sub-paragraph (2) substitute—

(1) 2006 c.47.

- “(a) the law of a country or territory outside England and Wales;”
- (3) After sub-paragraph (9) insert—
- “(10) For the purposes of sub-paragraph (2)(a) in its application to an offence committed outside the British Islands the Secretary of State must not specify the offence unless—
- (a) the conduct which constitutes the offence would, if carried out in England and Wales, amount to an offence under the law of England and Wales (the equivalent offence), and
 - (b) the equivalent offence is also specified for the purposes of paragraph 1, 2, 7 or 8 (as the case may be).”

Amendment to paragraph 25 of Schedule 3

- 3.**—(1) Paragraph 25 of Schedule 3 to the Act is amended as follows.
- (2) The existing words of the paragraph become sub-paragraph (1).
- (3) After sub-paragraph (1) insert—
- “(2) This paragraph does not apply to convictions by or before a court in a country or territory outside England and Wales.”

Date

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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 64 of the Safeguarding Vulnerable Groups Act 2006 (“the Act”). It amends paragraph 24 of Schedule 3 to the Act by conferring a power on the Secretary of State to prescribe foreign offences for the purposes of paragraphs 1, 2, 7 and 8 of that Schedule. These provisions refer to the criteria that may be prescribed by the Secretary of State which lead to the automatic inclusion of a person in the children’s barred list or the adults’ barred list.

Section 2 of the Act places a duty on the Independent Barring Board (an independent statutory body established under section 1 of the Act) to establish and maintain two lists, namely a children’s barred list and an adults’ barred list. Paragraphs 1, 2, 7 and 8 of Schedule 3 set out the circumstances in which a person is to be automatically included in the barred lists (either with or without a right to make representations).

Paragraph 24(1)(a) of Schedule 3 to the Act states that the criteria that can be prescribed for the purposes of paragraphs 1, 2, 7 and 8 include the fact that a person has been convicted of, or cautioned in relation to, an offence of a specified description. Paragraph 24(2)(a) of the Schedule sets out the offences that can be included in the prescribed criteria. As originally enacted, paragraph 24(2)(a) provides that the power to specify offences includes offences under the law of Scotland, Northern Ireland, the Channel Islands of the Isle of Man. This Order amends paragraph 24(2)(a) in order to enable the Secretary of State to include (in the criteria prescribed for the purposes of paragraphs 1, 2, 7 and 8) offences committed under the law of any country or territory outside England and Wales. Only foreign offences that are equivalent to offences under the law of England and Wales (and which have been prescribed for the same purposes) can be prescribed for the purposes of paragraphs 1, 2, 7 and 8 of Schedule 3 to the Act.

The Order also makes a consequential amendment to paragraph 25 of Schedule 3 to the Act in that it clarifies that paragraph 25 applies to courts in England and Wales only. Paragraph 25 places a duty on a court that convicts a person of an offence that would lead to automatic inclusion in the barred lists to inform the person convicted that the Independent Barring Board will include him or her in the barred list concerned.