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STATUTORY INSTRUMENTS

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**2009 No. 2610 (C. 114)**

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

The Safeguarding Vulnerable Groups Act 2006  
(Regulated Activity, Miscellaneous and Transitional  
Provisions and Commencement No. 5) Order 2009

*Made* - - - - *1st October 2009*  
*Coming into force* - - *12th October 2009*

The Secretary of State for Children, Schools and Families makes the following Order in exercise of the powers conferred by sections 5(3), 21(12), 61(5), 64(1), (2)(a) and (3) and 65 of, and paragraphs 2(1), 8(1) and 24(1) and (2) of Schedule 3 to, the Safeguarding Vulnerable Groups Act 2006(1):

In accordance with section 56(3)(a), (c), (o), (p) and (q) of that Act, the Secretary of State has consulted the Welsh Ministers:

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

**PART 1**

Introduction

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Miscellaneous and Transitional Provisions and Commencement No. 5) Order 2009 and comes into force on 12th October 2009.

(2) In this Order—

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

“the 1999 Act” means the Protection of Children Act 1999(2);

“the 2000 Act” means the Care Standards Act 2000(3);

“the 2002 Act” means the Education Act 2002(4);

“relevant person” means a person who immediately before the relevant day—

- (a) is engaging in regulated activity with the permission of a regulated activity provider, and
- (b) is not included in the list kept under section 1 of the 1999 Act or the list kept under section 81 of the 2000 Act, subject to a direction under section 142 of the 2002 Act or barred from regulated activity;

“relevant day” means the first day on which a person may make a monitoring application;

“the first transitional period” means the period starting on the day on which this Order comes into force and ending immediately before the relevant day;

“the second transitional period” means the period starting on the relevant day and ending on the day on which Schedule 10 to the Act comes into force in relation to the 1999 Act, the 2000 Act and the 2002 Act for all purposes;

“the third transitional period” means the period starting on the day on which this Order comes into force and ending on the day on which section 24 of the Act comes into force in relation to relevant persons.

### **Provisions coming into force on 12th October 2009**

2. 12th October 2009 is the day appointed for the coming into force of the following provisions of the Act—

- (a) paragraph 14 of Schedule 9, in relation to England and Wales;
- (b) Schedule 10 in so far as it relates to the repeal of sections 113C, 113D and 113F of the Police Act 1997(5);
- (c) section 63 in so far as it relates to the provisions specified in paragraphs (a) and (b).

### **Revocations**

3. The Safeguarding Vulnerable Groups Act 2006 (Transitory Provisions) Order 2009(6) is revoked.

## **PART 2**

### **Provisions applying during the first transitional period**

#### **Transitional modifications applying during the first transitional period**

4. Articles 5 to 9 apply during the first transitional period.

#### **Modification to section 113BA of the Police Act 1997**

5.—(1) Section 113BA(7) of the Police Act 1997 has effect subject to the following modification.

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(2) 1999 c. 14.

(3) 2000 c. 14.

(4) 2002 c. 32.

(5) 1997 c. 50.

(6) S.I. 2009/12.

(7) Section 113BA is inserted by paragraph 14(4) of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006.

(2) For subsection (2) substitute—

“(2) Suitability information relating to children is whether the applicant—

- (a) is provisionally included in the list kept under section 1 of the Protection of Children Act 1999;
- (b) is included in the list kept under section 1 of the Protection of Children Act 1999 otherwise than provisionally and disqualified from working with children for the purposes of section 35 of the Criminal Justice and Court Services Act 2000 or is barred from regulated activity relating to children;
- (c) is subject to a direction made under section 142 of the Education Act 2002.

(2A) If the applicant is provisionally included in the list kept under section 1 of the Protection of Children Act 1999, the suitability information includes the fact that the applicant must not be employed or, as the case may be, must cease to be employed in a childcare position with a childcare organisation in accordance with section 7 of that Act.

(2B) If the applicant is subject to a direction made under section 142 of the Education Act 2002, the suitability information includes—

- (a) details of any prohibition or restriction on the applicant’s employment;
- (b) the grounds on which the direction was made, and, where the grounds are misconduct, details of the misconduct.

(2C) In subsection (2A), “childcare position” and “childcare organisation” have the same meanings as in section 12 of the Protection of Children Act 1999.”.

#### **Modification to section 113BB of the Police Act 1997**

6.—(1) Section 113BB(8) of the Police Act 1997 has effect subject to the following modification.

(2) For subsection (2) substitute—

“(2) Suitability information relating to vulnerable adults is whether the applicant—

- (a) is provisionally included in the list kept under section 81 of the Care Standards Act 2000;
- (b) is included in the list kept under section 81 of the Care Standards Act 2000 otherwise than provisionally and prohibited from working in a care position or is barred from regulated activity relating to vulnerable adults.

(2A) If the applicant is provisionally included in the list kept under section 81 of the Care Standards Act 2000, the suitability information includes the fact that the applicant must not be employed or, as the case may be, must cease to be employed in a care position.

(2B) In subsection (2), “care position” has the same meaning as in Part 7 of the Care Standards Act 2000.”.

#### **Modification to section 119 of the Police Act 1997**

7.—(1) Section 119(9) of the Police Act 1997 has effect subject to the following modification.

(2) In subsection (1A), for “a list mentioned in section 113C(3) or 113D(3) above” substitute “the list kept under section 1 of the Protection of Children Act 1999 or the list kept under section 81

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(8) Section 113BB is inserted by paragraph 14(4) of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006.

(9) Section 119 was amended by sections 325 and 423 of, and paragraph 112, Part 7, of Schedule 34 to, the Greater London Authority Act 1999 (c. 29), section 134(2) of the Criminal Justice and Police Act 2001 (c. 16) and section 165(1) of, and paragraphs 1 and 4 of Schedule 14 to, the Serious Organised Crime and Police Act 2005 (c. 15). It is to be amended by paragraph 14(1) and (7) of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006.

of the Care Standards Act 2000 or maintains a list under section 2 of the Safeguarding Vulnerable Groups Act 2006”.

**Modification to section 120A of the Police Act 1997**

8.—(1) Section 120A(10) of the Police Act 1997 has effect subject to the following modification.

(2) In subsection (3)(b), for “mentioned in section 113C(3) or 113D(3)” substitute “kept under section 1 of the Protection of Children Act 1999 or section 81 of the Care Standards Act 2000 or maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006”.

**Modifications to Schedule 3 to the Safeguarding Vulnerable Groups Act 2006**

9.—(1) Schedule 3 to the Act has effect subject to the following modifications.

(2) In paragraph 1, for sub-paragraphs (2) and (3) substitute—

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

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

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

(a) include the person in the children’s barred list;

(b) give the person an opportunity to make representations as to why the person should be removed from the children’s barred list.”.

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

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

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

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

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

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

## PART 3

### Provisions applying during the second transitional period

**Transitional modifications applying during the second transitional period**

10. Articles 11 and 12 apply during the second transitional period.

**Modification to section 113BA of the Police Act 1997**

11.—(1) Section 113BA of the Police Act 1997 has effect subject to the following modification.

(2) For subsection (2) substitute—

“(2) Suitability information relating to children is—

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(10) Section 120A was inserted by section 134(1) of the Criminal Justice and Police Act 2001 and was amended by paragraphs 1 and 8 of Schedule 35 to the Criminal Justice Act 2003 (c. 44), section 165 of, and paragraphs 1 and 8 of Schedule 14 to, the Serious Organised Crime and Police Act 2005 and by S.I. 2009/203.

- (a) whether the applicant is included in the list kept under section 1 of the Protection of Children Act 1999;
  - (b) whether the applicant is subject to a direction made under section 142 of the Education Act 2002;
  - (c) whether the applicant is barred from regulated activity relating to children;
  - (d) if the applicant is barred from such regulated activity, such details as are prescribed of the circumstances in which he became barred;
  - (e) whether the applicant is subject to monitoring in relation to regulated activity relating to children;
  - (f) whether the Independent Barring Board is considering whether to include the applicant in the children’s barred list in pursuance of paragraph 3 or 5 of Schedule 3 to the 2006 Act.
- (2A) If the applicant is included in the list kept under section 1 of the Protection of Children Act 1999, the suitability information includes whether the inclusion is provisional and—
- (a) if it is provisional, the fact that the applicant must not be employed or, as the case may be, must cease to be employed in a childcare position with a childcare organisation in accordance with section 7 of that Act;
  - (b) if it is not provisional, the fact that the applicant is disqualified from working with children for the purposes of section 35 of the Criminal Justice and Court Services Act 2000.
- (2B) If the applicant is subject to a direction made under section 142 of the Education Act 2002, the suitability information includes—
- (a) details of any prohibition or restriction on the applicant’s employment;
  - (b) the grounds on which the direction was made, and, where the grounds are misconduct, details of the misconduct.
- (2C) In subsection (2A), “childcare position” and “childcare organisation” have the same meanings as in section 12 of the Protection of Children Act 1999.”.

**Modification to section 113BB of the Police Act 1997**

- 12.**—(1) Section 113BB of the Police Act 1997 has effect subject to the following modification.
- (2) For subsection (2) substitute—
- “(2) Suitability information relating to vulnerable adults is—
- (a) whether the applicant is included in the list kept under section 81 of the Care Standards Act 2000;
  - (b) whether the applicant is barred from regulated activity relating to vulnerable adults;
  - (c) if the applicant is barred from such regulated activity, such details as are prescribed of the circumstances in which he became barred;
  - (d) whether the applicant is subject to monitoring in relation to regulated activity relating to vulnerable adults;
  - (e) whether the Independent Barring Board is considering whether into include the applicant in the adults’ barred list in pursuance of paragraph 9 or 11 of Schedule 3 to the 2006 Act.

(2A) If the applicant is included in the list kept under section 81 of the Care Standards Act 2000, the suitability information includes whether the inclusion is provisional and—

- (a) if it is provisional, the fact that the applicant must not be employed or, as the case may be, must cease to be employed in a care position;
- (b) if it is not provisional, the fact that the applicant is prohibited from working in a care position.

(2B) In subsection (2A), “care position” has the same meaning as in Part 7 of the Care Standards Act 2000.”.

## PART 4

### Provisions applying during the first and second transitional periods

#### **Transitional modifications and provisions applying during the first and second transitional periods**

**13.** Articles 14 to 18 apply during the first and second transitional periods.

#### **Modifications to section 113E of the Police Act 1997**

**14.—(1)** Section 113E(11) of the Police Act 1997 has effect subject to the following modifications.

(2) In subsection (3)—

- (a) the words “113A or” must be ignored;
- (b) for paragraph (a), substitute “it is made in a case prescribed under section 113BB(1)”.

(3) In subsection (5) the definitions of “children’s suitability statement”, “specified children’s direction”, “specified children’s list”, “adults’ suitability statement” and “specified adults’ list” must be ignored.

(4) After subsection (5) insert—

“(5A) For the purposes of this section each of the following is a specified adults’ list—

- (a) the list kept under section 81 of the Care Standards Act 2000;
- (b) the adults’ barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006;
- (c) the adults’ barred list maintained under Article 6 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007(12).”.

#### **Modification to section 116 of the Police Act 1997**

**15.—(1)** Section 116(13) of the Police Act 1997 has effect subject to the following modification.

(2) For subsection (3) substitute—

“(3) Section 113B(3) to (11) and sections 113BA, 113BB and 113E, as modified by the Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Miscellaneous and

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(11) Section 113E was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005.

(12) [S.I. 2007/1351 \(N.I. 11\)](#).

(13) Section 116 was amended by paragraphs 1 and 5 of Schedule 35 to the Criminal Justice Act 2003 and by section 163(3) of, and paragraphs 1 and 3 of Schedule 14 to, the Serious Organised Crime and Police Act 2005. It is to be amended by paragraph 14(1) and (6) of the Safeguarding Vulnerable Groups Act 2006.

Transitional Provisions and Commencement No. 5) Order 2009, shall apply in relation to this section with any necessary further modifications.”.

### **Teachers’ pensions – entitlement to payment of retirement benefits**

**16.**—(1) The Teachers’ Pensions Regulations 1997(**14**) (“the 1997 Regulations”) have effect subject to the following modifications.

(2) In regulation E4 a person also falls within Case C if the requirements of paragraph (4)(a) to (d)(**15**) of that regulation are met and—

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

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

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

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

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

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

(6) In paragraphs (4) and (5) “unacceptable professional conduct”, “relevant offence” and “prohibition order” have the same meaning as in Schedule 2(**16**) to the Teaching and Higher Education Act 1998.

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

(8) Accordingly, where a person falls within Case C in accordance with this article the entitlement takes effect—

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

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

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

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(14) S.I. 1997/3001.

(15) Paragraph (4) was amended by S.I. 2004/587, S.I. 2006/2214, S.I. 2006/3122 and by S.I. 2008/541.

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

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

**17.**—(1) The General Teaching Council for England (Disciplinary Functions) Regulations 2001<sup>(17)</sup> have effect subject to the following modifications.

(2) In regulation 9<sup>(18)</sup>—

(a) after paragraph (1)(b) insert—

“; or

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

(b) for paragraph (3), substitute—

“(3) Where the Council is in receipt of documents concerning a registered teacher in which a relevant issue arises the Council shall refer those documents—

(a) where paragraph (1)(b) applies, to the Secretary of State for his consideration;

(b) where paragraph (1)(ba) applies, to IBB.”.

(c) for paragraph (4), substitute—

“(4) Where a Committee is considering allegations of unacceptable professional conduct or serious professional incompetence against a registered teacher or that he has been convicted of a relevant offence and a relevant issue arises, the Committee shall refer those allegations, or if the relevant issue forms part of a wholly separate allegation, that allegation, and all relevant documents or copies of documents—

(a) where paragraph (1)(b) applies, to the Secretary of State for his consideration;

(b) where paragraph (1)(ba) applies, to IBB.”.

(d) for paragraph (5), substitute—

“(5) Where a prohibition order is made in relation to a person on grounds of unacceptable professional conduct or a conviction for a relevant offence the Council shall refer the case and copies of all relevant documents—

(a) where paragraph (1)(b) applies, to the Secretary of State for him to consider the further exercise of his own powers;

(b) where paragraph (1)(ba) applies, to IBB.”.

### **Power of Secretary of State to refer to IBB**

**18.**—(1) The Secretary of State may refer a person (X) to IBB if each of the following conditions is satisfied in relation to X.

(2) The first condition is that information relating to X has been provided to the Secretary of State or the Welsh Ministers in accordance with a provision specified in paragraph (5).

(3) The second condition is that the Secretary of State has sent a notice to X inviting X to make representations as to why X should not be made subject to a direction under section 142 of the Education Act 2002.

(4) The third condition is that the Secretary of State has not made a direction under that section in relation to X.

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<sup>(17)</sup> S.I. 2001/1268.

<sup>(18)</sup> Regulation 9 was amended by S.I. 2003/1186.

- (5) The provisions are—
- (a) regulation 4 or 6 of the Education (Supply of Information) (Wales) Regulations 2003<sup>(19)</sup>;
  - (b) regulation 4 of the Education (Prohibition from Teaching or Working with Children) Regulations 2003<sup>(20)</sup>.

## PART 5

### Further Transitional Provisions

#### **Transitional provisions relating to the provision of information**

**19.**—(1) Article 20 applies from the coming into force of this Order until the end of the first transitional period.

(2) Article 21 applies from the coming into force of this Order until the end of the second transitional period or the third transitional period, whichever is the later.

(3) Article 22 applies from the coming into force of this Order until the end of the third transitional period.

#### **Information provided to IBB**

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

#### **Information provided by IBB**

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

(2) The persons are—

- (a) the Secretary of State for the purposes of his functions under the Teachers' Pensions Regulations 1997, Part 5 of the Police Act 1997 and article 22;
- (b) the Scottish Ministers for the purposes of their functions under Part 5<sup>(21)</sup> of the Police Act 1997.

(3) The information is—

- (a) information provided to IBB under paragraph 20 of Schedule 3 to the Act;
- (b) the fact that a person is included in a barred list;
- (c) the fact that IBB is considering including a person in a barred list;
- (d) the personal details of any person referred to in sub-paragraph (b) or (c);

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

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

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

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<sup>(19)</sup> S.I. 2003/542 (W. 76).

<sup>(20)</sup> S.I. 2003/1184.

<sup>(21)</sup> By virtue of section 53 of the Scotland Act 1998 (c. 46), the functions of the Secretary of State under Part 5 of the Police Act 1997 (c. 50) are exercised by the Scottish Ministers.

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

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

(8) If IBB—

- (a) knows or thinks that a person appears in the register of teachers maintained under section 3(22) of the Teaching and Higher Education Act 1998(23), and
- (b) becomes aware of relevant information relating to that person,

it must provide that information to the General Teaching Council for England(24) or General Teaching Council for Wales(25), as the case may be.

(9) In paragraph (8) “relevant information” is information which—

- (a) relates to the protection of children or vulnerable adults in general, or
- (b) is relevant to the exercise of any function of the General Teaching Council for England or the General Teaching Council for Wales,

and includes information specified in paragraph (3).

### **Information provided by the Secretary of State**

22.—(1) The Secretary of State may, at the request of a person (X) who meets the requirement specified in paragraph (2), inform that person whether a person (Y) falls within article 21(6).

(2) The requirement is that X satisfies the Secretary of State that X has a legitimate interest in knowing whether Y falls within article 21(6).

### **Relevant conduct engaged in before the repeal of sections 28 to 29A of the Criminal Justice and Court Services Act 2000**

23.—(1) In relation to conduct engaged in during the relevant period, paragraph 3(4) of Schedule 3 to the Act has effect as if the words “before the commencement of section 2” were omitted.

(2) “Relevant period” means the period—

- (a) starting on the day on which this Order comes into force, and
- (b) ending with the coming into force of the repeal by the Act of sections 28 to 29A(26) of the Criminal Justice and Court Services Act 2000(27).

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

(23) 1998 c. 30.

(24) The General Teaching Council for England is established under section 1 of the Teaching and Higher Education Act 1998 (c. 30).

(25) The General Teaching Council for Wales is established under S.I. 1998/2911.

(26) Section 29A was inserted by paragraphs 1 and 2 of Schedule 30 to the Criminal Justice Act 2003. Sections 28 to 29A were amended by paragraph 35, Part 4, of Schedule 11 to the Constitutional Reform Act 2005 (c. 4).

(27) 2000 c. 43.

## PART 6

### Prescribed Criteria

#### **Amendments to the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009**

**24.**—(1) The Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009(**28**) are amended as follows.

(2) In Part 1 of the table in paragraph 2 of the Schedule (prescribed criteria – automatic inclusion in the children’s barred list with the right to make representations) insert the following entries at the appropriate place—

“Theft Act 1968, section 9(1)(a)( <b>29</b> )	The offence was committed with intent to commit rape”
“Theft Act (Northern Ireland) 1969, section 9( <b>30</b> )	The offence was committed with intent to commit rape”

(3) In Part 2 of the table in paragraph 2 of the Schedule—

- (a) omit “Theft Act 1968, section 9(1)(a)” and “Theft Act (Northern Ireland) 1969, section 9”;
- (b) insert the following entry at the appropriate place—

“Sexual Offences (Scotland) Act 1976, section 3(**31**)

(4) In Part 1 of the table in paragraph 4 of the Schedule (prescribed criteria – automatic inclusion in the adults’ barred list with the right to make representations) insert the following entries at the appropriate place—

“Theft Act 1968, section 9(1)(a)	The offence was committed with intent to commit rape”
“Theft Act (Northern Ireland) 1969, section 9	The offence was committed with intent to commit rape”

(5) In Part 2 of the table in paragraph 4 of the Schedule—

- (a) omit “Theft Act 1968, section 9(1)(a)” and “Theft Act (Northern Ireland) 1969, section 9”;
- (b) insert the following entry at the appropriate place—

“Sexual Offences (Scotland) Act 1976, section 3”.

(28) S.I. 2009/37.

(29) 1968 c. 60. Section 9, in relation to intent to commit rape, was repealed by paragraph 17 of Schedule 6 to the Sexual Offences Act 2003 (c. 42).

(30) 1969 c. 16 (N.I.). Section 9, in relation to intent to commit rape, was amended by the Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247) (N.I. 13).

(31) 1976 c. 67. Section 3 was repealed by Schedule 3 to the Crime and Punishment (Scotland) Act 1997 (c. 48).

## PART 7

### Provisions relating to Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006

#### Regulated activity relating to Children

##### **Definition of relevant child care premises**

**25.**—(1) Paragraph 3 of Schedule 4 to the Act is amended as follows.

(2) In sub-paragraph (2)(c), after “any form of” insert “child minding or”.

(3) After sub-paragraph 3(2) insert—

“(3) But premises on which a person carries on childcare or child minding are not relevant childcare premises if the premises are the home of a parent of at least one child to whom the childcare or child minding is provided.

(4) For the purposes of paragraph (3) “parent” includes any person who has parental responsibility for a child or who has care of a child.

(5) “Parental responsibility” has the same meaning as in the Children Act 1989.”.

##### **Office holders and other amendments to paragraph 4 of Schedule 4 to the Act**

**26.**—(1) Paragraph 4 of Schedule 4 to the Act is amended as follows.

(2) In sub-paragraph (1)(a), after “member of” insert “or clerk to”.

(3) In sub-paragraph (1), after paragraph (a) insert—

“(aa) person appointed by the governing body of a maintained school to serve on a committee established by that body;

(ab) chief executive of a local authority that has any education functions or social services functions;”.

(4) In sub-paragraph (1), after paragraph (o) insert—

“(p) an individual carrying on or managing a regulated establishment or agency which provides care, accommodation or services wholly or mainly for or in relation to children;

(q) a person appointed under section 27(1)(a) of the Children Act 2004<sup>(32)</sup> as the lead director for children and young people’s services (Wales);

(r) Children’s Rights Director appointed under section 120 of the Education and Inspections Act 2006<sup>(33)</sup> and a person whose duties consist wholly or mainly of assisting the Director in the exercise of the Director’s functions.”.

(5) After sub-paragraph (1) insert—

“(1A) For the purposes of sub-paragraph (1)(a), a person is a clerk to the governing body of an educational establishment mentioned in section 8(5) if—

(a) the person is appointed in accordance with regulations under section 23 of the Education Act 2002 as a clerk to the governing body of a maintained school, or

(b) the person is appointed in relation to the governing body of any other educational establishment mentioned in section 8(5) and has functions similar to those of a person falling within paragraph (a).

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<sup>(32)</sup> 2004 c. 31.

<sup>(33)</sup> 2006 c. 40.

(1B) For the purposes of sub-paragraph (1)(p) an establishment or agency is a regulated establishment or agency if the person carrying it on or managing it is required to be registered in respect of it under Part 2 of the Care Standards Act 2000.”.

- (6) In sub-paragraph (7), after the definition of “local authority” insert—  
““maintained school” has the same meaning as in section 39 of the Education Act 2002;”.

## PART 8

### Provisions relating to Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006

#### Regulated activity relating to vulnerable adults

#### **Office holders and other amendments to paragraph 8 of Schedule 4 to the Act**

- 27.**—(1) Paragraph 8 of Schedule 4 is amended as follows.
- (2) In sub-paragraph (1), after paragraph (a) insert—  
“(aa) chief executive of a local authority that has any social services functions;”.
- (3) In sub-paragraph (1), after paragraph (f) insert—  
“(g) an individual carrying on or managing a regulated establishment or agency which provides care, accommodation or services wholly or mainly for or in relation to vulnerable adults;”.
- (4) After sub-paragraph (2) insert—  
“(2A) For the purposes of sub-paragraph (1)(g) an establishment or agency is a regulated establishment or agency if the person carrying it on or managing it is required to be registered in respect of it under Part 2 of the Care Standards Act 2000.”.

## PART 9

### Miscellaneous

#### **Controlled activity relating to children**

- 28.** In section 21(10) of the Act, after paragraph (e) insert—  
“(ea) for, or on behalf of, the Welsh Ministers in the exercise of their functions under Part 10A(**34**), 11 or 12 of the Children Act 1989, Part 1, 2 or 3 of the Care Standards Act 2000 or section 15 of the Adoption and Children Act 2002(**35**);”.

#### **Inspection of independent schools in England by approved bodies**

**29.** In relation to times before the coming into force of section 106 of the Education and Skills Act 2008(**36**), paragraph 1(10)(c) of Schedule 4 to the Act has effect as if after “in pursuance of” there were inserted “section 162A(1)(b) or”.

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**(34)** Part 10A was inserted by section 79(1) of the Care Standards Act 2000.

**(35)** 2002 c. 38.

**(36)** 2008 c. 25.

**References in the Act to the National Assembly for Wales**

**30.** In the following provisions of the Act, for “National Assembly for Wales” substitute “Welsh Ministers”—

- (a) section 21(6)(d) and (10)(c),
- (b) section 45(7)(b) and (e), and
- (c) paragraphs 1(10)(g), 1(11)(b) and 7(6)(c) of Schedule 4.

1st October 2009

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

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order, made under the Safeguarding Vulnerable Groups Act 2006 (c. 47) (“the Act”), amends the definition of regulated activity in Schedule 4 to the Act and the Regulations which prescribe the criteria on the basis of which a person will be included automatically in the barred lists maintained under section 2 of the Act. It also brings into force amendments to, and the repeal of, provisions in the Police Act 1997 (c. 50) (“the Police Act”) relating to enhanced criminal record certificates and makes transitional provision relating to the issuing of such certificates and to the functions of the Independent Barring Board (“IBB”) (which is established under section 1 of the Act).

On the coming into force of this Order, there will be people who are still disqualified from working with children by virtue of section 35 of the Criminal Justice and Court Services Act 2000 (c. 43), prohibited from working in a care position by virtue of section 89 of the Care Standards Act 2000 (c. 14), or subject to a direction prohibiting them from doing work to which section 142 of the Education Act 2002 (c. 32) applies. For as long as this remains the case, it will be necessary for these bars to be indicated by any criminal records certificates that are required to show suitability information relating to children or vulnerable adults. In order for this to happen the relevant provisions of the Police Act must be modified (without modification they would indicate only whether the applicant was barred from regulated activity).

Article 5 modifies the effect of section 113BA of the Police Act (which is brought into force by article 2) so that, during the first transitional period (defined in article 1), suitability information relating to children includes whether a person is provisionally included in the list kept under section 1 of the Protection of Children Act 1999 (c. 14), included in that list otherwise than provisionally or barred from regulated activity relating to children, or subject to a direction under section 142 of the Education Act 2002.

Article 6 makes equivalent provision for suitability information relating to vulnerable adults by modifying the effect of section 113BB of the Police Act (this is also brought into force by article 2). In this case the information shown is whether a person is provisionally included in the list kept under section 81 of the Care Standards Act 2000 or included in that list otherwise than provisionally or barred from regulated activity relating to vulnerable adults.

Articles 7 and 8 make provision consequential on the repeal of sections 113C and 113D of the Police Act brought into force by article 2.

Article 9 modifies the effect of Schedule 3 to the Act so that, during the first transitional period, a person is not to be included automatically in either of the barred lists maintained under section 2 of the Act unless IBB, rather than the Secretary of State, is satisfied that criteria prescribed for the purposes of paragraphs 1, 2, 7 or 8 of Schedule 3 are met. IBB will satisfy itself by accessing information made available to it under article 20 and by exercising the powers provided for under paragraph 19(1) of Schedule 3 to the Act.

Article 11 modifies the effect of section 113BA of the Police Act during the second transitional period. During this period a greater range of information will be shown on criminal records certificates, and suitability information relating to children will include whether a person is subject to monitoring and whether IBB is considering whether to include a person in the children’s barred list (maintained under section 2 of the Act).

Article 12 makes equivalent provision in relation to section 113BB of the Police Act.

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Article 14 modifies the effect of section 113E of the Police Act to allow for applications for criminal records certificates which request an urgent preliminary response to show not only whether a person is included in the list kept under section 81 of the Care Standards Act 2000, but also whether they are included in the adults barred list maintained either under the Act or under Article 6 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (S.I. 2007/1351 (N.I. 11)). The modifications also provide that such preliminary responses may only be requested in conjunction with an application for an enhanced criminal records certificate.

Article 15 makes consequential modifications to section 116 of the Police Act.

Article 16 modifies the effect of the Teachers' Pensions Regulations 1997 (S.I. 1997/3001) in relation to people included, or considered for inclusion, in a barred list who apply for ill-health pensions.

Article 17 has the effect that the functions of an investigating committee of the General Teaching Council for England are excluded where IBB has included or is considering including a teacher in either of the barred lists (these investigatory functions will continue to be excluded where the powers under section 142 of the Education Act 2002 are exercised).

Article 18 allows the Secretary of State to refer a person to IBB where the Secretary of State has invited the person to make representations as to why they should not be made subject to a direction under section 142 of the Education Act 2002 and has not yet made such a direction.

Article 21 makes provision for IBB to provide information to other persons during the first and second transitional periods. This will enable IBB to provide the Criminal Records Bureau and its equivalents in Scotland and Northern Ireland with information about people who are included in the children's or adults' barred lists or the lists kept under section 1 of the Protection of Children Act 1999 or section 81 of the Care Standards Act 2000, or who are subject to directions under section 142 of the Education Act 2002. IBB will be able to provide similar information to the Secretary of State, for example, for the purposes of his functions under the Teachers' Pensions Regulations 1997. It will also be able to confirm to the General Teaching Councils for England and Wales and employers or prospective employers of teachers and other school staff whether a person is subject to any of the disqualifications set out in paragraph (6), and under article 22 the Secretary of State will continue to be able to confirm to those employers whether teachers and school staff are barred from working with children or vulnerable adults.

Article 23 modifies the effect of Schedule 3 to the Act in relation to any conduct occurring between the coming into force of this Order and the repeal of the provisions of the Criminal Justice and Court Services Act 2000 which provide for the making of disqualification orders (sections 28 to 29A). The effect of this is that IBB is not to include a person in the children's barred list under paragraph 3 of Schedule 3 if the only conduct it has to consider is conduct which has occurred during that period, the conduct has already been considered by a court, and the court has decided not to impose a disqualification order on the person in question.

Parts 7 and 8 of the Order amend the definition of regulated activity in Schedule 4 to the Act.

Article 25 amends paragraph 3 of Schedule 4, the effect of which is to bring within the definition of "relevant childcare premises" any premises in Wales on which childminding takes place.

Article 25 also provides an exception to the definition of relevant childcare premises. Where a person provides care for a child on premises that are the home of the parent of the child (or the home of one of the children being cared for), such premises are excluded from the definition of relevant childcare premises. This would, for example, apply where a nanny takes care of children in the home of the parents of the children. The intention is to ensure that activities of workers (such as cleaners who are not involved in caring for the children) on premises which are the home of the parents are not caught within the definition of regulated activity.

Articles 26 and 27 bring within the definition of regulated activity, persons who occupy certain positions where, although they may not always work with or have contact with vulnerable groups, they exercise some degree of control or participate in making decisions relating to vulnerable groups.

These persons are referred to as “office-holders”. For example, the chief executive of a local authority exercising any social services’ functions is added to the list of office-holders and, as a consequence, will be engaging in regulated activity relating to children and regulated activity relating to vulnerable adults. Other office-holders added to the list of office-holders engaging in regulated activity relating to children are clerks to governing bodies, individuals (known as “associate members”) appointed by the governing body of a maintained school to a committee of the governing body, the lead director for children and young people’s services (Wales only) and the Children’s Rights Director (England).

A further category of office-holder that is added to the definition of regulated activity (relating to children and to vulnerable adults) is an individual who carries on or manages an establishment or agency in respect of which that individual is required to be registered under Part 2 of the Care Standards Act 2000.

Part 9 of the Order contains miscellaneous provisions. Article 28 includes further functions of the Welsh Ministers for the purposes of the definition of “controlled activity” relating to children (section 21 of the Act). In brief, a controlled activity is an activity that is not a regulated activity but involves a person having access to certain types of records relating to children or the opportunity to have contact with children.

Article 29 is intended to remedy an oversight in Part 1 of Schedule 4 to the Act and brings within the definition of regulated activity the exercise of any function of a body approved by the Secretary of State under section 162A of the Education Act 2002 relating to the inspection of an independent school in England.

#### **NOTE AS TO EARLIER COMMENCEMENT ORDERS**

*(This note is not part of the Order)*

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
section 1 in relation to England and Wales	2nd January 2008	<a href="#">2007/3545 (C.153)</a>
section 1 in relation to Northern Ireland	31st March 2008	<a href="#">2008/930 (C.45)</a>
section 2(2) to (5) partially	31st December 2007	<a href="#">2007/3545 (C.153)</a>
section 2 partially	11th February 2008	<a href="#">2007/3545 (C.153)</a>
section 2(2), (3) and (4) partially	19th May 2008	<a href="#">2008/1320 (C.57)</a>
section 2 partially	20th January 2009	<a href="#">2009/39 (C.3)</a>
section 3(1), (2)(a) and (b) and (3)(b) partially	19th May 2008	<a href="#">2008/1320 (C.57)</a>
section 4(8)	31st December 2007	<a href="#">2007/3545 (C.153)</a>
section 4 in so far as not already in force	19th May 2008	<a href="#">2008/1320 (C.57)</a>
section 5(1) and (2) partially	11th February 2008	<a href="#">2007/3545 (C.153)</a>
section 5 partially	19th May 2008	<a href="#">2008/1320 (C.57)</a>
section 5 in so far as not already in force	20th January 2009	<a href="#">2009/39 (C.3)</a>
section 6 partially	11th February 2008	<a href="#">2007/3545 (C.153)</a>
section 6(12) partially	19th May 2008	<a href="#">2008/1320 (C.57)</a>
section 6 partially	20th January 2009	<a href="#">2009/39 (C.3)</a>
section 11(2) partially	19th May 2008	<a href="#">2008/1320 (C.57)</a>
section 12 partially	19th May 2008	<a href="#">2008/1320 (C.57)</a>

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<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
section 13(1) and (5) partially	19th May 2008	2008/1320 (C.57)
section 14(1), (2) and (3) partially	19th May 2008	2008/1320 (C.57)
section 21 partially	20th January 2009	2009/39 (C.3)
section 22(1) to (4), (5)(a) and (b) and (6) partially	20th January 2009	2009/39 (C.3)
section 23(3)	20th January 2009	2009/39 (C.3)
section 24(1)(c) and (d), (8)(a) and (c), (10), (11) and (12)(d) partially	19th May 2008	2008/1320 (C.57)
section 25	19th May 2008	2008/1320 (C.57)
section 26(1) partially	19th May 2008	2008/1320 (C.57)
section 28	20th January 2009	2009/39 (C.3)
section 29	20th January 2009	2009/39 (C.3)
section 30(7) and (8) partially	19th May 2008	2008/1320 (C.57)
section 31(6) partially	19th May 2008	2008/1320 (C.57)
section 32(10) partially	19th May 2008	2008/1320 (C.57)
section 33(3) and (4)(b) partially	19th May 2008	2008/1320 (C.57)
section 35(1) partially	19th May 2008	2008/1320 (C.57)
section 36(1), (2) and (3) partially	19th May 2008	2008/1320 (C.57)
section 37 partially	11th February 2008	2007/3545 (C.153)
section 37(2) partially	19th May 2008	2008/1320 (C.57)
section 37 in so far as not already in force	20th January 2009	2009/39 (C.3)
section 38 partially	11th February 2008	2007/3545 (C.153)
section 38 partially	20th January 2009	2009/39 (C.3)
section 39(1) and (5) partially	19th May 2008	2008/1320 (C.57)
section 40 partially	11th February 2008	2007/3545 (C.153)
section 40(2) partially	19th May 2008	2008/1320 (C.57)
section 40 in so far as not already in force	20th January 2009	2009/39 (C.3)
section 41(1), (5) and (8) partially	19th May 2008	2008/1320 (C.57)
section 41(7) partially	20th January 2009	2009/39 (C.3)
section 42 partially	11th February 2008	2007/3545 (C.153)
section 42(2) partially	19th May 2008	2008/1320 (C.57)
section 42 in so far as not already in force	20th January 2009	2009/39 (C.3)
section 43(3) to (5) partially	11th February 2008	2007/3545 (C.153)
section 43(7) partially	19th May 2008	2008/1320 (C.57)
section 44(6) and (7) partially	19th May 2008	2008/1320 (C.57)

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
section 45(1), (5) and (9) partially	19th May 2008	2008/1320 (C.57)
section 46 partially	11th February 2008	2007/3545 (C.153)
section 46(1)(a) and (2) partially	19th May 2008	2008/1320 (C.57)
section 46 in so far as not already in force	20th January 2009	2009/39 (C.3)
section 47(6) and (7) partially	19th May 2008	2008/1320 (C.57)
section 47 partially	20th January 2009	2009/39 (C.3)
section 48(6), (7) and (8) partially	19th May 2008	2008/1320 (C.57)
section 49(6), (7) and (8) partially	19th May 2008	2008/1320 (C.57)
section 50 partially	11th February 2008	2007/3545 (C.153)
section 51 partially	11th February 2008	2007/3545 (C.153)
section 53 partially	11th February 2008	2007/3545 (C.153)
section 53 in so far as not already in force	20th January 2009	2009/39 (C.3)
section 54(1) and (2) partially		2008/1320 (C.57)
section 56	31st December 2007	2007/3545 (C.153)
section 57 partially	11th February 2008	2007/3545 (C.153)
section 57 in so far as not already in force	20th January 2009	2009/39 (C.3)
section 58 partially	11th February 2008	2007/3545 (C.153)
section 58(6) partially	19th May 2008	2008/1320 (C.57)
section 59 partially, in relation to England and Wales	11th February 2008	2007/3545 (C.153)
section 59 partially, in relation to Northern Ireland	31st March 2008	2008/930 (C.45)
section 60(1) partially, in relation to England and Wales	31st December 2007	2007/3545 (C.153)
section 60(1) and (4) partially, in relation to England and Wales	11th February 2008	2007/3545 (C.153)
section 60 partially, in relation to Northern Ireland	31st March 2008	2008/930 (C.45)
section 61, in relation to England and Wales	31st December 2007	2007/3545 (C.153)
section 61 partially, in relation to Northern Ireland	31st March 2008	2008/930 (C.45)
section 62 partially	31st December 2007	2007/3545 (C.153)
section 62 in so far as not already in force	11th February 2008	2007/3545 (C.153)
section 63(1) partially	19th May 2008	2008/1320 (C.57)
section 63(1) partially	17th December 2008	2008/3204 (C.145)
section 63(1) partially	20th January 2009	2009/39 (C.3)

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<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
section 64	31st December 2007	2007/3545 (C.153)
section 66	31st December 2007	2007/3545 (C.153)
section 67	31st December 2007	2007/3545 (C.153)
Schedule 1 in relation to England and Wales	2nd January 2008	2007/3545 (C.153)
Schedule 1 in relation to Northern Ireland	31st March 2008	2008/930 (C.45)
Schedule 2	2nd January 2008	2007/3545 (C.153)
Schedule 3		
Paragraphs 1(1), 2(1), 7(1) and 8(1) partially	31st December 2007	2007/3545 (C.153)
Paragraphs 15, 18(3)(b) and (6) and 24(1), (2) and (9)	31st December 2007	2007/3545 (C.153)
Paragraphs 1 to 14, 16, 17, 18(1), (2), (3) (a), (4) and (5), 19 to 23, 24(3) to (8) and 25 partially	11th February 2008	2007/3545 (C.153)
Paragraphs 6(1)(b), (2) and (3), 12(1)(b), (2) and (3), 16(5), 19(1)(b) and 21 partially	19th May 2008	2008/1320 (C.57)
Paragraphs 1 to 3, 4(1) to (4) and (6), 5, 7 to 9, 10(1) to (4) and (6), 11, 14 to 20, 22, 23, 24(3) to (7) and 25 in so far as not already in force	20th January 2009	2009/39 (C.3)
Schedule 4		
Schedule 4 partially	11th February 2008	2007/3545 (C.153)
Schedule 4 partially	19th May 2008	2008/1320 (C.57)
Paragraphs 2(1)(f), 6, 7(1)(f) and 9 partially	19th May 2008	2008/1320 (C.57)
Schedule 5		
Paragraphs 1(1), 2(1)(a), 3(1)(c) and (2), 4(1) (c) and (2), 5, 6(1)(c) and (2), 7(1)(c) and (2), 8, 9(1)(c) and (2), 10(1)(c) and (2) and 14 partially	19th May 2008	2008/1320 (C.57)
Schedule 6		
Paragraphs 2(1) and 5 partially	19th May 2008	2008/1320 (C.57)
Schedule 7		
Paragraphs 1 and 2 partially	19th May 2008	2008/1320 (C.57)
Schedule 8		
Paragraphs 2 to 4, partially	31st December 2007	2007/3545 (C.153)
Paragraphs 1 to 5	11th February 2008	2007/3545 (C.153)
Schedule 9		
Paragraphs 2, 5(1) and 6(1) partially	17th December 2008	2008/3204 (C.145)
Paragraphs 5(2), (3) (6) and (7), 6(2), (3) and (6) and 7 in relation to England	17th December 2008	2008/3204 (C.145)

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<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Paragraphs 5(4) and 6(4)	17th December 2008	<a href="#">2008/3204 (C.145)</a>
Paragraphs 10 and 15	19th May 2008	<a href="#">2008/1320 (C.57)</a>
Paragraphs 5(2), (3), (6) and (7), 6(2), (3) and (6) and 7 in relation to England in so far as not already in force	20th January 2009	<a href="#">2009/39 (C.3)</a>
Paragraphs 2, 5(1) and 6(1) partially	20th January 2009	<a href="#">2009/39 (C.3)</a>
Paragraphs 5(4) and 6(4)	20th January 2009	<a href="#">2009/39 (C.3)</a>