

2008 No. 474

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

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

**The Safeguarding Vulnerable Groups Act 2006 (Barring
Procedure) Regulations 2008**

Made - - - - - *28th February 2008*

Laid before Parliament *5th March 2008*

Coming into force - - - *7th April 2008*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 61(5) and 64(1) of, and paragraphs 15(1) and (2), and 18(3)(b) and (6)(a) of Schedule 3 to, the Safeguarding Vulnerable Groups Act 2006(b):

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Safeguarding Vulnerable Groups Act 2006 (Barring Procedure) Regulations 2008 and come into force on 7th April 2008.

(2) In these Regulations—

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

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

“the 2003 Regulations” means the Education (Prohibition from Teaching or Working with Children) Regulations 2003(d);

“disqualification order” means an order of the court under section 28, 29 or 29A of the Criminal Justice and Court Services Act 2000(e);

“offence against a child” has the same meaning as in section 26 of the Criminal Justice and Court Services Act 2000;

“previous restriction” means any of—

(a) Paragraph 18(3)(b) and (6) of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 refer to periods prescribed for the purposes of those provisions. Section 60(1) of that Act defines “prescribed” as meaning prescribed by regulations made by the Secretary of State.

(b) 2006 c.47.

(c) 2002 c.32.

(d) S.I. 2003/1184, as amended by S.I. 2007/195.

(e) 2000 c.43; section 29A was inserted by paragraph 2 of Schedule 30 to the Criminal Justice Act 2003 (c.44). An order of the court made under section 28, 29 or 29A disqualifies the person in respect of whom it is made from working with children.

- (a) inclusion (otherwise than provisionally) in the list kept by the Secretary of State under section 1 of the Protection of Children Act 1999(a),
- (b) inclusion (otherwise than provisionally) in the list kept by the Secretary of State under section 81 of the Care Standards Act 2000(b),
- (c) a disqualification order, or
- (d) a direction under section 142(1)(c) of the 2002 Act (other than one made on the grounds that condition A or condition B in Part 1 of Schedule 2 to the 2003 Regulations are satisfied in relation to a person, or on grounds of that person's misconduct, health, or professional incompetence); and

“Tribunal” means the Tribunal established under section 9(d) of the Protection of Children Act 1999.

Representations

2.—(1) This paragraph applies to any person to whom IBB must, in accordance with any provision of Schedule 3 to the Act, give the opportunity to make representations as to his removal from, or inclusion in, a barred list.

(2) IBB must give any person falling within paragraph (1) notice in writing that he may make such representations.

(3) IBB shall give any notice under paragraph (2) to the person in question by sending it to him by post.

(4) Any notice sent in accordance with paragraph (3) shall be treated as having been received by the person in question 48 hours after the date on which it was sent unless the contrary is proved.

(5) A person to whom notice is given in accordance with paragraph (3) may make representations as to his removal from, or inclusion in, a barred list(e) within the period of 8 weeks starting on the day on which he is treated as having received the notice.

(6) Where—

(i) a person has not completed making his representations within the period provided for under paragraph (5), and

(ii) IBB is satisfied that the person has good reason for not doing so,

IBB may allow that person such further period to make his representations as IBB considers reasonable.

The minimum barred period: persons subject to previous restrictions (children's barred list)

3. In the case of any person who is included by IBB in the children's barred list pursuant to article 2 of the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008(f)

-
- (a) 1999 c.14; section 1 was amended by sections 95(2), 96(2), 97(2) and 98(4) of the Care Standards Act 2000 (c.14). It is to be repealed by paragraph 8(2) of Part 1 of Schedule 9, and Schedule 10, to the Safeguarding Vulnerable Groups Act 2006 (“the 2006 Act”) (which were not in force on the making of these Regulations).
 - (b) 2000 c.14; section 81 is to be repealed by paragraph 9 of Part 1 of Schedule 9, and Schedule 10, to the 2006 Act (which were not in force on the making of these Regulations).
 - (c) Section 142(1) is to be repealed by Schedule 10 to the 2006 Act (which was not in force on the making of these Regulations).
 - (d) Section 9 was amended by paragraph 26(3) of Schedule 4 to the Care Standards Act 2000 (c.14), paragraphs 154 and 157(a) and (d) of Part 2 of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c.43), paragraph 6 of Schedule 14 and paragraph 122 of Schedule 21 to the Education Act 2002 (c.32) (“the 2002 Act”), paragraph 23 of Schedule 9 and Part 1 of Schedule 19 to the Education Act 2005 (c.18), paragraph 38(b) of Schedule 2 to the Childcare Act 2006 (c.21), section 170(3) of the Education and Inspections Act 2006 (c.40), and paragraph 8(3)(b)(ii) of Schedule 9 to the 2006 Act. It was repealed in part by Part 3 of Schedule 22 to the 2002 Act, paragraph 38(a) of Schedule 2 and Part 2 of Schedule 3 to the Childcare Act 2006, and is to be further repealed by paragraph 8(3)(a), (b)(i) and (iii) and (c) of Schedule 9, and Schedule 10, to the 2006 Act. The amendments and repeals made under the Education and Inspections Act 2006 and the 2006 Act were not in force on the making of these Regulations.
 - (e) The barred lists are the children's barred list and the adults' barred list which IBB is required to establish and maintain under section 2 of the 2006 Act.
 - (f) S.I. 2008/473.

(inclusion in the children's barred list: persons disqualified from working with children) the minimum barred period is the period calculated in the manner set out in regulations 4 to 7.

The minimum barred period: persons included in the list maintained under section 1 of the Protection of Children Act 1999

4.—(1) In relation to any person mentioned in regulation 3 who, at the point at which he is included in the children's barred list, is included (otherwise than provisionally) in the list kept by the Secretary of State under section 1 of the Protection of Children Act 1999—

- (a) where the person was under the age of 18 at the date of the most recent restriction decision, subtract from the period of 5 years the period starting on the date of that restriction decision and ending on the date on which he is included by IBB in the children's barred list;
- (b) where the person had reached the age of 18 at the date of the most recent restriction decision, subtract from the period of 10 years the period starting on the date of that restriction decision and ending on the date on which he is included by IBB in the children's barred list.

(2) In paragraph (1), restriction decision means a decision of—

- (a) the Secretary of State—
 - (i) to include the person in the list kept under section 1 of the Protection of Children Act 1999, or
 - (ii) not to remove the person from that list;
- (b) the Tribunal not to direct the person's removal from that list.

The minimum barred period: persons subject to disqualification orders

5.—(1) In relation to any person mentioned in regulation 3 who, at the point at which he is included in the children's barred list, is subject to a disqualification order in connection with the commission of an offence against a child—

- (a) where the person was under the age of 18 when he committed the offence in question, subtract from the period of 5 years the period starting on the date of the most recent disqualification decision and ending on the date on which he is included by IBB in the children's barred list;
- (b) where the person had reached the age of 18 when he committed the offence in question, subtract from the period of 10 years the period starting on the date of the most recent disqualification decision and ending on the date on which he is included by IBB in the children's barred list.

(2) In paragraph (1), disqualification decision means a decision of—

- (a) the Court, to make the person subject to the disqualification order;
- (b) the Tribunal, that the person should continue to be subject to the disqualification order.

The minimum barred period: persons subject to directions made under section 142(1) of the Education Act 2002

6.—(1) In relation to any person mentioned in regulation 3 who, at the point at which he is included in the children's barred list, is subject to a direction of the Secretary of State under section 142(1) of the 2002 Act (other than one made on the grounds that condition A or condition B in Part 1 of Schedule 2 to the 2003 Regulations are satisfied in relation to that person, or on grounds of that person's misconduct, health, or professional incompetence)—

- (a) where the person was under the age of 18 when he was made subject to the direction, subtract from the period of 5 years the period starting on the date of the most recent direction decision and ending on the date on which he is included by IBB in the children's barred list;

- (b) where the person had reached the age of 18 when he was made subject to the direction, subtract from the period of 10 years the period starting on the date of the most recent direction decision and ending on the date on which he is included by IBB in the children's barred list.
- (2) In paragraph (1), direction decision means a decision of—
- (a) the Secretary of State—
 - (i) to make the direction in respect of the person in question, or
 - (ii) not to revoke that direction;
 - (b) the Tribunal not to order the Secretary of State to revoke that direction.

The minimum barred period: persons subject to more than one previous disqualification

7.—(1) In relation to any person mentioned in regulation 3 who, at the point at which he is included in the children's barred list, is subject to more than one of the previous restrictions referred to in regulations 4 to 6, the minimum barred period is the period calculated in the manner set out in this regulation.

(2) Where the person was under the age of 18 at the date of the most recent unsuitability decision made in relation to him, subtract from the period of 5 years the period starting on the date of that unsuitability decision and ending on the date on which he is included by IBB in the children's barred list.

(3) Where the person had reached the age of 18 at date of the most recent unsuitability decision made in relation to him, subtract from the period of 10 years the period starting on the date of that unsuitability decision and ending on the date on which he is included by IBB in the children's barred list.

- (4) In this regulation, unsuitability decision means—
- (a) a restriction decision within the meaning of regulation 4(2);
 - (b) a disqualification decision within the meaning of regulation 5(2);
 - (c) a direction decision within the meaning of regulation 6(2).

The minimum barred period: persons subject to previous restrictions (adults' barred list)

8.—(1) In the case of any person who is included by IBB in the adults' barred list pursuant to article 4 of the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008 (inclusion in the adult's barred list: persons considered unsuitable to work with vulnerable adults) the minimum barred period is the period calculated in the manner set out in this regulation.

(2) Where the person was under the age of 18 at date of the most recent restriction decision, subtract from the period of 5 years the period starting on the date of that restriction decision and ending on the date on which he is included by IBB in the adults' barred list.

(3) Where the person had reached the age of 18 at date of the most recent restriction decision, subtract from the period of 10 years the period starting on the date of that restriction decision and ending on the date on which he is included by IBB in the adults' barred list.

- (4) In paragraphs (2) and (3), restriction decision means a decision of—
- (a) the Secretary of State—
 - (i) to include the person in the list kept under section 81 of the Care Standards Act 2000, or
 - (ii) not to remove the person from that list;
 - (b) the Tribunal not to direct the person's removal from that list.

The minimum barred period: persons not subject to previous restrictions

9.—(1) This regulation applies to any person to whom none of regulations 4 to 8 apply.

(2) In relation to any person who has not reached the age of 18 when IBB includes him in a barred list the minimum barred period is 1 year.

(3) In relation to any person who has reached the age of 18 but has not reached the age of 25 when IBB includes him in a barred list the minimum barred period is 5 years.

(4) In relation to any person who has reached the age of 25 when IBB includes him in a barred list the minimum barred period is 10 years.

Start of minimum barred period

10.—(1) In relation to a person who is included in a barred list because he satisfies any of the criteria prescribed for the purposes of paragraph 1(1), 2(1), 7(1), or 8(1) of Schedule 3 to the Act, the minimum barred period starts when the person satisfies the relevant criteria.

(2) In any other case the minimum barred period starts when the IBB includes the person in a barred list.

Review

11.—(1) The period prescribed for the purposes of paragraph 18(3)(b) of Schedule 3 to the Act (period within which a person must not have applied for permission to apply for review) is the period determined in accordance with paragraphs (2) to (6), below.

(2) In relation to a person who has not reached the age of 18, the period is one year.

(3) In relation to a person who—

(i) has reached the age of 18,

(ii) had been eligible before he reached that age to apply for permission pursuant to paragraph (2),

(iii) did not do so before he reached that age, and

(iv) has not done so since he reached that age,

the period is one year.

(4) In relation to a person who has not reached the age of 25 but to whom neither paragraph (2) nor paragraph (3) applies, the period is 5 years.

(5) In relation to a person who—

(i) has reached the age of 25,

(ii) is not eligible to apply for permission pursuant to paragraph (3),

(iii) had been eligible before he reached the age of 25 to apply for permission pursuant to paragraph (4),

(iv) did not do so before he reached that age, and

(v) has not done so since he reached that age,

the period is 5 years.

(6) In any other case, the period is 10 years.

(7) In this regulation, a reference to permission means the permission of IBB to make an application for review of a person's inclusion in a barred list.

28th February 2008

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations regulate aspects of the procedure to be followed by the Independent Barring Board (“IBB”) established under section 1 of, and Schedule 1 to, the Safeguarding Vulnerable Groups Act 2006 (“the Act”).

Regulation 2 stipulates the manner in which individuals should be invited to make representations as to whether they should be included in one of the barred lists maintained under section 2 of the Act and the time that they should be given to do so. This regulation will apply to all representations which individuals are permitted to make to IBB, including any made under the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008, S.I. 2008/473 (“the TPO”).

Regulations 3 to 9 set the minimum period that a person will remain barred before they are permitted to apply for permission to apply for a review of their inclusion in one of the barred lists.

Regulations 3 to 8 do this in relation to any person whom IBB is required to include in one of the barred lists pursuant to articles 2 or 4 of the TPO. These are people who, when they are included in one of the barred lists, are already prohibited from particular types of work because they are included in the list maintained under section 1 of the Protection of Children Act 1999 or the list maintained under section 81 of the Care Standards Act 2000, or are subject to a disqualification order (i.e. an order made under section 28, 29 or 29A of the Criminal Justice and Court Services Act 2000), or to a direction of the Secretary of State under section 142(1) of the Education Act 2002. The repeal of the provisions providing for these “previous restrictions” (see regulation 1(2)) will not affect a person’s minimum barred period or their inclusion in one or both lists.

Regulation 9 set the minimum barred period in relation to all other cases.

Regulation 10 determines the point at which the minimum barred period set by regulations 3 to 9 is treated as starting.

Regulation 11 must be read against paragraph 18 of Schedule 3 to the Act. Paragraph 18(3) of that Schedule states that a person may only apply to IBB for permission to apply for a review of their inclusion in a barred list if (i) the minimum barred period relating to them has expired and (ii) they have not, during a prescribed period, made an application for permission. Regulation 11 prescribes that period.

In general, if a person is under 18, the period within which they must not have made an application is one year. If they have reached the age of 18 but are less than 25 years old, it is five years. And if they are aged 25 years or older, it is 10 years. However, paragraphs (3) and (5) of this regulation address the possibility that a person might pass from one age category to the next without having exercised their right to apply for permission to seek a review. The effect of paragraph (3) is that, where a person had the right to make an application before they reached the age of 18 but failed to exercise it before they reached that age, their eligibility to make an application continues to depend on their not having made any such application within the previous year, rather than the previous 5 years (or 10 years, if they have still failed to exercise the right by the time that they reach the age of 25). Paragraph (5) has a similar effect in relation to a person who had started with the right to make an application if they had not done so in the previous 5 years. If they have not exercised this right they do not lose it by virtue of reaching the age of 25. So the requirement not to have made an application within the previous 10 years does not affect them until they have made an application.

2008 No. 474

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

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

The Safeguarding Vulnerable Groups Act 2006 (Barring
Procedure) Regulations 2008

£3.00

© Crown copyright 2008

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E2061 3/2008 182061T 19585