
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.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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.