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

2009 No.

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 - - - -	***
Coming into force - -	***

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.

(**1**) 2006 c. 47.

(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.

(**2**) 1999 c. 14.
(**3**) 2000 c. 14.
(**4**) 2002 c. 32.
(**5**) 1997 c. 50.
(**6**) S.I. 2009/12.

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.

(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.

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

(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 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—

(**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.

"(2) Suitability information relating to children is—

(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.