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

DRAFT STATUTORY INSTRUMENTS

2008 No.

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

The Safeguarding Vulnerable Groups Act 2006 (Transitory Provisions) Order 2008

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

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

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

A draft of this Order was laid before Parliament in accordance with section 61(3) of 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 (Transitory Provisions) Order 2008 and comes into force seven days after the day on which it is made.

(2) In this Order—

"the Act" means the Safeguarding Vulnerable Groups Act 2006;

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

"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**);

"the relevant period" means the period starting on the day on which this Order comes into force and ending on the day on which section 3 of the Act comes into force for all purposes.

PART 2

Consideration of cases

Consideration of cases arising before the relevant period

2.—(1) The Secretary of State must refer a person (X) to IBB if each of the following conditions is satisfied.

(2) The first condition is that before the start of the relevant period—

(a) X has been referred to the Secretary of State by virtue of a provision specified in paragraph (5), or

(b) information relating to X has been provided to the Secretary of State or the Welsh Ministers in accordance with a provision specified in paragraph (6).

(3) The second condition is that X is not provisionally included in the list kept under—

(a) section 1(**5**) of the 1999 Act, or

(b) section 81(**6**) of the 2000 Act.

(4) The third condition is that before the start of the relevant period the Secretary of State has not sent a notice to X inviting X to make representations as to why X should not be—

(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) made subject to a direction under section 142(**7**) of the 2002 Act.

(5) The provisions are—

(a) section 2(**8**), 2A(**9**) or 2D(**10**) of the 1999 Act;

(b) section 82, 83 or 84(**11**) of the 2000 Act.

(6) The provisions are—

(**2**) 1999 c. 14.
(**3**) 2000 c. 14.
(**4**) 2002 c. 32.
(**5**) Section 1 was amended by sections 95(2), 96(2), 97(2) and 98(4) of the Care Standards Act 2000 (c. 14) ("the 2000 Act"). It is to be repealed by paragraphs 8(1) and (2) of Part 1 of Schedule 9 and by Schedule 10 to the Safeguarding Vulnerable Groups Act 2006 (c. 47) ("the 2006 Act").
(**6**) Section 81 is to be repealed by paragraph 9 of Part 1 of Schedule 9 and by Schedule 10 to the 2006 Act.
(**7**) Section 142 is to be repealed by Schedule 10 to the 2006 Act.
(**8**) Section 2 was amended by sections 94(1)(a) and (b), 94(2) and 95(3) of, and by paragraph 26(1) and (2)(a) and (b) of Schedule 4 to, the 2000 Act. It was repealed in part by Schedule 6 to the 2000 Act and is to be repealed in full by Schedule 10 to the 2006 Act.
(**9**) Section 2A was inserted by section 95(1) of the 2000 Act. It was amended by paragraph 14 of Schedule 9 to the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), paragraph 37 of Schedule 2 to the Childcare Act 2006 (c. 21) and by paragraph 36 of Schedule 14 to the Education and Inspections Act 2006 (c. 40). It is to be repealed by paragraphs 8(1) and (2) of Part 1 of Schedule 9 and by Schedule 10 to the 2006 Act.
(**10**) Section 2D was inserted by section 98(1) of the 2000 Act. It is to be repealed by paragraphs 8(1) and (2) of Part 1 of Schedule 9 and by Schedule 10 to the 2006 Act.
(**11**) Sections 82 to 84 of the 2000 Act are to be repealed by paragraph 9 of Part 1 of Schedule 9 and by Schedule 10 to the 2006 Act.

(a) regulation 4 or 6 of the Education (Supply of Information) (Wales) Regulations 2003(**12**);

(b) regulation 4 of the Education (Prohibition from Teaching or Working with Children) Regulations 2003(**13**).

Consideration of cases arising during the relevant period

3.—(1) This article applies during the relevant period.

(2) Paragraph (3) applies if, by virtue of a provision specified in paragraph (13), a person must or may—

(a) refer a person to the Secretary of State;

(b) provide information relating to a person to the Secretary of State.

(3) The referral is to be made, or the information provided, to IBB instead of to the Secretary of State.

(4) Accordingly, a requirement in any enactment or subordinate legislation that the event specified in paragraph (5) be notified to a person also applies to a referral made to IBB in accordance with paragraph (3).

(5) The event is the referral of a person to the Secretary of State by virtue of a provision specified in paragraph (13).

(6) The Welsh Ministers must refer to IBB any information that they receive, in accordance with regulation 4 or 6 of the Education (Supply of Information) (Wales) Regulations 2003, on a ground—

(a) that a person is considered to be unsuitable to work with children;

(b) relating to the person's health where a relevant issue is raised.

(7) In paragraph (6) "relevant issue" has the same meaning as in regulation 3 of those Regulations.

(8) In relation to a person in relation to whom information is provided to IBB in accordance with paragraph (3), Schedule 1 to the Education (Prohibition from Teaching or Working with Children) Regulations 2003 has effect as if—

(a) in paragraph 7 of Part 1, for "of the Secretary of State's functions under section 142 of the 2002 Act" there were substituted "by the Independent Barring Board established under section 1 of the Safeguarding Vulnerable Groups Act 2006 of its functions under Schedule 3 to that Act", and

(b) in paragraph 7 of Part 2, for "of the Secretary of State's functions under section 142 of the 2002 Act" there were substituted "by the Independent Barring Board established under section 1 of the Safeguarding Vulnerable Groups Act 2006 of its functions under Schedule 3 to that Act".

(9) Subject to paragraph (12), section 2B(**14**) of the 1999 Act and section 85(**15**) of the 2000 Act must be ignored.

(10) Paragraph (11) applies if it appears to the Secretary of State that a person who held a relevant inquiry has found a person guilty of relevant misconduct.

(11) The Secretary of State must refer the person to IBB unless the Secretary of State is satisfied that IBB—

(a) is considering the case of the person, and

(**12**) S.I. 2003/542 (W. 76).
(**13**) S.I. 2003/1184.
(**14**) Section 2B was inserted by section 96(1) of the 2000 Act. It was amended by paragraph 94 of Schedule 3 to the Adoption and Children Act 2002 (c. 38) and by paragraph 18 of Part 1 of Schedule 2 to the Inquiries Act 2005 (c. 12). It is to be repealed by paragraphs 8(1) and (2) of Part 1 of Schedule 9 and by Schedule 10 to the 2006 Act.
(**15**) Section 85 was amended by paragraph 19 of Part 1 of Schedule 2 to the Inquiries Act 2005. It is to be repealed by paragraph 9 of Part 1 of Schedule 9 and by Schedule 10 to the 2006 Act.

(b) is aware of the relevant misconduct.

(12) In paragraphs (10) and (11) "relevant inquiry" and "relevant misconduct" have the same meaning as in—

(a) section 2B of the 1999 Act;

(b) section 85 of the 2000 Act.

(13) The provisions are—

(a) sections 2, 2A and 2D of the 1999 Act;

(b) sections 82, 83 and 84 of the 2000 Act;

(c) regulation 4 of the Education (Prohibition from Teaching or Working with Children) Regulations 2003, as modified by this Order.

Functions under section 142 of the Education Act 2002 during the relevant period

4.—(1) This article applies during the relevant period.

(2) Subject to paragraphs (3) to (5), the following provisions in section 142 of the 2002 Act must be ignored—

(a) in subsection (2), paragraphs (a) to (c);

(b) subsection (3);

(c) in subsection (4), paragraphs (a), (b), (d) and (e).

(3) Paragraph (2) does not apply in relation to a person (X) where, before the start of the relevant period, the Secretary of State or the Welsh Ministers—

(a) had given X the right to make representations, or

(b) had otherwise exercised functions under section 142 of the 2002 Act in relation to X.

(4) Paragraph (2) does not apply for the purposes of article 6.

(5) Paragraph (2) does not apply for the purposes of construing a reference in any enactment or subordinate legislation to work to which section 142 of the 2002 Act applies.

(6) The Education (Prohibition from Teaching or Working with Children) Regulations 2003 have effect as if—

(a) in regulation 4, paragraphs (1)(a)(ii), (2)(a)(ii) and (3) were omitted, and

(b) in paragraph 12 of Part 1(**16**) of Schedule 2, for "an offence if he has been", there were substituted "an offence if he does not satisfy any of the criteria prescribed for the purposes of paragraph 1 or 2 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 and he has been".

Consideration by IBB

5.—(1) For the purposes of this Order, 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—

(**16**) Part 1 of Schedule 2 was substituted by S.I. 2007/195.

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

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

(4) In paragraph 3(4), for the words ", having considered whether to make a disqualification order, decided not to" substitute "considered whether to make a disqualification order".

(5) 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.".

(6) 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 he should be removed from the adults' barred list.".

Effect of listing by IBB: children

6.—(1) This article applies if IBB, in exercise of its functions under this Order, includes a person (X) in the children's barred list.

(2) Subject to paragraph (4) X must be treated for all purposes as if X—

(a) is included in the list maintained under section 1 of the 1999 Act;

(b) is subject to a direction under section 142 of the 2002 Act.

(3) Accordingly, a reference in any enactment or subordinate legislation to a person included in that list or subject to such a direction includes a reference to a person included in the children's barred list.

(4) Paragraphs (2) and (3) do not apply for the purposes of—

(a) section 1(3) or 4(**17**) of the 1999 Act;

(b) section 144(**18**) of the 2002 Act;

(c) article 2 or 3 of the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008(**19**).

Effect of listing by IBB: adults

7.—(1) This article applies if IBB, in exercise of its functions under this Order, includes a person (X) in the adults' barred list.

(2) Subject to paragraph (4) X must be treated for all purposes as if X was included in the list kept under section 81 of the 2000 Act.

(3) Accordingly, a reference in any enactment or subordinate legislation to a person included in that list includes a reference to a person included in the adults' barred list.

(4) Paragraphs (2) and (3) do not apply for the purposes of—

(a) section 81(3), 86 or 87(**20**) of the 2000 Act;

(**17**) Section 4 is to be repealed by paragraphs 8(1) and (2) of Part 1 of Schedule 9 and by Schedule 10 to the Safeguarding Vulnerable Groups Act 2006 (c. 47) ("the 2006 Act").
(**18**) Section 144 is to be repealed by Schedule 10 to the 2006 Act.
(**19**) S.I. 2008/473.
(**20**) Sections 86 and 87 are to be repealed by paragraph 9 of Part 1 of Schedule 9 and by Schedule 10 to the 2006 Act.