



Amendments to General Teaching Council for Wales legislation

Proposed changes to legislation affecting the General Teaching Council for Wales as a result of the Safeguarding Vulnerable Groups Act 2006

Consultation

Consultation document No: 059/2008

Date of issue: 17 October 2008

Action required: Responses by 9 January 2009

Amendments to General Teaching Council for Wales legislation

Audience	Local Education Authorities; 10% of schools in the maintained sector; those bodies listed in Schedule 1 of the General Teaching Council for Wales (Constitution) Regulations 1999, as amended; teaching unions; Church Diocesan authorities; teacher supply agencies; FE Institutes; HEI Institutes; proprietors of independent schools; heads of independent schools; Governors Wales; Careers Wales; Local Safeguarding Children Board Chairs; the General Teaching Councils; and other interested bodies.
Overview	This consultation provides information on proposed changes that need to be made to existing legislation affecting the General Teaching Council for Wales as a result of the Safeguarding Vulnerable Groups Act 2006 and, where appropriate, seeks views on other changes being made to legislation relating to the Council.
Action required	<p>Any comments which consultees might have on the proposals should be sent to the Welsh Assembly Government by 9 January 2009. Responses should be made on the enclosed proforma and returned to:</p> <p>Ryan Taylor Learning Improvement & Professional Development Division 2 DCELLS, Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ</p> <p>Alternatively, please respond electronically to gtcw.enquiries@wales.gsi.gov.uk or complete it on the Assembly's website: www.learning.wales.gov.uk</p>
Further information	<p>Enquiries about this consultation can be obtained by emailing gtcw.enquiries@wales.gsi.gov.uk or by telephone to Christine Chapple on 029 2082 6055.</p> <p>Further information on the Safeguarding Vulnerable Groups Act 2006 and the Independent Safeguarding Authority (ISA) can be found at the ISA website www.isa.gov.org</p>
Additional copies	Hard copies of this electronic consultation document can be obtained from Ryan Taylor at the address shown above.
Related documents	<p>Reporting cases of Misconduct or Professional Incompetence in the Education Service (December 2005) National Assembly for Wales circular 33/2005</p> <p>Legislation relating to the General Teaching Council for Wales listed at Annex 1, all of which can be accessed on the Office of Public Sector Information (OPSI) website. http://www.opsi.gov.uk</p>

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Proposed changes to legislation affecting the General Teaching Council for Wales as a result of the Safeguarding Vulnerable Groups Act 2006

Summary

The Safeguarding Vulnerable Groups Act 2006 provides the legal framework for a new Vetting and Barring Scheme for people who work with children and vulnerable adults. The purpose of the new scheme is to minimise the risk of harm posed to children and vulnerable adults. It aims to do this by preventing those who are deemed unsuitable to work with children and vulnerable adults from gaining access to them through their work. The scheme will take effect from 12 October 2009.

Legislation governing the functions of the General Teaching Council for Wales needs to be amended to take account of the introduction of the Safeguarding Vulnerable Groups Act 2006. The Welsh Assembly Government is therefore consulting stakeholders on the proposed legislative changes that need to be in place when the scheme goes live.

Consultation period

Given the very specific nature of the proposed legislation and that, in the main, it is being introduced as a direct consequence of the coming into force of the Safeguarding Vulnerable Groups Act 2006, this consultation is being limited to 12 weeks. The closing date for responses is **9 January 2009**. Responses should be made using the enclosed proforma and returned to:

Ryan Taylor
Learning Improvement Professional Development Division
DCELLS
Welsh Assembly Government
Cathays Park
Cardiff
CF10 3NQ

Alternatively, please respond electronically to gtcw.enquiries@wales.gsi.gov.uk

Please note that responses may be made available for public inspection in the Assembly library. The Welsh Assembly Government will assume that you do not object to this approach to openness unless notified otherwise. If you reply by e-mail, any confidentiality clause automatically generated by your provider will not be taken into account unless you specifically request confidentiality. Consultation responses may also be included in a statistical summary, and a summary of responses may subsequently be published on the Welsh Assembly Government's website.

Proposed changes to legislation affecting the General Teaching Council for Wales as a result of the Safeguarding Vulnerable Groups Act 2006

Background

1. The General Teaching Council for Wales was established as a result of the Teaching and Higher Education Act 1998 on 1 September 2000. It provides an independent and authoritative voice for teachers, and was established to maintain and enhance high standards of teaching. The Council's functions and constitution are governed by a wide range of legislation, a list of which can be accessed on the Office of Public Sector Information (OPSI) website: <http://www.opsi.gov.uk>. A list of the legislation that we propose to amend is at Annex 1.

2. The Safeguarding Vulnerable Groups Act 2006 provides the framework for a new Vetting and Barring Scheme that builds on the current CRB infrastructure and reforms the current vetting and barring practices and amongst other things the procedures for reporting cases of professional misconduct of teachers and others by employers and supply agents.

3. Legislation governing the functions of the General Teaching Council for Wales needs to be amended to take account of the introduction of the Safeguarding Vulnerable Groups Act 2006. The Welsh Assembly Government is therefore consulting with stakeholders on the proposed legislative changes. We are also taking the opportunity to make further minor and consequential amendments to legislation relating to the General Teaching Council for Wales (to take account, for example, of the recent establishment of GTCs in Northern Ireland and the Republic of Ireland) to ensure that all references are current and relevant.

Safeguarding Vulnerable Groups Act 2006

4. The purpose of this consultation is to inform you of the consequential amendments that need to be made to the legislation affecting the General Teaching Council for Wales as a result of the Safeguarding Vulnerable Groups Act 2006. We are not consulting on the 2006 Act itself or the new Vetting and Barring Scheme, they already having been the subject of wide consultation. Key features of the 2006 Act are, however, set out below to help put into context the various changes we propose to make to the General Teaching Council for Wales' legislation as set out at paragraph 9 below.

5. The Safeguarding Vulnerable Groups Act 2006 provides that certain activities in relation to vulnerable groups are regulated. This is known as "regulated activity" and includes:

- any activity that involves **contact** with children and/or vulnerable adults and is of a specified nature e.g. teaching, training, care, supervision;
- any activity allowing contact with children or vulnerable adults and that is in a specified place e.g. schools; and

- any activity that involves people in certain defined positions of responsibility e.g. school governor.

6. Under a regulated activity:

- a barred individual must not undertake or seek to undertake regulated activity. It will be an offence for an individual, knowing they are barred, to seek work in a regulated activity ;
- to undertake regulated activity the individual must be a member of a new Vetting and Barring Scheme (i.e anyone providing a regulated activity must be registered with the Independent Safeguarding Authority (ISA); and
- an employer must not engage in regulated activity a barred person or a person who is not a member of the scheme.

New Vetting and Barring Scheme

7. The 2006 Act provides for a new Vetting and Barring Scheme for people who work with children and vulnerable adults. The purpose of the new scheme is to minimise the risk of harm posed to children and vulnerable adults. It aims to do this by preventing those who are deemed unsuitable to work with children and vulnerable adults from gaining access to them through their work. Key improvements on current barring lists and schemes under the new Scheme are:

- **Integration of the lists** – There will be two barred lists – one for those who are barred from engaging in regulated activity with children and one for those who are barred from engaging in regulated activity with vulnerable adults. These will supersede the current Protection of Children Act (POCA) List, List 99 and the Protection of Vulnerable Adults (POVA) List. The new lists will also supersede the existing system of Disqualification Orders which is operated by the criminal justice system;
- **Independent and consistent decision making** – a new Independent Safeguarding Authority (ISA) will decide who is unsuitable to work or volunteer with vulnerable groups. The ISA will take all discretionary decisions on who should be placed on the barred lists both prior to an individual's employment and, if necessary, following a referral into the Scheme. Under the existing List 99 scheme, decisions are made by the Secretary of State for Education under a concordat arrangement. Under the new scheme, Ministers will no longer have any role in making decisions on individual cases;
- **Pre-employment checks** – the scheme will ensure that those who are known to present a risk of harm to children and/or vulnerable adults are prevented from entering the relevant workforce in the first place. Individuals wishing to undertake "regulated activity" will need to become a member of the Vetting and Barring Scheme by registering with the Independent Safeguarding Authority (ISA). Once someone is registered, any new information which shows that they pose a risk to children and/or vulnerable adults will be automatically passed to the ISA. If necessary,

their ISA registration will be removed and their current employer will be informed.

8. Further guidance on how the Safeguarding Vulnerable Groups Act 2006 is to be implemented in Wales will be issued by the Welsh Assembly Government over the coming months in readiness for its launch in October 2009. Further information on the new ISA scheme is available at www.isa-gov.org

Proposed legislative changes

9. We propose to make the following changes to existing legislation relating to the General Teaching Council for Wales to take account of the requirements of the Safeguarding Vulnerable Groups Act 2006. Our proposals are technical in nature and are of direct consequence of the Act or are needed to ensure that all legislative references are current and relevant. The draft Statutory Instruments are not included with this document given their detailed and technical nature but information on each new piece of new legislation we intend to introduce and a summary of its impact is set out below:

The Education (Supply of Information) (Wales) Regulations 2009

At present, employers and teacher supply agencies are required, under the Education (Supply of Information) (Wales) Regulation 2003, to report cases of professional misconduct cases to the National Assembly for Wales, and cases of professional incompetence to be reported to the General Teaching Council for Wales. As a result of provisions contained within the 2006 Act, however, these arrangements will change from October 2009.

Under sections 35, 36 and 39 of the Safeguarding Vulnerable Groups Act 2006 local authorities, other employers and agents will be required to provide information on a person **direct** to the ISA in certain circumstances. These circumstances are set out at Annex 2 but essentially it relates to whether the “harm test” is satisfied and/or if the conduct of a person endangers a child.

As a direct consequence of this, new arrangements need to be put in place to enable employers and agents to be able to continue to report cases involving the professional misconduct of registered teachers (other than those cases that they are required to provide information about to the ISA as described above) and cases of professional incompetence. We therefore intend to introduce new regulations to replace the Education (Supply of Information) (Wales) Regulations 2003 which will be called “*The Education (Supply of Information) (Wales) Regulations 2009*”.

The new 2009 Regulations will require the employers of teachers registered with the General Teaching Council for Wales and supply agencies to report cases of misconduct (other than those cases they are required to provide information about to the ISA) and incompetence cases **direct** to the General Teaching Council for Wales.

Employers will be required to make a report to the Council if they cease to use a registered teacher's services on a specified ground or if they might have done so had that teacher not already ceased to provide his or her services. Agents must also make a report to the Council if they have arranged for a registered teacher to carry out work on behalf of a local education authority, a governing body or a proprietor of an independent school and terminate those arrangements on a specified ground, or might have done so had the teacher not already terminated the arrangements or ceased to be available for work. The specified grounds are misconduct, professional incompetence and conviction of a relevant offence. A relevant offence is an offence other than one having no material relevance to a person's fitness to be a registered teacher.

Detailed guidance on the new reporting arrangements will be issued next year in readiness for the introduction of the new Vetting and Barring Scheme in October 2009.

Consultees are invited to note the proposed reporting arrangements for referring cases to the ISA as described above, and the proposed introduction of The Education (Supply of Information) (Wales) Regulations 2009.

The General Teaching Council for Wales (Disciplinary Functions) (Amendment) Regulations 2009

It is proposed to amend the General Teaching Council for Wales (Disciplinary Functions) Regulations 2001 (the 2001 Regulations) mainly as a consequence of the coming into force of the Safeguarding Vulnerable Groups Act 2006. The 2001 Regulations make provision about the disciplinary functions of the General Teaching Council for Wales in relation to registered teachers.

We propose to amend regulation 9 of the 2001 Regulations so that the functions of an Investigating Committee of the Council are excluded if the ISA want to consider the case under the Safeguarding Vulnerable Groups Act 2006, for example, if a case raises issues of harm or risk of harm to children or vulnerable adults then the ISA are likely to want to consider it. The Council will also be under a separate duty under the Safeguarding Vulnerable Groups Act 2006 to provide the ISA with information if it considers that a registered teacher should be considered for barring by the ISA.

We also propose to make a further amendment to the 2001 regulations to require the GTCW to inform the Secretary of State, upon request, that the GTCW have made a prohibition order in relation to a person to enable the Secretary of State to fulfil his functions under the Teachers Pensions Regulations 1997. Although the GTCW already supply this information to the Secretary of State, the amendment is required to ensure that there is a clear statutory basis for it to do so. A similar provision will be made in relation to the General Teaching Council for England.

Consultees are invited to note the proposed introduction of the General Teaching Council for Wales (Disciplinary Functions) (Amendment) Regulations 2009.

The General Teaching Council for Wales (Functions) (Amendment) Regulations 2009

It is proposed to amend the General Teaching Council for Wales (Functions) Regulations 2000 (the 2000 regulations), which set out the content of the Council's register of teachers and make provision in relation to access to the register. The proposed changes are:

1. an amendment to add to the matters (as set out in Schedule 1 to the 2000 Regulations) to be recorded in the register of qualified teachers maintained by the General Teaching Council for Wales to include details of:
 - (a) a person's membership of the new Vetting and Barring Scheme;
 - (b) any restriction imposed by the General Teaching Council for Northern Ireland; and
 - (c) any restriction imposed by An Chomhairle Mhúinteoireachta or the Teaching Council for the Republic of Ireland.

Consultees should note that 1(a) above is a direct consequence of the Safeguarding Vulnerable Groups Act 2006 whilst 1(b), and 1(c) are required in order to bring the register up to date.

2. An amendment to add the following to the information set out in Schedule 2 to the 2000 Regulations (which must be provided by the Council to employers and others):
 - (a) whether a person has been barred from regulated activity relating to children under the Safeguarding Vulnerable Groups Act 2006;
 - (b) whether a person is a member of the new Vetting and Barring Scheme;
 - (c) details of any restriction or prohibition imposed by the General Teaching Council for Northern Ireland; and
 - (d) details of any restriction or prohibition imposed by An Chomhairle Mhúinteoireachta or the Teaching Council for the Republic of Ireland.

Consultees should note that 2(a) and 2(b) above are a direct consequence of the Safeguarding Vulnerable Groups Act 2006 whilst 2(c) and 2(d) are required in order to bring the information made available to employers and others up to date.

3. An amendment to include An Chomhairle Mhúinteoireachta or the Teaching Council for the Republic of Ireland as a body to which the General Teaching Council for Wales must supply certain information, and to which they must also provide, if requested, particulars of the grounds on which they decide a person is not suitable to be a teacher. This brings An Chomhairle Mhúinteoireachta or the Teaching Council for the Republic of Ireland in line with the General Teaching Councils for England, Scotland and Northern Ireland who are already entitled to this information.
4. While we are amending the 2000 Regulations, we also propose to take the opportunity to remove the existing requirement that a decision made by the General Teaching Council for **England** as to a teacher's suitability is binding on the General Teaching Council for Wales. A similar provision does not currently exist in England for those deemed suitable to teach in Wales nor with the other GTCs. We therefore propose to remove the current requirement for the General Teaching Council for Wales to automatically register teachers deemed suitable to teach in England. This will mean that each General Teaching Council will determine the question of suitability afresh.

Consultees are invited to note the proposed changes to the 2000 Regulations which are being made as a direct consequence of the Safeguarding Vulnerable Groups Act 2006 shown at 1(a) and 2(a) and 2(b) above.

Comments are welcome on our proposals to make further changes to the 2000 Regulations as described in 1(b) and 1(c), 2(c) and 2(d), and 3 and 4 above.

The General Teaching Council for Wales (Additional Functions) (Amendment) Order 2009

It is proposed to amend the General Teaching Council for Wales (Additional Functions) Order 2000 which requires the General Teaching Council for Wales to maintain records relating to specified categories of persons who are not registered teachers. The proposed amendments are:

- (a) the Council must keep records on any qualified teacher that has been barred from regulated activity relating to children under the Safeguarding Vulnerable Groups Act 2006 and any such teacher who has ceased to be a member of the new Vetting and Barring Scheme;
- (b) the Council must include in its records information on:
 - (i) whether a person has been barred from regulated activity relating to children under the Safeguarding Vulnerable Groups Act 2006;

- (ii) whether a person is a member of the new Vetting and Barring Scheme or has ceased being a member;
- (iii) the terms of any restriction or prohibition imposed by the General Teaching Council for Northern Ireland; and
- (iv) the terms of any restriction or prohibition imposed by An Chomhairle Mhúinteoireachta or the Teaching Council for the Republic of Ireland.

Consultees should note that (a) and (b)(i) and (b)(ii) above are being made as a direct consequence of the Safeguarding Vulnerable Groups Act 2006 whilst (b)(iii) and (b)(iv) are required in order to bring the records kept by the General Teaching Council for Wales up to date.

Consultees are invited to note the proposed changes to the 2000 Order, which are being made as a direct consequence of the Safeguarding Vulnerable Groups Act 2006 shown at (a) and (b)(i) and b(ii) above.

Comments are welcome on our proposals to make further changes to the 2000 Order set out in (b)(iii) and (b)(iv).

The General Teaching Council for Wales (Constitution) (Amendment) Regulations 2009

It is proposed to amend the General Teaching Council for Wales (Constitution) Regulations 1999 (the 1999 Regulations) which provide for the constitution of the General Teaching Council for Wales. This is mainly as a direct consequence of the Safeguarding Vulnerable Groups Act 2006. We propose to:

- (a) amend regulation 5 of the 1999 Regulations so that a person who has been barred from regulated activity relating to children under the Safeguarding Vulnerable Groups Act 2006 is not eligible to be a member of the General Teaching Council for Wales (whether by appointment or election) nor to vote in an election;
- (b) amend regulation 10 of the 1999 regulations so that if a member of the General Teaching Council for Wales is barred as described above, that member will cease to hold office;
- (c) update various references in the interpretation provisions in regulation 2 of the 1999 Regulations; and
- (d) replace references in the 1999 regulations to disqualification made under the Education Act 1996 with references to directions made under the Education Act 2002, i.e. that a person who is subject to a direction should not take part in the management of an independent school.

While amending the 1999 regulations, we propose also to take the opportunity to update Schedule 1 to the 1999 Regulations, which lists the bodies who are entitled to nominate persons for appointment to the General Teaching Council for Wales. We propose to:

- (e) replace the incorrect reference to the Independent Schools Information Service Wales with a reference to the Independent Schools Council;
- (f) transfer the University and College Union from Part 1 of the Schedule to Part 2 following a request by the union as most of their members do not fulfill the eligibility criteria for appointments to be made to the Council under Part 1 (i.e. that they are employed as teachers); and
- (g) change the name of the Parent Teacher Associations Wales to the National Confederation of Parent Teacher Associations as the Wales office of that body no longer exists.

Consultees are invited to note the proposed amendments listed at (a) to (d) above which are of a direct consequence of the Safeguarding Vulnerable Groups Act 2006 . We would, however, welcome views on our proposals to make amendments to the Schedule of the 1999 Regulations as set out at (e) to (g) above.

Coming into Force

10. It is proposed that these regulations and order will come into force on 12 October 2009 to coincide with the launch of the new Vetting and Barring Scheme. The exception to this is the proposed amendment to be made by the General Teaching Council for Wales (Functions) (Amendment) Regulations 2009 in relation to removing the existing requirement that a decision made by the General Teaching Council for **England** as to a teacher's suitability is binding on the General Teaching Council for Wales. Our intention is to bring this amendment into force on 1 July 2009 in readiness for the new school term in September 2009.

ANNEX 1

RELEVANT LEGISLATION THAT WILL BE AMENDED AS A RESULT OF THE SAFEGUARDING VULNERABLE GROUPS ACT 2006

The Education (Supply of Information) (Wales) Regulations 2003

The General Teaching Council for Wales (Disciplinary Functions) Regulations 2001

The General Teaching Council for Wales (Functions) Regulations 2000

The General Teaching Council for Wales (Additional Functions) Order 2000

The General Teaching Council for Wales (Constitution) Regulations 1999

CIRCUMSTANCES UNDER WHICH AN EMPLOYER OR AGENT WILL BE UNDER A DUTY TO REFER INFORMATION TO THE INDEPENDENT SAFEGUARDING AUTHORITY

35. Regulated activity providers: duty to refer

(1) Subsection (2) applies to—

- (a) a regulated activity provider who holds any prescribed information in relation to a person (P) engaged in regulated activity provided by him;
- (b) a responsible person (within the meaning of section 23) who holds any prescribed information in relation to a person (P) whom he permits to engage in controlled activity.

(2) A person to whom this subsection applies must provide IBB with the information if—

- (a) he withdraws permission for P to engage in the activity for a reason mentioned in subsection (3), or
- (b) he does not withdraw permission for such a reason but would or might have done so if P had not otherwise ceased to engage in the activity.

(3) The reasons are that the person to whom subsection (2) applies thinks—

- (a) that paragraph 1, 2, 7 or 8 of Schedule 3 applies to P,
- (b) that P has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 3), or
- (c) that the harm test is satisfied.

(4) The harm test is that P may—

- (a) harm a child or vulnerable adult,
- (b) cause a child or vulnerable adult to be harmed,
- (c) put a child or vulnerable adult at risk of harm,
- (d) attempt to harm a child or vulnerable adult, or
- (e) incite another to harm a child or vulnerable adult.

(5) For the purposes of subsection (3)(b), conduct is inappropriate if it appears to the person to whom subsection (2) applies to be inappropriate having regard to the guidance issued by the Secretary of State under paragraph 4(6) or 10(6) of Schedule 3.

(6) If regulated activity engaged in by P—

- (a) is regulated activity relating to vulnerable adults, and
- (b) falls within section 16,

subsection (2) must be read as if for “must” there were substituted “may”.

(7) This section does not apply if the conditions specified in subsection (2) are fulfilled before the section is commenced.

36. Personnel suppliers: duty to refer

(1) A personnel supplier must provide IBB with any prescribed information it holds in relation to a person (P) who has been supplied by it to another person if the supplier knows that P has ceased to be engaged in regulated activity or controlled activity in the circumstances mentioned in subsection (2)(a) or (b) of section 35.

(2) A personnel supplier which is an employment agency or employment business must provide IBB with any prescribed information it holds in relation to a person (P) for whom it acts if—

- (a) the agency or business determines to cease to act for P for a reason mentioned in subsection (4), or
- (b) it does not determine to cease to act for P for such a reason but would or might have done so if its arrangement with, or employment of, him had not otherwise come to an end.

(3) A personnel supplier which is an educational institution must provide IBB with any prescribed information it holds in relation to a student (P) following a course at the institution if—

- (a) the institution determines to cease to supply P to another person for him to engage in regulated or controlled activity for a reason mentioned in subsection (4),
- (b) the institution determines that P should cease to follow a course at the institution for a reason mentioned in subsection (4), or
- (c) it does not determine as mentioned in paragraph (a) or (b) for such a reason but would or might have done so if P had not otherwise ceased to engage in the activity or ceased to follow the course.

(4) The reasons are that the personnel supplier thinks—

- (a) that paragraph 1, 2, 7 or 8 of Schedule 3 applies to P,
- (b) that P has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 3), or
- (c) that the harm test is satisfied.

(5) The harm test is that P may—

- (a) harm a child or vulnerable adult,
- (b) cause a child or vulnerable adult to be harmed,
- (c) put a child or vulnerable adult at risk of harm,
- (d) attempt to harm a child or vulnerable adult, or
- (e) incite another to harm a child or vulnerable adult.

(6) For the purposes of subsection (4)(b), conduct is inappropriate if it appears to the personnel supplier to be inappropriate having regard to the guidance issued by the Secretary of State under paragraph 4(6) or 10(6) of Schedule 3.

(7) An employment agency acts for a person if it makes arrangements with him with a view to—

- (a) finding him employment with an employer, or

- (b) supplying him to employers for employment by them.
- (8) An employment business acts for a person if it employs him to act for and under the control of other persons in any capacity.
- (9) In this section “employment” has the same meaning as in the Employment Agencies Act 1973 (c. 35).
- (10) This section does not apply if the conditions specified in subsection (1), (2) or (3) are fulfilled before the section is commenced.

39. Local authorities: duty to refer

- (1) A local authority must provide IBB with any prescribed information they hold relating to a person if the first and second conditions are satisfied.
- (2) The first condition is that the local authority thinks—
 - (a) that paragraph 1, 2, 7 or 8 of Schedule 3 applies to the person,
 - (b) that the person has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 3) occurring after the commencement of this section, or
 - (c) that the harm test is satisfied.
- (3) The harm test is that the person may—
 - (a) harm a child or vulnerable adult,
 - (b) cause a child or vulnerable adult to be harmed,
 - (c) put a child or vulnerable adult at risk of harm,
 - (d) attempt to harm a child or vulnerable adult, or
 - (e) incite another to harm a child or vulnerable adult.
- (4) The second condition is that the local authority thinks—
 - (a) that the person is engaged or may engage in regulated activity or controlled activity, and
 - (b) (except in a case where paragraph 1, 2, 7 or 8 of Schedule 3 applies) that IBB may consider it appropriate for the person to be included in a barred list.
- (5) A local authority may provide IBB with any prescribed information it holds relating to a person if—
 - (a) the local authority think that a person has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 3) occurring before the commencement of this section, and
 - (b) the condition in subsection (4) is satisfied.
- (6) For the purposes of subsection (2)(b) or (5)(a), conduct is inappropriate if it appears to the local authority to be inappropriate having regard to the guidance issued by the Secretary of State under paragraph 4(6) or 10(6) of Schedule 3.
- (7) “Local authority” has the same meaning as in section 1 of the Local Authorities (Goods and Services) Act 1970 (c. 39).

SCHEDULE 3 BARRED LISTS

PART 1 CHILDREN'S BARRED LIST

Automatic inclusion

- 1(1) This paragraph applies to a person if any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person.
- (2) If it appears to the Secretary of State that this paragraph applies to a person the Secretary of State must refer the matter to IBB.
- (3) On the reference being made, IBB must include the person in the children's barred list.

Inclusion subject to consideration of representations

- 2(1) This paragraph applies to a person if any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person.
- (2) If it appears to the Secretary of State that this paragraph applies to a person the Secretary of State must refer the matter to IBB.
- (3) On the reference being made, IBB must—
- (a) include the person in the children's barred list;
 - (b) give the person the opportunity to make representations as to why he should be removed from the children's barred list.
- (4) If it appears to IBB that it is not appropriate for the person to be included in the list, it must remove him from the list.

Behaviour

- 3(1) This paragraph applies to a person if—
- (a) it appears to IBB that the person has (at any time) engaged in relevant conduct, and
 - (b) IBB proposes to include him in the children's barred list.
- (2) IBB must give the person the opportunity to make representations as to why he should not be included in the children's barred list.
- (3) IBB must include the person in the children's barred list if—
- (a) it is satisfied that the person has engaged in relevant conduct, and
 - (b) it appears to IBB that it is appropriate to include the person in the list.
- (4) This paragraph does not apply to a person if the relevant conduct consists only of an offence committed against a child before the commencement of section 2 and the court, having considered whether to make a disqualification order, decided not to.
- (5) In sub-paragraph (4)—
- (a) the reference to an offence committed against a child must be construed in accordance with Part 2 of the Criminal Justice and Court Services Act [2000 \(c. 43\)](#);
 - (b) a disqualification order is an order under section 28, 29 or 29A of that Act.

4(1) For the purposes of paragraph 3 relevant conduct is—

- (a) conduct which endangers a child or is likely to endanger a child;
- (b) conduct which, if repeated against or in relation to a child, would endanger that child or would be likely to endanger him;
- (c) conduct involving sexual material relating to children (including possession of such material);
- (d) conduct involving sexually explicit images depicting violence against human beings (including possession of such images), if it appears to IBB that the conduct is inappropriate;
- (e) conduct of a sexual nature involving a child, if it appears to IBB that the conduct is inappropriate.

(2) A person's conduct endangers a child if he—

- (a) harms a child,
- (b) causes a child to be harmed,
- (c) puts a child at risk of harm,
- (d) attempts to harm a child, or
- (e) incites another to harm a child.

(3) "Sexual material relating to children" means—

- (a) indecent images of children, or
- (b) material (in whatever form) which portrays children involved in sexual activity and which is produced for the purposes of giving sexual gratification.

(4) "Image" means an image produced by any means, whether of a real or imaginary subject.

(5) A person does not engage in relevant conduct merely by committing an offence prescribed for the purposes of this sub-paragraph.

(6) For the purposes of sub-paragraph (1)(d) and (e), IBB must have regard to guidance issued by the Secretary of State as to conduct which is inappropriate.

Risk of harm

5(1) This paragraph applies to a person if—

- (a) it appears to IBB that the person falls within sub-paragraph (4), and
- (b) IBB proposes to include him in the children's barred list.

(2) IBB must give the person the opportunity to make representations as to why he should not be included in the children's barred list.

(3) IBB must include the person in the children's barred list if—

- (a) it is satisfied that the person falls within sub-paragraph (4), and
- (b) it appears to IBB that it is appropriate to include the person in the list.

(4) A person falls within this sub-paragraph if he may—

- (a) harm a child,
- (b) cause a child to be harmed,
- (c) put a child at risk of harm,
- (d) attempt to harm a child, or
- (e) incite another to harm a child.

Restriction on inclusion

6(1) IBB must not include a person in the children's barred list—

- (a) only on a particular ground if a relevant Scottish authority has already considered whether the person should be included in a corresponding list on the same ground (whether or not it decided to include him in the list), or
- (b) if, in accordance with such criteria as the Secretary of State specifies by order, it is more appropriate for the person's case to be considered by the relevant Scottish authority.

(2) A relevant Scottish authority is such authority as the Secretary of State specifies by order as exercising for the purposes of the law of Scotland functions which correspond to those of IBB.

(3) A corresponding list is a list maintained for the purposes of the law of Scotland which the Secretary of State specifies by order as corresponding to the children's barred list.

PART 2 ADULTS' BARRED LIST

Automatic inclusion

7(1) This paragraph applies to a person if any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person.

(2) If it appears to the Secretary of State that this paragraph applies to a person the Secretary of State must refer the matter to IBB.

(3) On the reference being made, IBB must include the person in the adults' barred list.

Inclusion subject to consideration of representations

8(1) This paragraph applies to a person if any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person.

(2) If it appears to the Secretary of State that this paragraph applies to a person the Secretary of State must refer the matter to IBB.

(3) On the reference being made, IBB must—

- (a) include the person in the adults' barred list;
- (b) give the person the opportunity to make representations as to why he should be removed from the adults' barred list.

(4) If it appears to IBB that it is not appropriate for the person to be included in the list, it must remove him from the list.

Behaviour

9(1) This paragraph applies to a person if—

- (a) it appears to IBB that the person has (at any time) engaged in relevant conduct, and
- (b) IBB proposes to include him in the adults' barred list.

(2) IBB must give the person the opportunity to make representations as to why he should not be included in the adults' barred list.

(3) IBB must include the person in the adults' barred list if—

- (a) it is satisfied that the person has engaged in relevant conduct, and
- (b) it appears to IBB that it is appropriate to include the person in the list.

10(1) For the purposes of paragraph 9 relevant conduct is—

- (a) conduct which endangers a vulnerable adult or is likely to endanger a vulnerable adult;
- (b) conduct which, if repeated against or in relation to a vulnerable adult, would endanger that adult or would be likely to endanger him;
- (c) conduct involving sexual material relating to children (including possession of such material);
- (d) conduct involving sexually explicit images depicting violence against human beings (including possession of such images), if it appears to IBB that the conduct is inappropriate;
- (e) conduct of a sexual nature involving a vulnerable adult, if it appears to IBB that the conduct is inappropriate.

(2) A person's conduct endangers a vulnerable adult if he—

- (a) harms a vulnerable adult,
- (b) causes a vulnerable adult to be harmed,
- (c) puts a vulnerable adult at risk of harm,
- (d) attempts to harm a vulnerable adult, or
- (e) incites another to harm a vulnerable adult.

(3) "Sexual material relating to children" means—

- (a) indecent images of children, or
- (b) material (in whatever form) which portrays children involved in sexual activity and which is produced for the purposes of giving sexual gratification.

(4) "Image" means an image produced by any means, whether of a real or imaginary subject.

(5) A person does not engage in relevant conduct merely by committing an offence prescribed for the purposes of this sub-paragraph.

(6) For the purposes of sub-paragraph (1)(d) and (e), IBB must have regard to guidance issued by the Secretary of State as to conduct which is inappropriate.

Risk of harm

11(1) This paragraph applies to a person if—

- (a) it appears to IBB that the person falls within sub-paragraph (4), and
- (b) IBB proposes to include him in the adults' barred list.

(2) IBB must give the person the opportunity to make representations as to why he should not be included in the adults' barred list.

(3) IBB must include the person in the adults' barred list if—

- (a) it is satisfied that the person falls within sub-paragraph (4), and
- (b) it appears to IBB that it is appropriate to include the person in the list.

(4) A person falls within this sub-paragraph if he may—

- (a) harm a vulnerable adult,
- (b) cause a vulnerable adult to be harmed,
- (c) put a vulnerable adult at risk of harm,
- (d) attempt to harm a vulnerable adult, or
- (e) incite another to harm a vulnerable adult.

Restriction on inclusion

12(1) IBB must not include a person in the adults' barred list—

- (a) only on a particular ground if a relevant Scottish authority has already considered whether the person should be included in a corresponding list on the same ground (whether or not it decided to include him in the list), or
- (b) if, in accordance with such criteria as the Secretary of State specifies by order, it is more appropriate for the person's case to be considered by the relevant Scottish authority.

(2) A relevant Scottish authority is such authority as the Secretary of State specifies by order as exercising for the purposes of the law of Scotland functions which correspond to those of IBB.

(3) A corresponding list is a list maintained for the purposes of the law of Scotland which the Secretary of State specifies by order as corresponding to the adults' barred list.

PART 3 SUPPLEMENTARY

Procedure

13(1) IBB must ensure that in respect of any information it receives in relation to an individual from whatever source or of whatever nature it considers whether the information is relevant to its consideration as to whether the individual should be included in each barred list.

(2) Sub-paragraph (1) does not, without more, require IBB to give an individual the opportunity to make representations as to why he should not be included in a barred list.

14 When an individual is included in a barred list IBB must take all reasonable steps to notify the individual of that fact.

15(1) The Secretary of State may, by regulations, make provision as to the procedure to be followed for the purposes of any decision IBB is required or authorised to take under this Schedule.

(2) Such provision may include provision as to the time within which anything is to be done.

Representations

16(1) A person who is, by virtue of any provision of this Schedule, given an opportunity to make representations must have the opportunity to make representations in relation to all of the information on which IBB intends to rely in taking a decision under this Schedule.

(2) Any requirement of this Schedule to give a person an opportunity to make representations does not apply if IBB does not know and cannot reasonably ascertain the whereabouts of the person.

(3) The opportunity to make representations does not include the opportunity to make representations that findings of fact made by a competent body were wrongly made.

(4) Findings of fact made by a competent body are findings of fact made in proceedings before one of the following bodies or any of its committees—

- (a) the General Teaching Council for England;
- (b) the General Teaching Council for Wales;
- (c) the Council of the Pharmaceutical Society of Great Britain;
- (d) the General Medical Council;
- (e) the General Dental Council;
- (f) the General Optical Council;
- (g) the General Osteopathic Council;
- (h) the General Chiropractic Council;
- (i) the Nursing and Midwifery Council;
- (j) the Health Professions Council;
- (k) the General Social Care Council;
- (l) the Care Council for Wales.

(5) The Secretary of State may by order amend sub-paragraph (4) by inserting a paragraph or amending or omitting a paragraph for the time being contained in the sub-paragraph.

17(1) This paragraph applies to a person who is included in a barred list (except a person included in pursuance of paragraph 1 or 7) if, before he was included in the list, IBB was unable to ascertain his whereabouts.

- (2) This paragraph also applies to such a person if—
- (a) he did not, before the end of any time prescribed for the purpose, make representations as to why he should not be included in the list, and
 - (b) IBB grants him permission to make such representations out of time.
- (3) If a person to whom this paragraph applies makes such representations after the prescribed time—
- (a) IBB must consider the representations, and
 - (b) if it thinks that it is not appropriate for the person to be included in the list concerned, it must remove him from the list.
- (4) For the purposes of this paragraph, it is immaterial that any representations mentioned in sub-paragraph (3) relate to a time after the person was included in the list concerned.

Review

- 18(1) A person who is included in a barred list may apply to IBB for a review of his inclusion.
- (2) An application for a review may be made only with the permission of IBB.
- (3) A person may apply for permission only if—
- (a) the application is made after the end of the minimum barred period, and
 - (b) in the prescribed period ending with the time when he applies for permission, he has made no other such application.
- (4) IBB must not grant permission unless it thinks—
- (a) that the person's circumstances have changed since he was included in the list or since he last applied for permission (as the case may be), and
 - (b) that the change is such that permission should be granted.
- (5) On a review of a person's inclusion, if IBB is satisfied that it is no longer appropriate for him to be included in the list it must remove him from it; otherwise it must dismiss the application.
- (6) The minimum barred period is the prescribed period beginning with such of the following as may be prescribed—
- (a) the date on which the person was first included in the list;
 - (b) the date on which any criterion prescribed for the purposes of paragraph 1, 2, 7 or 8 is first satisfied;
 - (c) where the person is included in the list on the grounds that he has been convicted of an offence in respect of which a custodial sentence (within the meaning of section 76 of the Powers of Criminal Courts (Sentencing) Act [2000 \(c. 6\)](#)) was imposed, the date of his release;
 - (d) the date on which the person made any representations as to why he should not be included in the list.

Information

19(1) IBB may require—

- (a) any person who holds records of convictions or cautions for the use of police forces generally to provide to it any relevant information relating to a person to whom any of paragraphs 1 to 5 or 7 to 11 applies;
- (b) any person who holds such records to provide to it prescribed details of relevant matter (within the meaning of section 113A of the Police Act [1997 \(c. 50\)](#)) relating to a person to whom any of those paragraphs apply;
- (c) the chief officer of a relevant police force to provide to it any such relevant information;
- (d) any person who holds information prescribed for the purposes of section 24(8)(c) to provide to it any such information relating to a person to whom any of paragraphs 1 to 5 or 7 to 11 applies.

(2) For the purposes of sub-paragraph (1)(a), relevant information relating to a person is information which the person holding the records thinks might be relevant in relation to the regulated activity concerned.

(3) For the purposes of sub-paragraph (1)(c), relevant information relating to a person is information which the chief officer thinks might be relevant in relation to the regulated activity concerned.

(4) IBB must pay to the appropriate police authority such fee as the Secretary of State thinks appropriate for information provided to IBB in accordance with sub-paragraph (1)(c).

(5) For the purpose of deciding under this Schedule whether or not a person is included in a barred list IBB must not take account of relevant police information if the chief officer of the relevant police force thinks that it would not be in the interests of the prevention or detection of crime to disclose the information to the person.

(6) In sub-paragraph (5) relevant police information is information which falls within sub-paragraph (3), whether it is obtained by IBB in pursuance of sub-paragraph (1)(c) or paragraph 20(2).

(7) In this paragraph—

- “caution” has the same meaning as in section 126 of the Police Act [1997 \(c. 50\)](#);
- “relevant police force” must be construed in accordance with subsection (9) of section 113B of that Act as if the person had made an application for the purposes of that section.

(8) If IBB so requests, the Secretary of State must inform IBB which police forces are relevant police forces in relation to a person.

20(1) The Secretary of State may provide to IBB any information relating to a person which is held by him in connection with his functions under—

- (a) the Protection of Children Act [1999 \(c. 14\)](#), except section 9 (the Tribunal);
- (b) Part 7 of the Care Standards Act [2000 \(c. 14\)](#);

(c) sections 142 to 144 of the Education Act [2002 \(c. 32\)](#).

(2) The Secretary of State must provide to IBB any information relating to a person which is held by him in connection with his functions under this Act (except information he holds relating to an offence prescribed for the purposes of paragraph 4(5) or 10(5) of this Schedule).

21 IBB must provide the Secretary of State with the prescribed information relating to a person if—

- (a) it includes that person in a barred list;
- (b) it is considering whether to include him in a barred list;
- (c) it thinks that any of the criteria prescribed for the purposes of paragraph 1, 2, 7 or 8 is satisfied in relation to him and that the Secretary of State does not already have the information.

22 The Secretary of State must inform the Scottish Ministers if a person is included in a barred list.

23 IBB may, at the request of the Welsh Ministers, provide them with such information relating to the exercise of its functions as it thinks may be relevant to the exercise by the Welsh Ministers of any of their functions.

Prescribed criteria

24(1) The criteria which may be prescribed for the purposes of paragraphs 1, 2, 7 and 8 are—

- (a) that a person has been convicted of, or cautioned in relation to, an offence of a specified description;
- (b) that an order of a specified description requiring the person to do or not to do anything has been made against him;
- (c) that a person is included in a specified list maintained for the purposes of a country or territory outside the United Kingdom;
- (d) that an order or direction of a specified description requiring the person to do or not to do anything has been made against him for the purposes of a country or territory outside the United Kingdom.

(2) The power to specify offences for the purposes of sub-paragraph (1) includes power to specify offences under—

- (a) the law of Scotland, Northern Ireland, the Channel Islands or the Isle of Man;
- (b) section 70 of the Army Act 1955 (3 & 4 Eliz. 2 c. 18);
- (c) section 70 of the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19);
- (d) section 42 of the Naval Discipline Act 1957 (c. 53);
- (e) section 42 of the Armed Forces Act [2006 \(c. 52\)](#).

(3) The Secretary of State may specify a list for the purposes of sub-paragraph (1)(c) only if he thinks that inclusion in the list has a corresponding or similar effect to inclusion in a barred list.

(4) For the purposes of determining whether any of the criteria is satisfied in relation to a person, ignore—

- (a) any offence committed before he attained the age of 18;
- (b) any order or direction made before that time.

(5) The criteria which may be prescribed for the purposes of paragraph 1 or 2 must not consist only of circumstances in which the person has committed an offence against a child before the commencement of section 2 if the court, having considered whether to make a disqualification order, decided not to.

(6) In sub-paragraph (5)—

- (a) the reference to an offence committed against a child must be construed in accordance with Part 2 of the Criminal Justice and Court Services Act [2000 \(c. 43\)](#);
- (b) a disqualification order is an order under section 28, 29 or 29A of that Act.

(7) For the purposes of sub-paragraph (4) an offence committed over a period of time must be treated as committed on the last day of the period.

(8) For the purpose of considering whether the criteria apply to an individual, the Secretary of State must, from time to time, examine records of convictions or cautions held for the use of police forces generally.

(9) Sub-paragraph (8) does not apply to records of convictions made, or cautions given, before such date as is prescribed.

25 A court by or before which a person is convicted of an offence of a description specified for the purposes of paragraph 24(1)(a), or which makes an order of a description specified for the purposes of paragraph 24(1)(b), must inform the person at the time he is convicted or the order is made that IBB will include him in the barred list concerned.