

EXPLANATORY MEMORANDUM TO
THE SAFEGUARDING VULNERABLE GROUPS ACT 2006 (BARRED LIST
PRESCRIBED INFORMATION) REGULATIONS 2008

2008 No. 16

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These regulations set out the information which must be retained by the Independent Barring Board (“IBB”) in respect of those persons who are barred from working with children or vulnerable adults (placed on the barred lists). Applications will be made by individuals who need to be registered with the IBB in order to work with children or vulnerable adults. The IBB will also receive information and referrals from employers, police and other sources concerning the suitability of individuals for work in these areas.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The Safeguarding Vulnerable Groups Act 2006 puts in place a new system for vetting persons seeking to work with children or vulnerable adults, and for barring those considered to be unsuitable for such posts, whether in paid employment or voluntary work. The Act establishes an Independent Barring Board to consider relevant information about individuals wishing to work in these areas, and to take all discretionary decisions on who should be barred. The IBB will be an independent executive non-departmental public body (NDPB), sponsored by the Home Office. The IBB will maintain barred lists of those barred from working with either children or vulnerable adults.

4.2 These arrangements build on the provisions of Part V of the Police Act 1997, which provides for the disclosure of criminal records information to employers in specified categories of employment. The Criminal Records Bureau (“CRB”) was established to collate and disclose criminal records and police intelligence information for the purposes of the 1997 Act, and it will also provide a key role in providing such information to the IBB. In addition, the IBB will consider referral information passed to it by employers, other organisations or members of the public in reaching its barring decisions.

4.3 These regulations assist the work of the IBB by determining the information which should be retained by the IBB in respect of persons placed on the barred lists. This information is necessary for purposes of proper identification of individuals who are barred; to enable disclosure of barred status where necessary; for the handling of representations, internal reviews and appeals against decisions of the IBB; and for future review arrangements provided for by the Act.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

5.2 Similar arrangements are being put in place in Northern Ireland, and through devolved legislation in Scotland through the Protection of Vulnerable Groups (Scotland) Act 2007. Bars will be recognised in all parts of the UK. In accordance with section 3 of the Act barred lists in Scotland and Northern Ireland, and current applications to those lists, will also be checked when applications are received by the ISA for England and Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The policy put into place by the 2006 Act meets part of the recommendations of the Bichard Inquiry of 2004. This recommended that new arrangements should be put in place requiring those who wish to work with children, or with vulnerable adults to be registered (recommendation 19). With the approval of Ministers and Sir Michael Bichard, the scheme has been adapted to provide for the vetting of all persons working, or seeking work, in these sectors, and for the barring of those persons considered unsuitable for such work. All discretionary decisions on barring will be taken by the IBB. Those who are not barred will effectively be registered with the new IBB scheme. Once someone is registered with the scheme, they will be able to work with children or vulnerable adults, and any new criminal records information, or employer referral information, about them will be referred to the IBB. This process is known as continuous monitoring. Where new information arises, the IBB will review its barring decision and any change to the barred status will be reported to the employer. New employers, or bodies using volunteers in these areas, will be able to check a persons registered status in the scheme by means of a free on-line check (with the individual's consent).

7.2 In order to ensure appropriate and accurate identification of individuals, whether they are placed on the barred lists or registered with the scheme, and to match further information provided for the purposes of continuous monitoring, these regulations require the IBB to retain a range of information which is provided to them about an application. Information to be retained includes identification details relating to the individual, such as names, dates and place of birth, addresses, national insurance numbers, and the unique identification numbers relating to the systems on which information is held, for example the Police National Computer for criminal records information, and the CRB case number for matches against CRB disclosures. This information assists in verifying identity and ensuring the correct information is provided to the IBB and matched against its records. The Act provides a disputes process for cases where identity is disputed.

7.3 The IBB is also required to retain information considered relevant to the barring decision, and certain additional information provided to it, whether or not that has been used in reaching the decision or disclosed. This will be important in responding to any requests for a review of the IBB decision or an appeal against such a decision to the Care Standards tribunal, both of which are provided for by the Act. In addition, barred persons may ask for their barred status to be reviewed after periods of time (to be determined in separate regulations). In these cases it will be important for the IBB to have access to the original information on which the barring decision was based, and to be able to match any new information to the applicant.

7.4 Consultation with stakeholders has been held on a number of issues and is ongoing to inform implementation of the Act. It has not however covered the specific issue of retention of information, as this is considered of relevance primarily to the internal workings of the IBB. Although IBB is the term set out in the relevant legislation, following public and stakeholder consultation the Board is using the brand name “Independent Safeguarding Authority”. This reflects public acceptance of the important safeguarding role of the Board.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

Stewart Baxter at the Home Office Tel: 0207 035 3265 or e-mail: Stewart.Baxter2@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.