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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 4**

**CHILDREN AND YOUNG PERSONS  
PROTECTION OF VULNERABLE ADULTS**

**The Protection of Vulnerable Groups (Scotland) Act  
2007 (Transitory Provisions in Consequence of the  
Safeguarding Vulnerable Groups Act 2006) Order 2009**

*Made - - - - 14th January 2009*

*Laid before the Scottish*

*Parliament - - - - 14th January 2009*

*Coming into force in accordance with article 1(2)*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 87(1) and (3) and 100(2) of the Protection of Vulnerable Groups (Scotland) Act 2007<sup>(1)</sup> and all other powers enabling them to do so.

**Citation and commencement**

1.—(1) This Order may be cited as the Protection of Vulnerable Groups (Scotland) Act 2007 (Transitory Provisions in Consequence of the Safeguarding Vulnerable Groups Act 2006) Order 2009.

(2) This Order comes into force on the same day as the Safeguarding Vulnerable Groups Act 2006 (Transitory Provisions) Order 2009<sup>(2)</sup>.

**Interpretation**

2. In this Order—

“the 2006 Act” means the Safeguarding Vulnerable Groups Act 2006<sup>(3)</sup>;

“the IBB” means the Independent Barring Board established under section 1 (Independent Barring Board) of the 2006 Act; and

“the SVG (Transitory Provisions) Order” means the Safeguarding Vulnerable Groups Act 2006 (Transitory Provisions) Order 2009.

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(1) 2007 asp 14.  
(2) S.I.2009/12.  
(3) 2006 c. 47.

### **Effect of the Order**

3. This Order has effect until the commencement, for all purposes, of all of section 3 (barred persons) of the 2006 Act.

### **Effect of listing by the IBB – children’s barred list**

4.—(1) This article applies where the IBB, in exercise of its functions under the SVG (Transitory Provisions) Order, includes a person (X) in the children’s barred list established and maintained under section 2 (barred lists) of the 2006 Act.

(2) X is to be treated as if included in the list kept under section 1 (duty of Secretary of State to keep list) of the Protection of Children Act 1999(4), and any reference in–

- (a) the Protection of Children (Scotland) Act 2003(5),
- (b) Part 5 (certificates of criminal records, &c.) of the Police Act 1997(6), or
- (c) any subordinate legislation made under Part 5 of the Police Act 1997,

to a person included in the list kept under section 1 of the Protection of Children Act 1999 includes a reference to a person to be treated as if included in that list in accordance with this article.

(3) In section 98A(6) (application for registration of independent school) of the Education (Scotland) Act 1980(7) the reference to section 17 of the Protection of Children (Scotland) Act 2003 is to be construed in accordance with this article.

### **Effect of listing by the IBB – adults' barred list**

5.—(1) This article applies where the IBB in exercise of its functions under the SVG (Transitory Provisions) Order, includes a person (X) in the adults' barred list established and maintained under section 2 of the 2006 Act.

(2) X is to be treated as if included in the list kept under section 81 (duty of Secretary of State to keep list) of the Care Standards Act 2000(8) and any reference in Part 5 of the Police Act 1997 or in any subordinate legislation made under that Part to a person included in the list kept under section 81 of the Care Standards Act 2000 includes a reference to a person as if included in that list in accordance with this article.

St Andrew’s House,  
Edinburgh  
14th January 2009

*ADAM INGRAM*  
Authorised to sign by the Scottish Ministers

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(4) 1999 c. 14. Section 1 was amended by section 97(2) of the Care Standards Act 2000 (c. 14).  
(5) 2003 asp 5.  
(6) 1997 c. 50. Part 5 has been relevantly amended by sections 79 and 80 of, and schedule 4, paragraphs 33, 34, 38 and 40 to, the Protection of Vulnerable Groups (Scotland) Act 2007, sections 163 to 167 of, and Schedules 14 and 17 to, the Serious Organised Crime and Police Act 2005 (c. 15) and section 70 of the Criminal Justice (Scotland) Act 2003 (asp 7).  
(7) 1980 c. 44. Section 98A was inserted by section 4(2) of the School Education (Ministerial Powers and Independent Schools) (Scotland) Act 2004 (asp 12).  
(8) 2000 c. 14.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes amendments in consequence of provisions made by virtue of the Safeguarding Vulnerable Groups Act 2006 (“the 2006 Act”).

The Safeguarding Vulnerable Groups Act 2006 (Transitory Provisions) Order 2009, made under section 64 of the 2006 Act, makes provision for the Independent Barring Board (“the IBB”) to replace the Secretary of State as the body who decides who is barred from working with children and/or vulnerable adults, in advance of the 2006 Act coming into force for all purposes.

During this transitory period persons who would have been referred to the Secretary of State for consideration for inclusion in the list kept under section 1 of the Protection of Children Act 1999 (“the 1999 Act”) or the list kept under section 81 of the Care Standards Act 2000 (“the 2000 Act”), or to be made subject to a direction under section 142 of the Education Act 2002 are to be referred to the IBB for inclusion, or consideration for inclusion, in the appropriate list established and maintained under section 2 (barred lists) of the 2006 Act.

The Safeguarding Vulnerable Groups Act 2006 (Transitory Provisions) Order 2009, provides that people listed by the IBB in either (or both) of the lists kept under section 2 of the 2006 Act, are to be treated, in the law of England and Wales, as if they were listed under section 1 of the 1999 Act and subject to a direction under section 142 of the Education Act 2002 or listed under section 81 of the 2000 Act, as the case may be. That Order will have effect until the commencement for all purposes of section 3 (barred persons) of the 2006 Act.

This Order makes similar consequential provision for Scotland. It provides that persons listed in either of the lists established and maintained under section 2 of the 2006 Act are to be treated, in Scots law, as listed in the list kept under section 1 of the 1999 Act or section 81 of the 2000 Act, as the case may be.

In particular any reference in Part 5 of the Police Act 1997 or section 17 of the Protection of Children (Scotland) Act 2003 to a person included in the list kept under section 1 of the 1999 Act includes a reference to a person to be treated as if included in that list by virtue of this Order. Similarly any reference in Part 5 of the Police Act 1997 to a person included in the list kept under section 81 of the 2000 Act includes a reference to a person to be treated as if included in that list in accordance with this Order.