

SCHEDULES

SCHEDULE 3

Section 2

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—

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- (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.

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- (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.

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- (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.

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- (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—

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- (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;

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- (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;

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- (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.

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- (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.