

POLICING AND CRIME ACT 2009

EXPLANATORY NOTES

TERRITORIAL EXTENT AND APPLICATION

Part 8 – Miscellaneous

Chapter 1 – Safeguarding Vulnerable Groups and Criminal Records

Renaming of Independent Barring Body

Section 81 Renaming of Independent Barring Body

509. This section amends provisions in the Safeguarding Vulnerable Groups Act 2006 (“the 2006 Act”) to change the name of the Independent Barring Board (IBB) to the Independent Safeguarding Authority (ISA). The IBB was established under section 1 of the 2006 Act as a body corporate to consider the suitability of persons seeking to do certain specified work with children or vulnerable adults, and empowered to bar from such work those considered unsuitable. Bars are based on an assessment by the Board of any possible risk of harm posed to children or vulnerable adults by persons doing, or seeking such work, with these groups in either a paid or voluntary capacity.
510. **Section 81** amends sections of the 2006 Act where references to the IBB appear in that Act, in order to change the name of the Board by substituting the name Independent Safeguarding Authority. It similarly amends references to the abbreviations “IBB” with “ISA”, and other enactments and documents in place prior to the passage of this Act where references to the Independent Barring Board or “IBB” appear. The change applies to subordinate legislation as defined by the Interpretation Act 1978.
511. This applies to England, Wales and Northern Ireland and to any enactments of the Scottish Parliament and Northern Ireland legislation.

Safeguarding vulnerable groups: England and Wales

Section 82 Educational establishments: check on members of governing body

512. **Section 82** amends provisions in the 2006 Act. Its objectives are:
- a) to ensure that a person (“the appropriate officer”) who is required under section 13 of the 2006 Act to make a check on a member of a governing body (“governor”) of an educational establishment as defined in section 8(5) of the Act, does not commit an offence if the governor fails to consent to the check or fails to provide the appropriate officer with any information necessary to make the check; and
 - b) to create a new criminal offence where a governor acts as a member of a governing body before consenting to the check or providing the appropriate officer with any information required to carry out the check.
513. The appropriate officer is required under section 13 of the 2006 Act to make the check within a prescribed period. To achieve the first objective above, subsection (6) of the section provides that the prescribed period must not start before the governor consents

to the appropriate officer making the check and provides any information required to make the check.

514. To achieve the second objective, subsection (2) of the section provides that a governor commits an offence if he or she starts to act as a governor without first consenting to a check and providing the appropriate officer with any information required to make the check.
515. Provisions in sections (4) and (5) of the section mirror the provision at sections 13(3) and (4) of the 2006 Act. Section 13(3) of the SGVA ensures that the appropriate officer does not commit an offence if he or she does not make a check on a governor where the governor was appointed before the commencement of section 13; section 13(4) of the Act allows the Secretary of State by order to set a date when the exception in section 13(3) comes to an end (known as “sunsetting”). These provisions relate to the Government’s announced policy of phasing in, over a few years, the Vetting and Barring Scheme’s requirements to register with the Independent Safeguarding Authority referred to as the Independent Barring Board or IBB in the Act.

Section 83 Monitoring application

516. **Section 83** amends provisions in section 24 of the 2006 Act relating to an application to become subject to monitoring. Section 24(1) states that an individual must make a monitoring application in order to become subject to monitoring (in effect register with the Vetting and Barring Scheme established by the Act). Section 24(10) previously provided that the “form and manner” of an application would be prescribed in regulations.
517. This amendment allows the Secretary of State to determine the form, manner and content of the application form. This allows the Secretary of State to amend the application form without needing to make secondary legislation.

Section 84 Monitoring: additional fees

518. This section makes provision for the payment of a fee by persons who are subject to monitoring under the 2006 Act, and have benefited from a free application to the monitoring scheme as a volunteer, if they subsequently enter paid employment in activities regulated under the Act.
519. Fees for applications for monitoring under the 2006 Act will be prescribed under powers set out in section 24. The fees are based on cost-recovery for the scheme. It is intended that no fee will be prescribed for persons joining the scheme as unpaid volunteers. This section provides that a fee becomes payable when persons who have benefited from a free application (volunteers) undergo a change of circumstances which means that a fee would have been payable under section 24(1)(d) (persons in paid regulated activity). This removes a loophole which would have enabled persons to apply solely as volunteers and avoid any fee when moving into paid activities.
520. The section provides a power to prescribe the change in circumstances (moving from unpaid to paid activity) and to set a fee for such persons. It also clarifies that an individual does not cease to be subject to monitoring under section 24, merely because the required fee has not been paid. However, subsection (3) inserts a specific power for the Secretary of State to refuse to provide information under section 30 unless the relevant fee under section 24A is paid.

Section 85 Vetting Information

521. This section amends section 30 of the 2006 Act.
522. The section changes the requirements arising from the declaration to be made by persons eligible to receive vetting information under section 30. Section 30 requires the Secretary of State to provide vetting information to certain categories of persons entitled

to know the status of an individual under the Vetting and Barring Scheme established by the Act. This is information which indicates whether the individual is registered with the scheme (or “subject to monitoring” under section 24 of the Act). The persons entitled to see such information are employers, personnel suppliers, local authorities and certain other bodies set out in Schedule 7 to the 2006 Act.

523. Section 30(2) of the 2006 Act previously required a declaration to be made indicating within which of the “specified entries” in Schedule 7 of the Act the enquirer falls. The Government believes that this is no longer necessary. The amendment simplifies the declaration by removing the reference to a “specified entry” in Schedule 7, and substituting a requirement for the enquirer to indicate whether he is entitled to information relating to children, to vulnerable adults, or to both. The effect is to simplify the application procedure for those entitled to the information.
524. Subsection (6) of the section relates specifically to members of the governing body of an educational institution. Previously section 30(5) aimed to ensure that the appropriate officer could make an application under section 30 to receive vetting information in relation to any appointed governor without the need to obtain the consent of the governor. This provision is no longer effective as, under section 82, a governor must consent to a check being made under section 30 of the 2006 Act and must provide information enabling the appropriate officer to make such a check before the governor can legally act as a governor.
525. New section 24A (section 84) provides that persons who had been entitled to a free application because they were unpaid volunteers must pay a prescribed fee upon taking part in paid activities. This section amends the declaration by the person seeking the information under section 30 to require them to indicate whether the application relates to paid activities. This provision assists the enforcement of fees. The new requirement to indicate whether the application related to paid activities should flag up those individuals who are now seeking paid employment, having previously registered as a volunteer, and therefore alert the Secretary of State that a required fee is due. If this fee is not paid, the Secretary of State can refuse to provide the information required.
526. Subsection (6) provides that paid activity means an activity that is carried out for financial gain and that the Secretary of State can clarify areas of doubt as to when an activity must, or must not, be treated as paid.

Section 86 Notification of cessation of monitoring

527. **Section 86** amends section 32 of the 2006 Act, changing the requirements arising from the declaration to be made by persons eligible to receive information about the cessation of monitoring under section 32. Section 32 requires the Secretary of State to establish a register of persons entitled to be notified when an individual ceases to be monitored in accordance with provisions in section 24 of the 2006 Act, that is, persons who are “registered” with the Vetting and Barring Scheme established by that Act.
528. The previous provisions required the Secretary of State to provide such persons with information when an individual in whom they have registered an interest ceases to be monitored under the 2006 Act. Persons entitled to this information are those registered under section 32, who must also fall within the categories of person set out in Schedule 7. This includes employers, personnel suppliers, local authorities and certain other bodies set out in Schedule 7.
529. **Section 32(3)** previously required a declaration to be made indicating within which of the “specified entries” in Schedule 7 the applicant for registration falls. Section 32(5) provided that the application and registration apply to those specified entries.
530. The effect of subsections (1) to (4) is that the relevant declaration need not specify which particular entry of the table in Schedule 7 the applicant falls within; all that is needed is for the declaration to state that the applicant falls within the table.

531. Subsection (5) relates specifically to members of the governing body of an educational institution. Previously section 32(8) aimed to ensure that the appropriate officer can register in relation to any appointed governor without the need to obtain the consent of the governor. This provision is no longer effective as under section 82 a governor must consent to a check under section 30 of the 2006 Act before he or she can legally act as a governor. Under section 32(9), consent given for the purposes of section 30 has effect as consent to an application by the appropriate officer to register in relation to the governor under section 32.

Section 87 Notification of proposal to include person in barred list

532. **Section 87** amends the 2006 Act by inserting an additional duty and conferring a further power on the ISA in circumstances where it proposes to bar an individual from working with children or vulnerable adults. In such circumstances, this section requires the ISA to notify any person who is registered under section 32 of the 2006 Act with respect to the individual concerned that the ISA is proposing to bar him or her and to provide reasons why. Section 87 also empowers the ISA to notify any other person who is permitting the individual to engage in regulated or controlled activity of the proposal to bar and the reasons why. A further notification must confirm whether the individual has been barred or not. Once the ISA has decided that it proposes to bar someone, it must give him or her eight weeks to make any representations before it can make its final barring decision. If the person is working with children or vulnerable adults during this time, notification under this section allows the employer to be aware of the potential risk so that it can consider whether it needs to take any action.

Section 88 Provision of safeguarding information to the police

533. This section inserts a new provision (section 50A) into the 2006 Act that empowers the ISA to provide information that it holds to the police in England and Wales for use by the police for any of the purposes specified in subsection (1). This power provides an additional safeguard to that in section 87 in that it allows the ISA to provide information to the police in what are likely to be exceptional cases where the ISA has not reached a decision as to whether or not it proposes to bar a person but considers that an individual may pose a risk of harm to vulnerable groups. Another use for this power is to enable the ISA to inform the police if it thinks that someone it has barred poses a risk to children in their own household.

Section 89 Barring process

534. This section adjusts the procedure for automatic barring in England and Wales so that it is the ISA, rather than the Secretary of State, that must be satisfied that a person has met the prescribed criteria for automatic barring before the ISA is required to bar him or her. The section also makes a consequential change to the duty on the Secretary of State to check records. The prescribed criteria that trigger an automatic bar consist of certain serious offences and in some of these cases the automatic bar is triggered only if certain specified circumstances arise, for example, the victim is a child. This means that the circumstances of an offence will sometimes need to be verified before it can be confirmed that any of the prescribed criteria are satisfied with respect to him or her.

Safeguarding vulnerable groups: Northern Ireland

Section 90 Notification of proposal to include person in barred list: Northern Ireland

535. This section makes equivalent provision in relation to Northern Ireland to that made in relation to England and Wales by section 87.

Section 91 Provision of safeguarding information to the police: Northern Ireland

536. This section makes equivalent provision in relation to Northern Ireland to that made in relation to England and Wales by section 88.

Section 92 Barring process: Northern Ireland

537. This section makes equivalent provision in relation to Northern Ireland to that made in relation to England and Wales by section 89.

Criminal records etc

Section 93 Criminal conviction certificates to be given to employers

538. Part V of the Police Act 1997 (“the 1997 Act”) sets out the scheme under which the Secretary of State, under the form of the “Criminal Records Bureau” (the “CRB”), must issue criminal conviction certificates (also known as Basic Disclosures) and criminal record or enhanced criminal record certificates (known as Standard and Enhanced Disclosures). Currently, section 112 only provides for Basic Disclosures to be sent to applicants. It is envisaged that when the Basic Disclosure service is introduced by the CRB the majority of applications will be made for the purposes of employment. This section therefore provides for a copy of the Basic Disclosure to be sent to an employer where specifically requested.

Section 94 Certificates of criminal records etc: right to work information

539. **Section 94** inserts a new section 113CD into the 1997 Act to provide for “right to work” information to be recorded on Basic, Standard and Enhanced Disclosures where a request for such information is made. This follows a request from the Home Secretary in early 2008 to explore the possibility of incorporating “right to work” checks within the CRB service following concerns about the employment of illegal workers in sectors required to obtain a CRB disclosure. Currently, CRB certificates do not provide information pertaining to an individual’s immigration status.
540. The amendments will enable an employer to be informed, should they so request, whether prospective or current employees have a “right to work” in the UK based on the UK Border Agency (UKBA) records. This will assist employers in avoiding the employment of illegal workers which under the current legislation makes an employer liable to pay a civil penalty of up to £10,000 per person if found to be employing someone illegally. This civil penalty regime was introduced in February 2008 and is set out under sections 15 and 22 of the Immigration, Asylum and Nationality Act 2006.
541. This will be an optional service offered by the CRB and there will remain other ways for employers to satisfy themselves of an individual’s right to work status.
542. Where a request for a “right to work” check is made, the certificate will state whether the applicant has a right to work or not and any conditions attached to the relevant status will also be disclosed where appropriate. If an individual’s right to work status cannot be determined from UKBA records, employers will be provided with further information on how to identify whether the individual has a right to work.
543. The intention is to charge a fee to recover the development and running costs of this service and this will be in addition to the fee paid for a Disclosure. Prior to any fee being introduced, a public consultation will be carried out.

Section 95 Criminal conviction certificates: verification of identity

544. **Section 95** allows for other methods of identity verification to be prescribed under section 118 of the 1997 Act when making an application for a certificate. The taking of fingerprints is already provided for under section 118 and any method prescribed under this section is likely to be less intrusive than requiring fingerprints. Such requirements

may include requiring evidence of identity (such as a passport, driving licence and current utility bills etc).

Section 96 Registered persons

545. **Section 96** enables the CRB, when checking the suitability of individuals to be registered to countersign and receive Standard and Enhanced Disclosures in respect of applicants, to be checked against the new barred lists established under the Safeguarding Vulnerable Groups Act 2006. Such individuals are known as “Registered Persons” under the Police Act 1997. Although the 2006 Act enables suitability information to be disclosed to employers, it does not amend the definition of suitability information the CRB itself should have regard to when assessing whether an individual should be registered. This was an oversight as the current provision enables checks to be undertaken against the old barring lists for this purpose.

Section 97 Criminal Records: applications

546. **Section 97** makes amendments to the 1997 Act so that the Secretary of State may determine the “form, manner and contents” in which applications for such Disclosures are made.
547. Currently regulations are required for any change to such applications and this provision will enable the Secretary of State to determine administratively the way people apply, what applicants are required to disclose on the applications and how people sign and countersign them without having to make regulations each time. This will include providing for electronic or on-line applications.
548. A similar amendment is being made for “monitoring” applications made under the Safeguarding Vulnerable Groups Act 2006 because when the new Vetting and Barring Scheme is live many Enhanced Disclosure applications will be made jointly with applications for monitoring and the initial application will be made via the CRB.