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STATUTORY INSTRUMENTS

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**2009 No. 2610**

**The Safeguarding Vulnerable Groups Act 2006  
(Regulated Activity, Miscellaneous and Transitional  
Provisions and Commencement No. 5) Order 2009**

**PART 4**

Provisions applying during the first and second transitional periods

**Transitional modifications and provisions applying during the first and second transitional periods**

**13.** Articles 14 to 18 apply during the first and second transitional periods.

**Modifications to section 113E of the Police Act 1997**

**14.—**(1) Section 113E(1) of the Police Act 1997 has effect subject to the following modifications.

(2) In subsection (3)—

(a) the words “113A or” must be ignored;

(b) for paragraph (a), substitute “it is made in a case prescribed under section 113BB(1)”.

(3) In subsection (5) the definitions of “children’s suitability statement”, “specified children’s direction”, “specified children’s list”, “adults’ suitability statement” and “specified adults’ list” must be ignored.

(4) After subsection (5) insert—

“(5A) For the purposes of this section each of the following is a specified adults’ list—

(a) the list kept under section 81 of the Care Standards Act 2000;

(b) the adults’ barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006;

(c) the adults’ barred list maintained under Article 6 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007(2).”.

**Modification to section 116 of the Police Act 1997**

**15.—**(1) Section 116(3) of the Police Act 1997 has effect subject to the following modification.

(2) For subsection (3) substitute—

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(1) Section 113E was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005.

(2) [S.I. 2007/1351 \(N.I. 11\)](#).

(3) Section 116 was amended by paragraphs 1 and 5 of Schedule 35 to the Criminal Justice Act 2003 and by section 163(3) of, and paragraphs 1 and 3 of Schedule 14 to, the Serious Organised Crime and Police Act 2005. It is to be amended by paragraph 14(1) and (6) of the Safeguarding Vulnerable Groups Act 2006.

“(3) Section 113B(3) to (11) and sections 113BA, 113BB and 113E, as modified by the Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Miscellaneous and Transitional Provisions and Commencement No. 5) Order 2009, shall apply in relation to this section with any necessary further modifications.”.

### **Teachers’ pensions – entitlement to payment of retirement benefits**

**16.—**(1) The Teachers’ Pensions Regulations 1997(4) (“the 1997 Regulations”) have effect subject to the following modifications.

(2) In regulation E4 a person also falls within Case C if the requirements of paragraph (4)(a) to (d)(5) of that regulation are met and—

- (a) the Secretary of State has notified the person in writing that the requirements specified in paragraphs (3) and (4) below are met, or
- (b) the requirement specified in paragraph (7) below is met.

(3) The requirement is that IBB has not included, and is not considering including, the person in a barred list.

(4) The requirement is that neither the General Teaching Council for England nor the General Teaching Council for Wales has made a prohibition order in relation to the person on the grounds—

- (a) of unacceptable professional conduct, or
- (b) that the person has been convicted (at any time) of a relevant offence.

(5) The General Teaching Council for England and the General Teaching Council for Wales must, at the request of the Secretary of State, inform the Secretary of State whether they have made a prohibition order in relation to a particular person on the grounds—

- (a) of unacceptable professional conduct, or
- (b) that the person has been convicted (at any time) of a relevant offence.

(6) In paragraphs (4) and (5) “unacceptable professional conduct”, “relevant offence” and “prohibition order” have the same meaning as in Schedule 2(6) to the Teaching and Higher Education Act 1998.

(7) The requirement is that IBB has included, or is considering including, the person in a barred list but the Secretary of State is satisfied that there are exceptional circumstances relating to the person which make it appropriate that the person should fall within Case C.

(8) Accordingly, where a person falls within Case C in accordance with this article the entitlement takes effect—

- (a) where, immediately before the person became incapacitated the person was in excluded employment, on the day after the last day of the person’s excluded employment; and
- (b) in any other case, as soon as the person falls within the Case or as soon as the person would have fallen within the Case had there not been a requirement that the Secretary of State notify that person that the requirements specified in paragraphs (3) and (4) are met,

or (in all cases), if later, 6 months before the date of the last of any medical reports considered by the Secretary of State in determining under regulation H9 of the 1997 Regulations that the person had become incapacitated.

(9) In paragraph (8) “excluded employment” has the same meaning as in the 1997 Regulations.

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(4) [S.I. 1997/3001](#).

(5) Paragraph (4) was amended by [S.I. 2004/587](#), [S.I. 2006/2214](#), [S.I. 2006/3122](#) and by [S.I. 2008/541](#).

(6) Schedule 2 was amended by paragraphs 1 and 12(1) to (3) of Part 1 of Schedule 12 and by paragraph 86(1) and (2) of Schedule 21 to the 2002 Act. It was repealed in part by paragraph 86(1) and (3) Schedule 21 and by Part 3 of Schedule 22 to the 2002 Act. It is to be amended by paragraphs 2 and 7 of Part 1 of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006 (c. 47).

## **Modifications to the General Teaching Council for England (Disciplinary Functions) Regulations 2001**

**17.—**(1) The General Teaching Council for England (Disciplinary Functions) Regulations 2001<sup>(7)</sup> have effect subject to the following modifications.

(2) In regulation 9<sup>(8)</sup>—

(a) after paragraph (1)(b) insert—

“; or

(ba) the Independent Barring Board, established under section 1 of the Safeguarding Vulnerable Groups Act 2006 (“IBB”) has included, or is considering whether to include, a registered teacher in either of the barred lists maintained under section 2 of that Act”;

(b) for paragraph (3), substitute—

“(3) Where the Council is in receipt of documents concerning a registered teacher in which a relevant issue arises the Council shall refer those documents—

(a) where paragraph (1)(b) applies, to the Secretary of State for his consideration;

(b) where paragraph (1)(ba) applies, to IBB.”.

(c) for paragraph (4), substitute—

“(4) Where a Committee is considering allegations of unacceptable professional conduct or serious professional incompetence against a registered teacher or that he has been convicted of a relevant offence and a relevant issue arises, the Committee shall refer those allegations, or if the relevant issue forms part of a wholly separate allegation, that allegation, and all relevant documents or copies of documents—

(a) where paragraph (1)(b) applies, to the Secretary of State for his consideration;

(b) where paragraph (1)(ba) applies, to IBB.”.

(d) for paragraph (5), substitute—

“(5) Where a prohibition order is made in relation to a person on grounds of unacceptable professional conduct or a conviction for a relevant offence the Council shall refer the case and copies of all relevant documents—

(a) where paragraph (1)(b) applies, to the Secretary of State for him to consider the further exercise of his own powers;

(b) where paragraph (1)(ba) applies, to IBB.”.

## **Power of Secretary of State to refer to IBB**

**18.—**(1) The Secretary of State may refer a person (X) to IBB if each of the following conditions is satisfied in relation to X.

(2) The first condition is that information relating to X has been provided to the Secretary of State or the Welsh Ministers in accordance with a provision specified in paragraph (5).

(3) The second condition is that the Secretary of State has sent a notice to X inviting X to make representations as to why X should not be made subject to a direction under section 142 of the Education Act 2002.

(4) The third condition is that the Secretary of State has not made a direction under that section in relation to X.

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(7) [S.I. 2001/1268](#).

(8) Regulation 9 was amended by [S.I. 2003/1186](#).

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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(5) The provisions are—

- (a) regulation 4 or 6 of the Education (Supply of Information) (Wales) Regulations 2003<sup>(9)</sup>;
- (b) regulation 4 of the Education (Prohibition from Teaching or Working with Children) Regulations 2003<sup>(10)</sup>.

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<sup>(9)</sup> S.I. 2003/542 (W. 76).  
<sup>(10)</sup> S.I. 2003/1184.