*Draft Regulations laid before Parliament under section 61(3) of the Safeguarding Vulnerable Groups Act 2006, for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

# 2008 No. XXXX

# CHILDREN AND YOUNG PERSONS, ENGLAND AND WALES PROTECTION OF VULNERABLE ADULTS, ENGLAND AND WALES

## The Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2008

*Made - - - -* ***

*Coming into force in accordance with regulation 1*

The Secretary of State for Children, Schools and Families makes the following Regulations in exercise of the powers conferred by section 61(5) and 64(1) and (3) of, and paragraphs 1(1), 2(1), 7(1), 8(1) and 24(1) and (2)(**1**) of Schedule 3 to, the Safeguarding Vulnerable Groups Act 2006(**2**):

In accordance with section 56(3)(q) of that Act he has consulted the Welsh Ministers:

A draft of these Regulations was laid before Parliament in accordance with section 61(3) of that Act and approved by resolution of each House of Parliament.

(**1**) Each of paragraph 1(1), 2(1), 7(1) and 8(1) of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 refers to criteria prescribed for the purposes of those paragraphs. Section 60(1) of that Act defines "prescribed" as meaning prescribed by regulations made by the Secretary of State. Paragraph 24 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 makes provision as to the criteria that may be prescribed for the purposes of paragraphs 1(1), 2(1), 7(1) and 8(1) of that Schedule.

(**2**) 2006 c.47.

# PART 1

## Introduction

### Citation, commencement and interpretation

**1.**—(1) These Regulations may be cited as the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2008 and come into force seven days after the day on which they are made.

(2) In these Regulations—

"the Act" means the Safeguarding Vulnerable Groups Act 2006;

"the 2002 Act" means the Education Act 2002(**3**);

"the 2003 Regulations" means the Education (Prohibition from Teaching or Working with Children) Regulations 2003(**4**);

"connected offence" means, in relation to an offence specified in the Schedule, an offence of—

(a) attempting, conspiring or incitement to commit that offence, or

(b) aiding, abetting, counselling or procuring, the commission of that offence;

"disqualification order" means an order of the court under section 28, 29 or 29A of the Criminal Justice and Court Services Act 2000(**5**);

"relevant circumstances" means—

(a) in relation to an offence specified in—

(i) sub-paragraph (a) or (b) of paragraph 1,

(ii) sub-paragraph (b)(ii) to (v), (c) or (d)(ii) of paragraph 2, or

(iii) sub-paragraph (b)(ii) to (vii), (c) or (d)(ii) of paragraph 4

of the Schedule the circumstances described in the relevant sub-paragraph which relate to the commission of that offence, and

(b) in relation to an offence specified in—

(i) sub-paragraph (c), (e) or (g)(i) of paragraph 1,

(ii) sub-paragraph (e), (g) or (i)(i) of paragraph 2, or

(iii) sub-paragraph (e), (g) or (i)(i) of paragraph 4

of the Schedule the circumstances referred to in the relevant sub-paragraph in relation to the commission of that offence;

"relevant date" means the date on which these Regulations come into force.

(3) In regulation 3 a reference to an offence specified in paragraph 1(a) to (c), (e) or (g)(i) of the Schedule is a reference to that offence only where it was committed in relevant circumstances.

(4) In regulation 4 a reference to an offence specified in paragraph 2(b)(ii) to (v), (c), (d)(ii), (e), (g) or (i)(i) of the Schedule is a reference to that offence only where it was committed in relevant circumstances.

(5) In regulation 6 a reference to an offence specified in paragraph 4(b)(ii) to (vii), (c), (d)(ii), (e), (g) or (i)(i) of the Schedule is a reference to that offence only where it was committed in relevant circumstances.

(**3**) 2002 c.32.
(**4**) S.I. 2003/1184 as amended by S.I. 2007/195.
(**5**) 2000 c.43.

(6) In regulations 3 to 6—

(a) a reference to an offence, A, specified in the Schedule includes a reference to an offence, B, which in relation to offence A is a connected offence;

(b) a reference to being convicted of an offence specified in the Schedule includes a reference to being convicted of a relevant foreign offence or an offence which in relation to that relevant foreign offence is a connected offence.

(7) In paragraph (6)(b) a relevant foreign offence is an offence satisfying the criteria specified in paragraph (8).

(8) The criteria are that—

(a) the offence is one under the law in force in a country or territory outside the British Islands;

(b) the conduct which constitutes the offence would, if carried out in England and Wales, amount to an equivalent offence which is specified in the Schedule;

(c) where the equivalent offence is one specified in paragraph 1(a) to (c), (e) or (g)(i), 2(b)(ii) to (v), (c), (d)(ii), (e), (g) or (i)(i) or 4(b)(ii) to (vii), (c), (d)(ii), (e), (g) or (i)(i) of the Schedule, the offence was committed in relevant circumstances relating to the equivalent offence.

(9) For the purposes of paragraph (8) an act punishable under the law in force in a country or territory outside the British Islands constitutes an offence under that law however it is described in that law.

**Effect of decision not to impose a disqualification order**

**2.**—(1) Where the condition in paragraph (2) is met, the offences referred to in regulations 3 to 6 do not include any offence which a person has committed against a child before the commencement (for all purposes) of section 2 of the Act.

(2) The condition is that the court, having considered whether to make a disqualification order in connection with the commission of the offence, decided not to.

(3) In this regulation 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(**6**).

# PART 2

## Prescribed criteria

**Prescribed criteria – automatic inclusion in the children's barred list**

**3.**—(1) The criteria prescribed for the purposes of paragraph 1(1) of Schedule 3 to the Act are the criteria set out in paragraphs (2) to (4).

(2) The criterion set out in this paragraph is that before the relevant date—

(a) the person had been made subject to a disqualification order, and

(b) condition C in the 2003 Regulations was satisfied in relation to the person, and

(c) regulation 8 of those Regulations applied to the person, and

(d) the Secretary of State had not made a direction under section 142(1)(a) of the 2002 Act in relation to that person.

(**6**) Section 30(5)(a) of the Criminal Justice and Court Services Act 2000 was amended by paragraphs 1, 3(1) and 4(a) of Schedule 30 to the Criminal Justice Act 2003 (c.44).

(3) The criterion set out in this paragraph is that before the relevant date—

(a) the person had been convicted of, or cautioned in relation to, an offence specified in Part 2 of Schedule 2 to the 2003 Regulations, and

(b) condition C in those Regulations was satisfied in relation to the person, and

(c) regulation 8 of those Regulations applied to the person, and

(d) the Secretary of State had not made a direction under section 142(1)(a) of the 2002 Act in relation to that person.

(4) The criterion set out in this paragraph is that the person has, on or after the relevant date, been convicted of, or cautioned in relation to, an offence specified in paragraph 1 of the Schedule.

**Prescribed criteria – automatic inclusion in the children's barred list with the right to make representations**

**4.**—(1) The criteria prescribed for the purposes of paragraph 2(1) of Schedule 3 to the Act are the criteria set out in paragraphs (2) to (6).

(2) The criterion set out in this paragraph is that before the relevant date—

(a) the person had been made subject to a disqualification order, and

(b) condition C in the 2003 Regulations was not satisfied in relation to the person, and

(c) regulation 8 of those Regulations applied to the person, and

(d) the Secretary of State had not made a direction under section 142(1)(a) of the 2002 Act in relation to that person.

(3) The criterion set out in this paragraph is that before the relevant date—

(a) the person had been convicted of, or cautioned in relation to, an offence specified in Parts 2 to 5 of Schedule 2 to the 2003 Regulations, and

(b) any of conditions D to F in those Regulations was satisfied in relation to the person, and

(c) regulation 8 of those Regulations applied to the person, and

(d) the Secretary of State had not made a direction under section 142(1)(a) of the 2002 Act in relation to that person.

(4) The criterion set out in this paragraph is that the person has, on or after the relevant date, been made subject to a risk of sexual harm order within the meaning of section 123 of the Sexual Offences Act 2003(**7**) or section 2 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005(**8**).

(5) The criterion set out in this paragraph is that the person has, on or after the relevant date, been convicted of, or cautioned in relation to, an offence specified in paragraph 2 of the Schedule.

(6) The criterion set out in this paragraph is that the person has, on or after the relevant date, been made subject to a disqualification order and the person does not meet any other criteria prescribed in regulation 3 or in this regulation.

**Prescribed criteria – automatic inclusion in the adults' barred list**

**5.** The criterion prescribed for the purposes of paragraph 7(1) of Schedule 3 to the Act is that the person has, on or after the relevant date, been convicted of, or cautioned in relation to, an offence specified in paragraph 3 of the Schedule.

(**7**) 2003 c.42 ("the 2003 Act").
(**8**) 2005 asp 9.

**Prescribed criteria – automatic inclusion in the adults' barred list with the right to make representations**

**6.** The criteria prescribed for the purposes of paragraph 8(1) of Schedule 3 to the Act are—

(a) that the person has, on or after the relevant date, been made subject to a risk of sexual harm order within the meaning of section 123 of the Sexual Offences Act 2003 or section 2 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005;

(b) that the person has, on or after the relevant date, been convicted of, or cautioned in relation to, an offence specified in paragraph 4 of the Schedule.

# PART 3

## Miscellaneous Provisions

**Amendments to the Education (Provision of Information by Independent Schools) (England) Regulations 2003**

**7.**—(1) In regulation 8 of the Education (Provision of Information by Independent Schools) (England) Regulations 2003(**9**)—

(a) omit paragraphs (1)(a)(ii) and (2);

(b) in paragraph (1) for "Secretary of State" substitute "Independent Barring Board established under section 1 of the Safeguarding Vulnerable Groups Act 2006(**10**)".

(2) After regulation 10 of those Regulations, insert—

"**Provision of information**

**10A.** The Independent Barring Board established under section 1 of the Safeguarding Vulnerable Groups Act 2006 must, at the request of the Secretary of State, inform the Secretary of State whether the Independent Barring Board has received information from the proprietor of a specified school in relation to a specified person pursuant to regulation 8.

(3) In Part 5 of the Schedule to those Regulations, in paragraph 20 for "of the Secretary of State's functions under section 142 of the 2002 Act" substitute "by the Independent Barring Board established under section 1 of the Safeguarding Vulnerable Groups Act 2006 of its functions under Schedule 3 to that Act".

**Amendments to the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008**

**8.**—(1) The Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008(**11**) is amended as follows.

(2) After article 2(1)(a), insert—

"(aa) who does not meet any of the criteria prescribed for the purposes of paragraph 1 or 2 of Schedule 3 to the Act under the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2008;".

(**9**) S.I. 2003/1934. Regulation 8 was amended by S.I. 2004/3373.
(**10**) 2006 c.47.
(**11**) S.I. 2008/473.