STATUTORY RULES OF NORTHERN IRELAND

2009 No. 346 (C. 24)

SAFEGUARDING VULNERABLE GROUPS

Safeguarding Vulnerable Groups (2007 Order) (Commencement No. 5, Transitional Provisions and Savings) Order (Northern Ireland) 2009

Made - - - - 12th October 2009

The Secretary of State makes the following Order in exercise of the powers conferred by Articles 1(3) and 61(1) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007(**1**).

PART 1

Introduction

Citation

1. This Order may be cited as the Safeguarding Vulnerable Groups (2007 Order) (Commencement No. 5, Transitional Provisions and Savings) Order (Northern Ireland) 2009.

Interpretation

2.—(1) In this Order

"the Order" means the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007;

"the 1986 Order" means the Education and Libraries (Northern Ireland) Order 1986(**2**);

"the 2007 Regulations" means the Education (Prohibition from Teaching or Working with Children) Regulations (Northern Ireland) 2007(**3**);

"the 2008 Order" means the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008(**4**);

"disqualification order" means an order under Article 23 or 24 of POCVA;

(**1**) S.I. 2007/1351 (N.I. 11).
(**2**) S.I. 1986/594 (N.I. 3).
(**3**) S.R. 2007 No. 288.
(**4**) S.R. 2008 No. 200.

"POCVA" means the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003(**5**);

"the relevant provisions of POCVA" means the provisions of that Order specified in the Schedule to this Order.

PART 2

Commencement

Provisions coming into operation on 12th October 2009

3.—(1) 12th October 2009 is the day appointed for the coming into operation of the provisions of the Order specified in column 1 of the Schedule.

(2) Where a particular purpose is specified in column 2 of the Schedule in relation to any such provision, the provision shall come into operation on that date for that purpose only.

Repeal of provisions of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003

4.—(1) The repeal of the remaining provisions of POCVA by Article 60(2) and Schedule 8 to the Order shall come into operation on 12th October 2009 for the purposes specified in the following provisions of this Article.

(2) The provisions of POCVA referred to in paragraph (1) shall cease to have effect for the purposes of enabling a disqualification order to be made in relation to a person who is barred from regulated activity by virtue of Article 7(2) of the Order.

(3) Article 30 of POCVA shall cease to have effect for the purpose of making it an offence for a person knowingly to apply for, to offer to do, to accept or to do any work in a regulated position (within the meaning of Article 31 of that Order) where—

(a) the person falls within paragraph (4); and

(b) is disqualified from working with children only by reason of a disqualification order falling within paragraph (5).

(4) A person ("P") falls within this paragraph if P—

(a) is or has at any time been barred from regulated activity by virtue of Article 7(2) of the Order; or

(b) has been included in the children's barred list pursuant to Article 3(2)(a) of the 2008 Order, but is removed from that list by the IBB(**6**) in accordance with Article 3(4) of that Order.

(5) A disqualification order falls within this paragraph if—

(a) P was subject to a disqualification order immediately before IBB included P in the children's barred list; and

(b) at the time IBB was aware that P was subject to the disqualification order.

(6) In paragraph (1) "the remaining provisions of POCVA" means the provisions of that Order other that those specified in the Schedule to this Order.

(**5**) S.I. 2003/417 (N.I. 4). The 2003 Order is to be repealed by Schedule 8 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.

(**6**) See section 1 of the Safeguarding Vulnerable Groups Act 2006 (2006 c. 47) for the meaning of this term. It is a reference to the Independent Barring Board established under that section.

PART 3

Transitional provisions and savings

Persons included in the list of persons unsuitable to work with children: Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003

5.—(1) Notwithstanding the commencement under Article 3 of the repeal of the relevant provisions of POCVA, those provisions shall continue to have effect in relation to a person falling within paragraph (4) ("P") for any of the purposes specified in paragraph (2) until one of the matters described in paragraph (5) applies to P.

(2) The relevant provisions of POCVA shall continue to have effect for the purposes of—

(a) keeping the list under Article 3 of that Order;

(b) providing for the effect of P's inclusion in that list in accordance with Article 16 of that Order;

(c) determining whether P is to be removed from that list and providing for P's removal.

(3) For the purposes of paragraph (2)(c), the reference to determining whether P is to be removed from the list includes consideration of whether P should be removed on an appeal under Article 11 of that Order or on an application under Article 12 of that Order.

(4) P is a person—

(a) who immediately before 12th October 2009 is included in the list kept under Article 3 of POCVA, and

(b) in relation to whom none of the matters described in paragraph (5)(b) to (e) has occurred before that date.

(5) The matters referred to in paragraph (1) are—

(a) P is removed from the list kept under Article 3 of POCVA in accordance with a provision of that Order;

(b) P is included in the children's barred list pursuant to Article 3(2)(a) of the 2008 Order and either—

(i) IBB is not required under paragraph (2)(b) of Article 3 of that Order to give P the opportunity to make representations as to why P should be removed from that list, or

(ii) where IBB is required under that paragraph to give P the opportunity to make such representations, IBB decides under that Article not to remove P from that list;

(c) P is included in the children's barred list other than in accordance with Article 3(2)(a) of the 2008 Order;

(d) in accordance with Article 3(4) of the 2008 Order, IBB removes P from the children's barred list;

(e) where P is referred to IBB in accordance with Article 4 of the 2008 Order, IBB makes a decision not to include P in the children's barred list.

(6) Article 7 of the Order does not apply to P until the relevant provisions of POCVA cease to have effect in relation to P in accordance with this Article.

Persons included in the list of persons unsuitable to work with vulnerable adults: Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003

6.—(1) Notwithstanding the commencement under Article 3 of the repeal of the relevant provisions of POCVA, those provisions shall continue to have effect in relation to a person falling

within paragraph (4) ("P") for any of the purposes specified in paragraph (2) until one of the matters described in paragraph (5) applies to P.

(2) The relevant provisions of POCVA shall continue to have effect for the purposes of—

(a) keeping the list under Article 35 of that Order;

(b) providing for the effect of P's inclusion in that list in accordance with Article 46 of that Order;

(c) determining whether P is to be removed from that list and providing for P's removal.

(3) For the purposes of paragraph (2)(c), the reference to determining whether P is to be removed from the list includes consideration of whether P should be removed on an appeal under Article 42 of that Order or on an application under Article 43.

(4) P is a person—

(a) who immediately before 12th October 2009 is included in the list kept under Article 35 of POCVA, and

(b) in relation to whom none of the matters described in paragraph (5)(b) to (e) has occurred before that date.

(5) The matters referred to in paragraph (1) are—

(a) P is removed from the list kept under Article 35 of POCVA in accordance with a provision of that Order;

(b) P is included in the adults' barred list pursuant to Article 5(2)(a) of the 2008 Order and either—

(i) IBB is not required under paragraph (2)(b) of Article 5 of that Order to give P the opportunity to make representations as to why P should be removed from that list, or

(ii) where IBB is required under that paragraph to give P the opportunity to make such representations, IBB decides under that Article not to remove P from that list;

(c) IBB includes P in the adults' barred list other than in accordance with Article 5(2)(a) of the 2008 Order;

(d) in accordance with Article 5(4) of the 2008 Order, IBB removes P from the adults' barred list;

(e) where P is referred to IBB in accordance with Article 6 of the 2008 Order, IBB makes a decision not to include P in the adults' barred list.

(6) Article 7 of the Order does not apply to P until the relevant provisions of POCVA cease to have effect in relation to P in accordance with this Article.

Persons prohibited from teaching or working with children: The Education (Prohibition from Teaching or Working with Children) Regulations (Northern Ireland) 2007

7.—(1) Notwithstanding the commencement under Article 3 of—

(a) paragraph 2 of Schedule 7 to the Order; and

(b) the repeal of the relevant provisions of POCVA,

those provisions shall continue to have effect in relation to a person falling within paragraph (3) ("P") for any of the purposes specified in paragraph (2) until one of the matters described in paragraph (4) applies to P.

(2) The provisions mentioned in paragraph (1) continue to have effect for the purposes of—

(a) keeping a list under regulation 8 of the 2007 Regulations;

(b) providing for the effect of P's inclusion in that list in accordance with Article 16 of POCVA;

(c) determining whether a prohibition in relation to P should be revoked under regulation 9 (revocation by the Department of Education) or regulation 11 (revocation on appeal to the Care Tribunal(**7**) under regulation 10) of the 2007 Regulations and revoking such a prohibition;

(d) giving effect to the 2007 Regulations in so far as those regulations are relevant for the purposes specified in sub-paragraphs (a) to (c).

(3) P is a person—

(a) who immediately before the 12th October 2009—

(i) is included in the list kept under Article 3 of POCVA; or

(ii) is not included in that list but who is included in the list kept under regulation 8 of the 2007 Regulations on the grounds referred to in Article 70(2)(e)(iii) or Article 88A(2)(b)(iii) of the 1986 Order; and

(b) in relation to whom none of the matters described in paragraph (4)(b) to (e) has occurred before that date.

(4) The matters referred to in paragraph (1) are—

(a) a prohibition in relation to P is revoked under regulation 9 or 11 of 2007 Regulations;

(b) P is included in the children's barred list pursuant to Article 3(2)(a) of the 2008 Order and either—

(i) IBB is not required under Article 3(2)(b) of that Order to give P the opportunity to make representations as to why P should be removed from that list, or

(ii) where IBB is required under that paragraph to give P the opportunity to make such representations, IBB decides under that Article not to remove P from that list;

(c) P is included in the children's barred list other than in accordance with Article 3(2)(a) of the 2008 Order;

(d) in accordance with Article 3(4) of the 2008 Order, IBB removes P from the children's barred list;

(e) where P is referred to the IBB in accordance with Article 4 of the 2008 Order, IBB makes a decision not to include P in the children's barred list.

(5) Article 7 of the Order does not apply to a person falling within paragraph (3)(a)(ii) until the provisions referred to in paragraph (1) cease to have effect in relation to that person in accordance with this Article.

Northern Ireland Office
12th October 2009

Paul Goggins
Minister of State

(**7**) "Care Tribunal" means the Care Tribunal established under Article 44 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 [S.I. 2003/431 (N.I. 9)].