STATUTORY RULES OF NORTHERN IRELAND

2009 No. 304 (C. 20)

SAFEGUARDING VULNERABLE GROUPS

Safeguarding Vulnerable Groups (Regulated Activity, Transitional Provisions and Commencement No. 4) Order (Northern Ireland) 2009

Made - - - -	*1st September 2009*
To be laid before Parliament	
Coming into operation	*12th October 2009*

The Secretary of State makes the following Order in exercise of the powers conferred by Article 1(3), 9(3) and 61(1), (2)(a) and (3) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007(**1**).

PART 1

Introduction

Citation and commencement

1. This Order may be cited as the Safeguarding Vulnerable Groups (Regulated Activity, Transitional Provisions and Commencement No. 4) Order (Northern Ireland) 2009 and comes into operation on 12th October 2009.

Interpretation

2.—(1) In this Order—

"the 1999 Act" means the Protection of Children Act 1999(**2**);

"the 2000 Act" means the Care Standards Act 2000(**3**);

"the 2002 Act" means the Education Act 2002(**4**);

(**1**) S.I. 2007/1351 (N.I. 11).
(**2**) 1999 c. 14.
(**3**) 2000 c. 14.
(**4**) 2002 c. 32.

"the 2003 Act" means the Protection of Children (Scotland) Act 2003(**5**);

"the 2003 Order" means the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003(**6**);

"the 2006 Act" means the Safeguarding Vulnerable Groups Act 2006(**7**);

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

"the 2007 Regulations" means the Education (Prohibition from Teaching or Working with Children) Regulations (Northern Ireland) 2007(**8**);

"relevant person" means a person who immediately before the relevant day—

(a) is engaging in regulated activity with the permission of a regulated activity provider, and

(b) is not included in the list kept under Article 3 or 35 of the 2003 Order or the list kept under regulation 8 of the 2007 Regulations or barred from regulated activity;

"relevant day" means the first day on which a person may make a monitoring application;

"the first transitional period" means the period starting on and including the day on which this Order comes into operation and ending immediately before the relevant day;

"the second transitional period" means the period starting on and including the relevant day and ending on and including the day on which—

(c) Schedule 7 comes into operation in relation to the Education and Libraries (Northern Ireland) Order 1986(**9**);

(d) Schedule 8 to the 2007 Order comes into operation in relation to the 2003 Order for all purposes;

(e) Schedule 10 to the 2006 Act comes into force in relation to the 1999 Act, the 2000 Act and the 2002 Act for all purposes; and

(f) Schedule 4 to the Protection of Vulnerable Groups (Scotland) Act 2007(**10**) comes into force in relation to the 2003 Act.

"the third transitional period" means the period starting on and including the day on which this Order comes into operation and ending on and including the day on which Article 28 of the 2007 Order comes into operation in relation to relevant persons.

Provisions coming into operation on 12th October 2009

3. 12th October 2009 is the day appointed for the coming into operation of the following provisions of the 2007 Order—

(a) paragraph 3 of Schedule 7;

(b) Schedule 8 in so far as it relates to the repeal of sections 113C, D and F of the Police Act 1997(**11**);

(c) Article 60 in so far as it relates to the provisions specified in paragraphs (a) and (b).

(**5**) 2003 asp 5.
(**6**) 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.
(**7**) 2006 c. 47.
(**8**) S.R. 2007 No. 288.
(**9**) S.I. 1986/594 (N.I. 3).
(**10**) 2007 asp 14.
(**11**) 1997 c. 50.

Revocations

4. The Safeguarding Vulnerable Groups (Transitory Provisions) Order (Northern Ireland) 2009(**12**) is revoked.

PART 2

Provisions applying during the first transitional period

Transitional modifications applying during the first transitional period

5. Articles 6 to 10 apply during the first transitional period.

Modification to section 113BA of the Police Act 1997

6.—(1) Section 113BA(**13**) of the Police Act 1997 has effect subject to the following modification.

(2) For subsection (2) substitute—

"(2) Suitability information relating to children is whether the applicant is—

(a) barred from regulated activity relating to children;

(b) provisionally included in the list kept under Article 3 of the 2003 Order;

(c) included in the list kept under Article 3 of the 2003 Order otherwise than provisionally and disqualified from working with children for the purposes of Article 30 of that Order;

(d) included in the list kept under regulation 8 of the 2007 Regulations;

(e) provisionally included in the list kept under section 1 of the 1999 Act;

(f) included in the list kept under section 1 of the 1999 Act otherwise than provisionally and disqualified from working with children for the purposes of section 35 of the 2000 Act;

(g) subject to a direction made under section 142 of the 2002 Act;

(h) provisionally included in the list kept under section 1(1) of the 2003 Act;

(i) included in the list kept under section 1(1) of the 2003 Act and disqualified from working with children for the purposes of section 17 of that Act.

(2A) If the applicant is provisionally included in the list kept under—

(a) Article 3 of the 2003 Order, the suitability information includes the fact that the applicant must not be employed or, as the case may be, must cease to be employed in a childcare position with a childcare organisation in accordance with Article 16 of that Order; or

(b) section 1 of the 1999 Act, the suitability information includes the fact that the applicant must not be employed or, as the case may be, must cease to be employed in a childcare position with a childcare organisation in accordance with section 7 of that Act.

(**12**) S.R. 2009 No. 38.

(**13**) Section 113BA is inserted by paragraph 14(4) of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006. An amendment to section 126 of the Police Act 1997 by paragraph 3 of Schedule 7 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 makes section 113BA applicable to Northern Ireland.

(2B) If the applicant is subject to a direction made under section 142 of the 2002 Act, the suitability information includes—

(a) details of any prohibition or restriction on the applicant's employment;

(b) the grounds on which the direction was made, and, where the grounds are misconduct, details of the misconduct.

(2C) In subsection (2A)(a), "childcare position" and "childcare organisation" have the same meaning as in Article 20 of the 2003 Order.

(2D) In subsection (2A)(b), "childcare position" and "childcare organisation" have the same meaning as in section 12 of the 1999 Act.".

Modification to section 113BB of the Police Act 1997

7.—(1) Section 113BB(**14**) of the Police Act 1997 has effect subject to the following modification.

(2) For subsection (2) substitute—

"(2) Suitability information relating to vulnerable adults is whether the applicant is—

(a) barred from regulated activity relating to vulnerable adults;

(b) provisionally included in the list kept under Article 35 of the 2003 Order;

(c) included in the list kept under Article 35 of the 2003 Order otherwise than provisionally and prohibited from working in a care position.

(d) provisionally included in the list kept under section 81 of the 2000 Act;

(e) included in the list kept under section 81 of the 2000 Act otherwise than provisionally and prohibited from working in a care position.

(2A) If the applicant is provisionally included in the list kept under—

(a) Article 35 of the 2003 Order, the suitability information includes the fact that the applicant must not be employed or, as the case may be, must cease to be employed in a care position in accordance with Article 46 of that Order; or

(b) section 81 of the 1999 Act, the suitability information includes the fact that the applicant must not be employed or, as the case may be, must cease to be employed in a care position in accordance with section 89 of that Act.

(2B) In subsections (2)(c) and (2A)(a), "care position" has the same meaning as in Article 48 of the 2003 Order.

(2C) In subsections (2)(e) and (2A)(b), "care position" has the same meaning as in Part 7 of the 2000 Act.".

Modification to section 119 of the Police Act 1997

8.—(1) Section 119(**15**) of the Police Act 1997 has effect subject to the following modification.

(2) In subsection (1A), for "any person who keeps a list mentioned in section 113C(3) or 113D(3) above" substitute "any person who keeps a list under Article 3 of the 2003 Order, regulation 8 of the 2007 Regulations, section 1 of the 1999 Act, section 1(1) of the 2003 Act, Article 35 of the

(**14**) Section 113BB is inserted by paragraph 14(4) of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006. An amendment to section 126 of the Police Act 1997 by paragraph 3 of Schedule 7 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 makes section 113BB applicable to Northern Ireland.

(**15**) Section 119 was amended by sections 325 and 423 of, and paragraph 112, Part 7, of Schedule 34 to, the Greater London Authority Act 1999 (c. 29), section 134(2) of the Criminal Justice and Police Act 2001 (c. 16) and section 165(1) of, and paragraphs 1 and 4 of Schedule 14 to, the Serious Organised Crime and Police Act 2005 (c. 15). It is to be amended by paragraph 14(1) and (7) of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006.

2003 Order or section 81 of the 2000 Act; or maintains a list under Article 6 of the 2007 Order or section 2 of the 2006 Act.".

Modification to section 120A of the Police Act 1997

9.—(1) Section 120A(**16**) of the Police Act 1997 has effect subject to the following modification.

(2) In subsection (3)(b), for "list mentioned in section 113C(3) or 113D(3)" substitute "list kept under Article 3 of the 2003 Order, regulation 8 of the 2007 Regulations, section 1 of the 1999 Act, section 1(1) of the 2003 Act, Article 35 of the 2003 Order or section 81 of the 2000 Act; or maintained under Article 6 of the 2007 Order or section 2 of the 2006 Act.".

Modifications to Schedule 1 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007

10.—(1) Schedule 1 to the 2007 Order has effect subject to the following modifications.

(2) In paragraph 1, for sub-paragraphs (2) and (3) substitute—

"(2) If IBB is satisfied that this paragraph applies to the person, it must include the person in the children's barred list.".

(3) In paragraph 2, for sub-paragraphs (2) and (3) substitute—

"(2) If IBB is satisfied that this paragraph applies to the person, it must—

(a) include the person in the children's barred list;

(b) give the person an opportunity to make representations as to why the person should be removed from the children's barred list.".

(4) In paragraph 7, for sub-paragraphs (2) and (3) substitute—

"(2) If IBB is satisfied that this paragraph applies to the person, it must include the person in the adults' barred list.".

(5) In paragraph 8, for sub-paragraphs (2) and (3) substitute—

"(2) If IBB is satisfied that this paragraph applies to the person, it must—

(a) include the person in the adults' barred list;

(b) give the person an opportunity to make representations as to why the person should be removed from the adults' barred list.".

PART 3

Provisions applying during the second transitional period

Transitional modifications applying during the second transitional period

11. Articles 12 and 13 apply during the second transitional period.

Modification to section 113BA of the Police Act 1997

12.—(1) Section 113BA of the Police Act 1997 has effect subject to the following modification.

(2) For subsection (2) substitute—

(**16**) Section 120A was inserted by section 134(1) of the Criminal Justice and Police Act 2001 and was amended by paragraphs 1 and 8 of Schedule 35 to the Criminal Justice Act 2003 (c. 44), section 165 of, and paragraphs 1 and 8 of Schedule 14 to, the Serious Organised Crime and Police Act 2005 and by S.I. 2009/203.