STATUTORY RULES OF NORTHERN IRELAND

2009 No. 39

SAFEGUARDING VULNERABLE GROUPS

The Safeguarding Vulnerable Groups (Prescribed Criteria and Miscellaneous Provisions) Regulations (Northern Ireland) 2009

Made - - - -	*6th February 2009*
To be laid before Parliament	
Coming into operation	*13th March 2009*

The Secretary of State makes the following Regulations in exercise of the powers conferred by Article 61(1) and (3) of, and paragraphs 1(1), 2(1), 7(1), 8(1) and 24(1) and (2)(**1**) of Schedule 1 to, the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007(**2**).

PART 1

Introduction

Citation and Commencement

1. These Regulations may be cited as the Safeguarding Vulnerable Groups (Prescribed Criteria and Miscellaneous Provisions) Regulations (Northern Ireland) 2009 and shall come into operation on 13th March 2009.

Interpretation

2.—(1) In these Regulations—

"the 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(**3**);

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

(**1**) Each of paragraph 1(1), 2(1), 7(1) and 8(1) of Schedule 1 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 ("the 2007 Order") refers to criteria prescribed for the purposes of those paragraphs. Article 2(2) of the 2007 Order defines "prescribed" as meaning prescribed by regulations made by the Secretary of State. Paragraph 24 of Schedule 1 to the 2007 Order makes provision as to the criteria that may be prescribed for the purposes of paragraphs 1, 2, 7 and 8 of that Schedule.

(**2**) S.I. 2007/1351 (N.I. 11).

(**3**) S.R. 2007 No. 288.

(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 Article 23 or 24 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003(**4**);

"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 operation;

"relevant period" means the period starting on the day on which these Regulations come into operation and ending on the day on which Article 7 of the Order comes into operation for all purposes.

(2) In regulation 5 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.

(3) In regulation 6 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.

(4) In regulation 8 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.

(5) In regulations 5 to 8—

(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.

(6) In paragraph (5)(b) a relevant foreign offence is an offence satisfying the criteria specified in paragraph (7).

(7) 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 Northern Ireland, amount to an equivalent offence which is specified in the Schedule; and

(**4**) S.I. 2003/417 (N.I. 4).

(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.

(8) For the purposes of paragraph (7) 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

3.—(1) Where the condition in paragraph (2) is met, the offences referred to in regulations 5 to 8 do not include any offence which a person has committed against a child before the commencement (for all purposes) of Article 6 of the Order.

(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 Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003.

PART 2

Prescribed criteria

4.—(1) During the relevant period, the criteria prescribed in this Part are not satisfied in so far as they relate to—

(a) an offence specified in the Schedule to the 2007 Regulations under the law of England and Wales, Scotland or the law extending to the United Kingdom as a whole or any part or parts thereof;

(b) an offence specified in the Schedule to these Regulations under the law of England and Wales, Scotland or the law extending to the United Kingdom as a whole or any part or parts thereof; or

(c) a connected offence in relation to an offence mentioned in sub-paragraph (a) or (b),

unless that offence or connected offence was committed in Northern Ireland.

(2) During the relevant period, the criteria prescribed in this Part are not satisfied in so far as they relate to—

(a) a relevant foreign offence; or

(b) an offence which in relation to that relevant foreign offence is a connected offence,

unless the equivalent offence specified in the Schedule is an offence under the law of Northern Ireland.

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

5.—(1) The criteria prescribed for the purposes of paragraph 1(1) of Schedule 1 to the Order 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 2007 Regulations was satisfied in relation to the person, and

(c) regulation 6 of those Regulations applied to the person, and

(d) the Department of Education had not included that person in the list kept under regulation 8 of those Regulations.

(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 the Schedule to the 2007 Regulations, and

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

(c) regulation 6 of those Regulations applied to the person, and

(d) the Department of Education had not included that person in the list kept under regulation 8 of those Regulations.

(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

6.—(1) The criteria prescribed for the purposes of paragraph 2(1) of Schedule 1 to the Order 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 of the 2007 Regulations was not satisfied in relation to the person, and

(c) regulation 6 of those Regulations applied to the person, and

(d) the Department of Education had not included that person in the list kept under regulation 8 of the 2007 Regulations.

(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 the Schedule to the 2007 Regulations, and

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

(c) regulation 6 of those Regulations applied to the person, and

(d) the Department of Education had not included that person in the list kept under regulation 8 of those Regulations.

(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(**5**) or section 2 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005(**6**).

(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 5 or in this regulation.

(**5**) 2003 c. 42 ("the 2003 Act").
(**6**) 2005 asp 9.

Prescribed criteria – automatic inclusion in the adults' barred list

7. The criterion prescribed for the purposes of paragraph 7(1) of Schedule 1 to the Order 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.

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

8. The criteria prescribed for the purposes of paragraph 8(1) of Schedule 1 to the Order 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; or

(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 Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008

9.—(1) The Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008(**7**) is amended as follows.

(2) After Article 3(1)(a), insert—

"(aa) who does not meet any of the criteria prescribed for the purposes of paragraph 1 or 2 of Schedule 1 to the Order under the Safeguarding Vulnerable Groups (Prescribed Criteria and Miscellaneous Provisions) Regulations (Northern Ireland) 2009;".

Northern Ireland Office
6th February 2009

Paul Goggins
Minister of State

(**7**) S.R. 2008 No. 200.