STATUTORY RULES OF NORTHERN IRELAND

2009 No. 38

SAFEGUARDING VULNERABLE GROUPS

Safeguarding Vulnerable Groups (Transitory Provisions) Order (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 Order in exercise of the powers conferred by Article 56(1), 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 (Transitory Provisions) Order (Northern Ireland) 2009 and comes into operation on 13th March 2009.

Interpretation

2.—(1) In this Order—

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

"the 2003 Order" means the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003(**2**);

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

(**1**) S.I. 2007/1351 (N.I. 11).
(**2**) 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 The 2003 Order is to be repealed by Schedule 8 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.
(**3**) S.R. 2007 No. 288.

"the relevant period" means the period starting on the day on which this Order comes into operation and ending on the day on which Article 7 of the 2007 Order comes into operation for all purposes.

PART 2

Consideration of cases

Consideration of cases arising before the relevant period

3.—(1) The Department of Health, Social Services and Public Safety and the Department of Education must refer a person (X) to IBB if each of the following conditions is satisfied.

(2) The first condition is that before the start of the relevant period—

(a) X has been referred to the Department of Health, Social Services and Public Safety under Article 4, 5, 6, 9 36, 37 or 38 of the 2003 Order, or

(b) information relating to X has been provided to the Department of Education and as a result of that information that Department is considering making a decision in respect of X under regulation 4 of the 2007 Regulations.

(3) The second condition is that X is not provisionally included in the list kept under Article 3 or 35 of the 2003 Order.

(4) The third condition is that before the start of the relevant period the Department of Health, Social Services and Public Safety or the Department of Education has not sent a notice to X inviting X to make representations as to why X should not be—

(a) included in the list kept under Article 3 or 35 of the 2003 Order;

(b) included in the list kept under regulation 8 of the 2007 Regulations.

Consideration of cases arising during the relevant period

4.—(1) This Article applies during the relevant period.

(2) Paragraph (3) applies if, by virtue of a provision specified in paragraph (10), a person must or may—

(a) refer a person to the Department of Health, Social Services and Public Safety;

(b) provide information relating to a person (X) to the Department of Education and as a result of that information that Department is considering making a decision in respect of X under regulation 4 of the 2007 Regulations.

(3) The referral is to be made, or the information provided, to IBB instead of to the Department of Health, Social Services and Public Safety or the Department of Education.

(4) Accordingly, a requirement in any statutory provision that the event specified in paragraph (5) be notified to a person also applies to a referral made to IBB in accordance with paragraph (3).

(5) The event is the referral of a person to the Department of Health, Social Services and Public Safety by virtue of a provision specified in sub-paragraphs (a) or (b) of paragraph (10).

(6) Subject to paragraph (9), Article 7 and Article 39 of the 2003 Order must be ignored.

(7) Paragraph (8) applies if it appears to the Department of Health, Social Services and Public Safety that a person who held a relevant inquiry has found a person guilty of relevant misconduct.

(8) The Department of Health, Social Services and Public Safety must refer the person to IBB unless that Department is satisfied that IBB—

(a) is considering the case of the person, and

(b) is aware of the relevant misconduct.

(9) In paragraphs (7) and (8) "relevant inquiry" and "relevant misconduct" have the same meaning as in Article 7 and Article 39 of the 2003 Order.

(10) The provisions are—

(a) Articles 4, 5, 6 and 9 of the 2003 Order;

(b) Articles 36, 37 and 38 of the 2003 Order;

(c) regulation 4 of the 2007 Regulations, as modified by this Order.

Conditions for automatic prohibition under the 2007 Regulations during the relevant period

5. During the relevant period the Education (Prohibition from Teaching or Working with Children) Regulations (Northern Ireland) 2007 have effect as if in paragraph 12 of Part 1 of the Schedule, for "an offence if he has been", there were substituted "an offence if he does not satisfy any criteria prescribed for the purposes of paragraph 1 or 2 of Schedule 1 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 and he has been".

Consideration by IBB

6.—(1) For the purposes of this Order, 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 he should be removed from the children's barred list.".

(4) In paragraph 3(4), for the words ", having considered whether to make a disqualification order, decided not to" substitute "considered whether to make a disqualification order".

(5) 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.".

(6) 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 he should be removed from the adults' barred list.".

Effect of listing by IBB: children

7.—(1) This Article applies if IBB, in exercise of its functions under this Order, includes a person (X) in the children's barred list.

(2) Subject to paragraph (4) X must be treated for all purposes as if X—

(a) is included in the list kept under Article 3 of the 2003 Order;

(b) is included in the list kept under regulation 8 of the 2007 Regulations.

(3) Accordingly, a reference in any statutory provision to a person included in those lists includes a reference to a person included in the children's barred list.

(4) Paragraphs (2) and (3) do not apply for the purposes of—

(a) Article 3(3) or 11 of the 2003 Order;

(b) regulation 9 or 10 of the 2007 Regulations;

(c) Article 3 or 4 of the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008(**4**).

Effect of inclusion in the children's barred list: England and Wales

8.—(1) This Article applies if IBB, in exercise of its functions under the Safeguarding Vulnerable Groups Act 2006 (Transitory Provisions) Order 2009(**5**), includes a person (X) in the children's barred list established and maintained under section 2(1)(a) of the Safeguarding Vulnerable Groups Act 2006(**6**) ("the children's barred list for England and Wales").

(2) Subject to paragraph (4), X must be treated for all purposes as if X—

(a) is included in the list kept under Article 3 of the 2003 Order;

(b) is included in the list kept under regulation 8 of the 2007 Regulations.

(3) Accordingly, a reference in any statutory provision to a person included in those lists includes a reference to a person included in the children's barred list for England and Wales.

(4) Paragraphs (2) and (3) do not apply for the purposes of—

(a) Article 3(3) or 11 of the 2003 Order;

(b) regulation 9 or 10 of the 2007 Regulations;

(c) Article 3 or 4 of the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008.

Effect of listing by IBB: adults

9.—(1) This Article applies if IBB, in exercise of its functions under this Order, includes a person (X) in the adults' barred list.

(2) Subject to paragraph (4) X must be treated for all purposes as if X was included in the list kept under Article 35 of the 2003 Order.

(3) Accordingly, a reference in any statutory provision to a person included in that list includes a reference to a person included in the adults' barred list.

(4) Paragraphs (2) and (3) do not apply for the purposes of—

(a) Article 35(3) or 42 of the 2003 Order;

(b) Article 5 or 6 of the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008.

Effect of inclusion in the adults' barred list: England and Wales

10.—(1) This Article applies if IBB, in exercise of its functions under the Safeguarding Vulnerable Groups Act 2006 (Transitory Provisions) Order 2009, includes a person X in the adults'

(**4**) S.R. 2008 No. 200.
(**5**) S.I. 2009 No. 12.
(**6**) 2006 c. 47.

barred list established and maintained under section 2(1)(b) of the Safeguarding Vulnerable Groups Act 2006 ("the adults' barred list for England and Wales").

(2) Subject to paragraph (4), X must be treated for all purposes as if X was included in the list kept under Article 35 of the 2003 Order.

(3) Accordingly, a reference in any statutory provision to a person included in that list includes a reference to a person included in the adults' barred list for England and Wales.

(4) Paragraphs (2) and (3) do not apply for the purposes of—

(a) Article 35(3) or 42 of the 2003 Order;

(b) Article 5 or 6 of the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008.

Information provided to IBB

11.—(1) This Article applies for the purpose of IBB's functions under this Order.

(2) A person who holds records of convictions or cautions for the use of police forces generally must make those records available to IBB.

(3) In its consideration as to whether a person should be included in the children's barred list IBB shall consider the information specified in paragraph (4).

(4) The information is any information that it receives in relation to the person from whatever source or of whatever nature.

(5) In its consideration as to whether a person should be included in the adults' barred list IBB shall consider the information specified in paragraph (6).

(6) The information is any information that—

(a) it receives by virtue of Article 4(3) in its application to the provisions set out in Article 4(10)(b);

(b) it has considered in relation to its consideration as to whether the person should be included in the children's barred list.

(7) Paragraphs (3) and (5) do not, without more information, require IBB to give a person the opportunity to make representations as to why that person should not be included in a barred list.

Information provided by IBB

12.—(1) IBB may provide to either of the persons specified in paragraph (2) any information specified in paragraph (3).

(2) The persons are—

(a) the Department of Education for the purposes of its functions under the Teachers' Superannuation Regulations (Northern Ireland) 1998(**7**);

(b) the Secretary of State for the purposes of his functions under Part V of the Police Act 1997(**8**); and

(c) the Scottish Ministers for the purposes of their functions under Part V(**9**) of the Police Act 1997.

(3) The information is—

(a) information provided to IBB under paragraph 20 of Schedule 1 to the 2007 Order;

(**7**) S.R. 1998 No. 333.
(**8**) 1997 c. 50.
(**9**) By virtue of section 53 of the Scotland Act 1998 (c. 46), the functions of the Secretary of State under Part V of the Police Act 1997 (c. 50) are exercised by the Scottish Ministers.