

2009 No. 38

SAFEGUARDING VULNERABLE GROUPS

**Safeguarding Vulnerable Groups (Transitory Provisions) Order
(Northern Ireland) 2009**

Made - - - - - *6th February 2009*

Coming into operation - *13th March 2009*

To be laid before Parliament

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(a).

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(b);

“the 2007 Regulations” means the Education (Prohibition from Teaching or Working with Children) Regulations (Northern Ireland) 2007(c);

“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.

(a) S.I. 2007/1351 (N.I. 11).

(b) 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 The 2003 Order is to be repealed by Schedule 8 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.

(c) S.R. 2007 No. 288.

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(a).

(a) S.R. 2008 No. 200.

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(a), 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(b) (“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’ 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.

(a) S.I. 2009 No. 12.
(b) 2006 c. 47.

(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(a);

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

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

(3) The information is—

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

(b) the fact that a person is included in a barred list under the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008;

(c) the fact that a person is included in a barred list otherwise than as described in sub-paragraph (b);

(d) the fact that IBB is considering including a person in a barred list;

(e) the personal details of any person referred to in sub-paragraph (b), (c) or (d).

(4) In paragraph (3) "personal details" includes the name (including any former name or alias), address, gender and date of birth of a person together with such further details as IBB consider are necessary to identify the person in question.

(5) IBB may, at the request of a person (X) who meets the requirement specified in paragraph (6), inform that person whether a person (Y) is included in a barred list.

(6) The requirement is that X satisfies IBB that X has a legitimate interest in knowing whether Y falls within paragraph (5).

(7) If IBB—

(a) S.R. 1998 No. 333.

(b) 1997 c. 50.

(c) 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.

- (a) knows or thinks that a person appears on the register of teachers maintained under Article 35 of the Education (Northern Ireland) Order 1998(a), and
 - (b) becomes aware of relevant information relating to that person,
- it must provide that information to the General Teaching Council for Northern Ireland(b).

(8) In paragraph (7) “relevant information” is information which—

- (a) relates to the protection of children or vulnerable adults in general, or
- (b) is relevant to the exercise of any function of the General Teaching Council for Northern Ireland,

and includes information specified in paragraph (3).

Information provided by the Department of Health, Social Services and Public Safety

13.—(1) The Department of Health, Social Services and Public Safety may, at the request of a person (X) who meets the requirement specified in paragraph (2), inform that person whether a person (Y) is included in the list kept under Article 3 or 35 of the 2003 Order.

(2) The requirement is that X satisfies the Department of Health, Social Services and Public Safety that X has a legitimate interest in knowing whether Y is included in the list kept under Article 3 or 35 of the 2003 Order.

Information provided by the Department of Education

14.—(1) The Department of Education may, at the request of a person (X) who meets the requirement specified in paragraph (2), inform that person whether a person (Y) is included in the list kept under regulation 8 of the 2007 Regulations.

(2) The requirement is that X satisfies the Department of Education that X has a legitimate interest in knowing whether Y is included in the list kept under regulation 8 of the 2007 Regulations.

PART 3

Supplementary and Consequential Provision

Application of Articles 16 and 17

15.—(1) Articles 16 and 17 apply in relation to a person falling within paragraph (2).

(2) A person falls within this paragraph if—

- (a) the person has been referred to IBB in accordance with Article 3 or 4(3);
- (b) information relating to the person has been provided to IBB in accordance with Article 4(3).

Teachers’ pensions – entitlement to payment of retirement benefits

16.—(1) For the purposes of this Order the Teachers’ Superannuation Regulations (Northern Ireland) 1998(c) have effect subject to the provisions of this Article.

(2) In regulation E4 Case C is met if the requirements of paragraph (4) of that regulation are met and—

(a) S.I. 1998/1759 (N.I. 13).

(b) The General Teaching Council for Northern Ireland is established under Article 34 of the Education (Northern Ireland) Order 1998.

(c) S.R. 1998 No. 333 as amended by S.R. 2001 No. 149, S.R. 2003 No. 147, S.R. 2005 No. 181, S.R. 2005 No. 495, S.R. 2006 No. 163, S.R. 2006 No. 366 and S.R. 2007 No. 137.

- (a) the Department of Education has notified the person in writing that the requirement specified in paragraph (3) is met, or
 - (b) the requirement specified in paragraph (4) is met.
- (3) The requirement is that IBB has not included, and is not considering including, the person in a barred list.
- (4) The requirement is that IBB has included, or is considering including, the person in a barred list but the Department of Education is satisfied that there are exceptional circumstances relating to the person which make it appropriate that he should fall within Case C.
- (5) Accordingly, in Case C the entitlement takes effect—
- (a) where, immediately before the person became incapacitated he was in excluded employment, on the day after the last day of his excluded employment; and
 - (b) in any other case, as soon as the person falls within the Case or as soon as the person would have fallen within the Case had there not been a requirement that the Department of Education notify that person that the requirement specified in paragraph (3) is met.
- (6) In paragraph (5) “excluded employment” has the same meaning as in the Teachers’ Superannuation Regulations (Northern Ireland) 1998.

Modifications to the General Teaching Council for Northern Ireland (Registration of Teachers) Regulations (Northern Ireland) 2004

17.—(1) The General Teaching Council for Northern Ireland (Registration of Teachers) Regulations (Northern Ireland) 2004(a) shall have effect subject to the modifications set out in this Article.

(2) For regulation 3 (disqualification from registration), substitute—

“3. For the purposes of Article 35 of the 1998 Order, a person is not eligible for registration unless he is a qualified teacher or if he is not eligible to teach, or disqualified from being a teacher in any school, by virtue of—

- (a) section 3(3)(d) of the Teaching and Higher Education Act 1998(b);
- (b) section 11 of the Teaching Council (Scotland) Act 1965(c);
- (c) the Teachers’ (Eligibility) Regulations (Northern Ireland) 1997(d);
- (d) regulations made under Article 36 of the 1998 Order;
- (e) his inclusion in the list kept under regulation 8 of the Education (Prohibition from Teaching or Working with Children) Regulations (Northern Ireland) 2007(e); or
- (f) his inclusion in either of the barred lists maintained under Article 6 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007(f).”

Northern Ireland Office
6th February 2009

Paul Goggins
Minister of State

(a) S.R. 2004 No. 38, as amended by the General Teaching Council for Northern Ireland (Approval of Qualifications) Regulations (Northern Ireland) 2007 (S.R. 2007 No. 402).

(b) 1998 c. 30.

(c) 1965 c. 19. (Section 11 was amended by section 50 of the Standards in Scotland’s Schools etc (Scotland) Act 2000.

(d) S.R. 1997 No. 312.

(e) S.R. 2007 No. 288.

(f) S.I. 2007 No. 1351 (N.I. 11).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (“the 2007 Order”), makes provision relating to the functions of the Independent Barring Board (“IBB”) (which is established under section 1 of the Safeguarding Vulnerable Groups Act 2006) during the “relevant period”. The relevant period is defined in Article 2 as the period starting on the day after the Order comes into operation and ending on the day that Article 7 of the 2007 Order comes into operation for all purposes. The beginning of that period marks the point from which IBB starts to replace the Department of Health, Social Services and Public Safety and the Department of Education as the bodies which decide who should be barred from working with children and/or vulnerable adults.

Article 3 requires the Department of Health, Social Services and Public Safety and the Department of Education to refer to IBB certain people whose cases the Department of Health, Social Services and Public Safety would otherwise have considered under the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (“the 2003 Order”) and cases the Department of Education would otherwise have considered under the Education (Prohibition from Teaching or Working with Children) Regulations (Northern Ireland) 2007 (“the 2007 Regulations”). The people who must be referred are those in relation to whom the Department of Health, Social Services and Public Safety or the Department of Education has received referrals or information in accordance with any of the provisions specified in paragraphs (2)(a) and (b) and who are not included provisionally in either of the lists specified in paragraph (3). The duty to refer a person only applies if this information has been received before the start of the relevant period and the Department of Health, Social Services and Public Safety or the Department of Education has not, by that point, written to the person to invite representations from them as to why they should not be included in any of the specified lists. Where the Department of Health, Social Services and Public Safety or the Department of Education has written to invite representations, has provisionally included a person in either of the lists specified in paragraph (3), or has prohibited a person in accordance with regulation 8 of the 2007 Regulations, that person will be considered in accordance with the 2003 Order and/or 2007 Regulations, as appropriate.

Article 4 relates to cases arising during the relevant period. Where a person, A, would formerly have been required to refer or provide information about another person, B, to the Department of Health, Social Services and Public Safety or the Department of Education in accordance with any of the provisions specified in paragraph (10), this duty takes effect as one to refer B to IBB for consideration in accordance with the 2007 Order. Under paragraph (8) the Department of Health, Social Services and Public Safety must refer to IBB any person found guilty of “relevant misconduct” by a “relevant inquiry” (both terms having the meanings given by Article 7 and 39 of the 2003 Order). However, the duty under paragraph (8) does not apply if the Department of Health, Social Services & Public Safety is satisfied that IBB is already considering the individual and knows about the conduct in question. Paragraph (6) ensures that the Department of Health, Social Services and Public Safety may not separately consider such a person for inclusion in either of the lists specified in Article 3(3), whilst paragraphs (4) and (5) make provision consequential on the redirection of referrals under the 2003 Order effected by paragraph (3).

Article 5 disapplies the modification introduced by Article 3 in so far as this is necessary in relation to the 2007 Regulations (a) to ensure that where, before the start of the relevant period, the Department of Education had invited representations, the Department may continue to consider the case of the person in question and (b) so that it does not affect the interpretation of any reference elsewhere in legislation to the work to which regulation 6 of the 2007 Regulations applies.

Article 6 modifies the effect of Schedule 1 to the Order during the relevant period. As a result, IBB is not to include a person in the children's barred list under paragraph 3 of the Schedule if the only conduct it has to consider has already been considered by a court and that court has also considered whether to impose a disqualification order on the person in relation to the conduct in question (a disqualification order is an order under Article 23 or 24 of the 2003 Order). The other change effected by Article 6 is that a person is not to be included automatically in either of the barred lists unless IBB, rather than the Department of Education, is satisfied that criteria prescribed for the purposes of paragraphs 1, 2, 7 or 8 are met. IBB will satisfy itself of this by accessing the information made available to it under Article 9(2) and by exercising the powers provided for under paragraph 19(1) of Schedule 1 to the 2007 Order.

Articles 7 and 9 provide for the effect of inclusion in the children's and adults' barred lists under this Order. Anyone included in the children's barred list is to be treated as if they were included in the list kept under Article 3 of the 2003 Order or the list kept under regulation 8 of the 2007 Regulations. Anyone included in the adults' barred list is to be treated as if they were included in the list kept under Article 35 of the 2003 Order. As a result, any reference elsewhere in legislation to a person who is included in the list kept under the 2003 Order or the 2007 Regulations is to be read as including anyone included in the children's or adults' barred list, as appropriate. However, this does not apply for the purposes of the provisions specified in paragraph (4) of either Article (so, for example, where a person is included in the children's barred list, they do not have a right to appeal under regulation 10 of the 2007 Regulations; their right to appeal is provided for under Article 8 of the 2007 Order).

Articles 8 and 10 provide for the effect of inclusion in the children's and adults' barred lists for England and Wales (established and maintained under section 2(1) of the Safeguarding Vulnerable Groups Act 2006) under the Safeguarding Vulnerable Groups Act 2006 (Transitory Provisions) Order 2009 (S.I. 2009/12). Anyone included in the children's barred list for England and Wales is to be treated as if they were included in the list kept under Article 3 of the 2003 Order, or the list kept under regulation 8 of the 2007 Regulations. Anyone included in the adults' barred list for England and Wales is to be treated as if they were included in the list kept under Article 35 of the 2003 Order. As a result, any reference elsewhere in legislation to a person who is included in the list kept under the 2003 Order or the 2007 Regulations is to be read as including anyone included in the children's or adults' barred list for England and Wales, as appropriate. However, this does not apply for the purposes of the provisions specified in paragraph (4) of either Article (so for example, where a person is included in the children's barred list for England and Wales, they do not have a right of appeal under regulation 10 of the 2007 Regulations).

Article 11 makes provision in relation to the information to be made available to IBB and that which is to be considered by IBB for the purpose of its functions under this Order. The effect of paragraphs (3) to (6) is that, when considering whether to include a person in the adults' barred list, IBB is to consider only information referred to it under Article 36, 37 or 38 of the 2003 Order or information which it has considered in relation to the question of whether the person should be included in the children's barred list. When considering whether to include a person in the children's barred list, IBB is to consider any information that it receives in relation to the inclusion of that person in that list.

Article 12 makes provision for IBB to provide information to other persons during the relevant period. This will enable IBB to provide AccessNI and its equivalents in Scotland and England with information about people who are included in the barred lists. IBB will be able to provide similar information to the Department of Education, for example, in connection with its functions under the Teachers' Superannuation Regulations (Northern Ireland) 1998 (S.R.1998/333). It will also be able to confirm to the General Teaching Council for Northern Ireland and employers or prospective employers of teachers and other school staff whether a person is subject to any of the disqualifications set out in paragraph (6).

Articles 13 and 14 similarly make provision for the Department of Health, Social Services and Public Safety and the Department of Education to advise employers or prospective employers whether a person was included in the lists kept under Article 3 or 35 of the 2003 Order or regulation 8 of the 2007 Regulations.

Articles 16 and 17 make supplementary and consequential provision. Article 16 modifies the effect of the Teachers' Superannuation Regulations (Northern Ireland) 1998 in relation to applications from people referred to IBB under this Order for ill health pensions, whilst Article 17 amends the General Teaching Council for Northern Ireland (Registration of Teachers) Regulations (Northern Ireland) 2004 to disqualify from registration a person who is included in the list kept under regulation 8 of the 2007 Regulations or who IBB has included in either of the barred lists.

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