

EXECUTIVE NOTE

THE PROTECTION OF CHILDREN (SCOTLAND) ACT 2003 (THE MEANING OF DISQUALIFIED FROM WORKING WITH CHILDREN: CORRESPONDING DISQUALIFICATIONS IN NORTHERN IRELAND) (NO. 2) ORDER 2009 SSI 2009/316

Powers under which Instrument is made

1. Section 17(2) of the Protection of Children (Scotland) Act 2003 (“the 2003 Act”), enables the Scottish Ministers by order to make provision to give effect to corresponding prohibitions and disqualifications in other jurisdictions, within or outside the United Kingdom, and is the power under which the Protection of Children (Scotland) Act 2003 (The Meaning of Disqualified from Working with Children: Corresponding Disqualifications in Northern Ireland) Order (No. 2) 2009 (“the 2009 No. 2 Order”) is made.

Parliamentary procedure

2. This Scottish Statutory Instrument is a class 5 instrument subject to the negative resolution procedure at the Scottish Parliament.

Summary of policy proposals

Current position in Scotland

3. The 2003 Act establishes a list of individuals considered to be unsuitable to work with children in Scotland, together with a procedure for listing and appeals against listing and a list of child care positions in Scotland from which individuals disqualified from working with children are prohibited from working.
4. Section 11 provides a range of offences in relation to persons who are disqualified from working with children. Under section 11(1), it is an offence for a disqualified individual to work, or to seek to work, in child care position. Furthermore, it is an offence (under section 11(3)(a)) for an organisation to offer work in a child care position to such an individual. However, as currently in force, it is not an offence for an organisation to fail to remove a disqualified individual who is already in their workforce (as section 11(3)(b) has not been commenced). Therefore, to be sure of complying with the 2003 Act, an organisation should seek an enhanced disclosure when appointing an individual to a child care position but it is not strictly necessary for these purposes to undertake checks of workers already in post.
5. Section 17(1) defines “disqualified from working with children” as meaning those persons listed in the list of those considered unsuitable to work with children kept under section 1 of the 2003 Act, as well as persons included in other lists in England and Wales or subject to a court disqualification in England and Wales.
6. Section 17(2) provides an order-making power to recognise other prohibitions or disqualifications which the Scottish Ministers considered correspond to the disqualification as set out in section 17(1).

Recognition of the Northern Ireland children's list under POCVA

7. The Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (SI 2003/417) ("the POCVA Order") also establishes lists of individuals considered unsuitable to work with children and vulnerable adults in Northern Ireland and provides that listed persons are disqualified from working with children in Northern Ireland. The Protection of Children (Scotland) Act 2003 (The Meaning of Disqualified from Working with Children: Corresponding Disqualifications in Northern Ireland) Order 2009 (SSI 2009/39) ("the 2009 No. 1 Order") came into force on 1 April 2009 and bars individuals disqualified from working with children under the POCVA Order from working in a child care position in Scotland. The 2009 No. 1 Order closed the gap in protection which had persisted since the 2003 Act and POCVA Order came into force.

Safeguarding Vulnerable Groups legislation for England, Wales and Northern Ireland

8. The Scottish Government, UK Government and Northern Ireland Executive are working towards establishing more coherent arrangements for vetting and barring across the UK. The legislative underpinning for these arrangements is provided by the Protection of Vulnerable Groups (Scotland) Act 2007 ("the PVG Act") for Scotland, the Safeguarding Vulnerable Groups Act 2006 ("the SVG Act") for England and Wales (and, to a limited extent, Northern Ireland) and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 ("the SVG NI Order") for Northern Ireland.
9. The SVG Act establishes the Independent Barring Board ("the IBB") (aka Independent Safeguarding Authority) to which the responsibility for making decisions to bar individuals from working with children or vulnerable adults in England, Wales and Northern Ireland is being transferred from the Secretary of State in a phased transition.

Imminent changes for Northern Ireland

10. It is intended that, from 12 October, the SVG NI barred lists will take full effect.

Corresponding provision for Scotland

11. The 2009 No. 2 Order recognises the SVG NI children's barred list so that individuals disqualified under that Order are also prohibited from working in a child care position in Scotland. The 2009 No. 2 Order comes into force on the 12 October 2009. Those on the POCVA lists are also barred by virtue of the 2009 No. 1 Order which will remain in force until the Northern Irish transitional phase is complete.

Consultation

12. The PVG Act (section 92) establishes the principle that an individual found to be unsuitable to work with vulnerable groups in one part of the UK should be barred from such work in Scotland and makes explicit provision to recognise the POCVA lists. The 2009 No. 1 Order made explicit provision to recognise the POCVA

children's list for 2003 Act purposes and implicitly recognised the SVG NI children's list. The 2009 No. 2 Order makes recognition of the SVG NI children's list explicit. It has not been the subject of public consultation because it preserves the effect of the 2009 No. 1 Order and is in line with the established principle of mutual recognition of listing.

Financial effects and Regulatory Impact Assessment

13. The 2009 No. 2 Order has no financial implications for the Scottish Government as Disclosure Scotland will continue to disclose information about barring in Northern Ireland as now. There are no changes to existing arrangements in consequence of this order. As explained at paragraph 4, there is no requirement on organisations to check to see whether any of their existing workforce are now barred from working in a child care position in Scotland as a result of the 2009 No. 2 Order. Therefore, no Regulatory Impact Assessment has been prepared for this instrument.

Scottish Government
Children, Young People and Social Care Directorate