

Draft Regulations laid before Parliament under section 61(3) of the Safeguarding Vulnerable Groups Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2008 No.

**CHILDREN AND YOUNG
PERSONS, ENGLAND AND WALES
PROTECTION OF VULNERABLE
ADULTS, ENGLAND AND WALES**

The Safeguarding Vulnerable Groups Act 2006 (Prescribed
Criteria) (Transitional Provisions) Regulations 2008

Made - - - - 2008

Coming into force - - 7th April 2008

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 61(5) and 64(1) of, and paragraphs 1(1), 7(1) and 24(1) to (3)(1) of Schedule 3 to, the Safeguarding Vulnerable Groups Act 2006(2):

In accordance with section 56(3)(q) of that Act he has consulted the Welsh Ministers:

A draft of these Regulations was laid before Parliament in accordance with section 61(3) of the Safeguarding Vulnerable Groups Act 2006 and approved by resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria) (Transitional Provisions) Regulations 2008 and come into force on 7th April 2008.

(2) In these Regulations—

“the Act” means the Safeguarding Vulnerable Groups Act 2006;

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

(1) Paragraphs 1 and 7 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 refer to criteria prescribed for the purposes of those paragraphs. Paragraph 24 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 makes provision as to the criteria that may be prescribed for the purposes of paragraphs 1 and 7 of that Schedule. Section 60(1) of that Act defines “prescribed” as meaning prescribed by regulations made by the Secretary of State.

(2) 2006 c.47.

- (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 section 28, 29 or 29A of the Criminal Justice and Court Services Act 2000⁽³⁾;

“relevant circumstances” means—

- (a) in relation to an offence specified in sub-paragraph (a) or (b) of paragraph 1 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 sub-paragraph (c), (e) or (g)(i) of that paragraph, the circumstances referred to in the relevant sub-paragraph in relation to the commission of that offence.

(3) In regulation 2, 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.

(4) In regulations 2 and 3, a reference to an offence specified in the Schedule includes a reference to an offence which is a connected offence in relation to the specified offence.

(5) For the purposes of regulations 2 and 3, an offence committed over a period of time must be treated as having been committed on the last day of that period.

Prescribed criteria – children’s barred list

2.—(1) The criteria prescribed for the purposes of paragraph 1 of Schedule 3 to the Act as it has effect for the purposes of article 2(7) of the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008⁽⁴⁾ are that the person has been convicted of, or cautioned in relation to, an offence specified in paragraph 1 of the Schedule which that person committed within the period of 10 years ending on the day that the Secretary of State refers the person to IBB under article 2(1)(c) of that Order for inclusion in the children’s barred list.

(2) Paragraph 1 does not apply in relation to the commission of an offence specified in paragraph 1 of the Schedule if the court, having considered whether to make a disqualification order in relation to that commission of that offence, decided not to.

Prescribed criteria – adults’ barred list

3. The criteria prescribed for the purposes of paragraph 7 of Schedule 3 to the Act as it has effect for the purposes of article 4(7) of the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008 are that the person has been convicted of, or cautioned in relation to, an offence specified in paragraph 2 of the Schedule which that person committed within the period of 10 years ending on the day that the Secretary of State refers the person to IBB under article 4(1)(c) of that Order for inclusion in the adults’ barred list.

	<i>Name</i>
2008	Parliamentary Under Secretary of State Department for Children, Schools and Families

(3) 2000 c.43; section 29A was inserted by paragraph 2 of Schedule 30 to the Criminal Justice Act 2003 (c.44). An order of the court made under section 28, 29 or 29A disqualifies the person in respect of whom it is made from working with children.

(4) S.I. 2008/473.

SCHEDULE

Regulations 2 and 3

1. The offences specified for the purposes of regulation 2 are—
 - (a) the offence of rape contrary to the common law of Scotland, where the offence was committed against a child;
 - (b) the offence of rape contrary to the common law of Northern Ireland, where the offence was committed against a child;
 - (c) any offence contrary to a provision specified in the first column of Part 1 of the table set out in this paragraph, where it was committed in circumstances specified in the corresponding entry in the second column of that Part of that table;
 - (d) any offence contrary to a provision specified in Part 2 of that table;
 - (e) any offence contrary to—
 - (i) section 70 of the Army Act 1955(5),
 - (ii) section 70 of the Air Force Act 1955(6), or
 - (iii) section 42 of the Naval Discipline Act 1957(7),which corresponds to an offence contrary to any provision specified in the first column of Part 1 of that table and which was committed in circumstances specified in the entry in the second column of that Part of that table that corresponds to the relevant entry in the first column of that Part of that table;
 - (f) any offence contrary to—
 - (i) section 70 of the Army Act 1955,
 - (ii) section 70 of the Air Force Act 1955, or
 - (iii) section 42 of the Naval Discipline Act 1957,which corresponds to an offence contrary to any provision specified in Part 2 of that table; and
 - (g) any offence contrary to section 42 of the Armed Forces Act 2006(8) where—
 - (i) the corresponding offence under the law of England and Wales is one contrary to a provision specified in the first column of Part 1 of that table, and the offence under the Armed Forces Act 2006 was committed in circumstances specified in the entry in the second column of that Part of that table that corresponds to the relevant entry in the first column of that Part of that table, or
 - (ii) the corresponding offence under the law of England and Wales is one contrary to a provision specified in Part 2 of that table.

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- (5) 1955 c.18; so far as relevant, section 70 was amended by Schedule 1 to the Suicide Act 1961 (c.60), section 1(6) of the Genocide Act 1969 (c.12), section 5(1) of the Biological Weapons Act 1974 (c.6), section 7(1) of the Criminal Attempts Act 1981 (c.47), section 35(a) of the Chemical Weapons Act 1996 (c.6), section 12(a) of the Nuclear Explosions (Prohibition and Inspections) Act 1998 (c.7), section 74(2)(a) and (b), and (3) of, and Schedule 10 to, the International Criminal Court Act 2001 (c.17), and paragraph 9(a) and (b) of Schedule 6, and Schedule 7, to the Sexual Offences Act 2003 (c.42). Section 70 is to be repealed by Schedule 17 to the Armed Forces Act 2006 (c.52).
 - (6) 1955 c.19; so far as relevant, section 70 was amended by Schedule 1 to the Suicide Act 1961, section 1(6)(b) of the Genocide Act 1969, section 5(1) of the Biological Weapons Act 1974, section 7(1) of the Criminal Attempts Act 1981, section 35(b) of the Chemical Weapons Act 1996, section 12(b) of the Nuclear Explosions (Prohibition and Inspections) Act 1998, section 74(2)(a) and (b), and (3) of, and Schedule 10 to, the International Criminal Court Act 2001, and paragraph 10(a) and (b) of Schedule 6, and Schedule 7, to the Sexual Offences Act 2003. Section 70 is to be repealed by Schedule 17 to the Armed Forces Act 2006.
 - (7) 1957 c.53; so far as relevant, section 42 was amended by section 34(3) of the Armed Forces Act 1971 (c.33), section 7(1) of the Criminal Attempts Act 1981, paragraph 3 of Schedule 1, and Schedule 2, to the Armed Forces Act 1986 (c.21), and paragraph 5(1) and (2) of Schedule 3, and paragraph 34(1), (2), (3) and (4) of Schedule 6, and Schedule 7, to the Armed Forces Act 2001 (c.19). Section 42 is to be repealed by Schedule 17 to the Armed Forces Act 2006.
 - (8) 2006 c.52.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria) (Transitional Provisions) Regulations 2008 No. 1062*

Table

<i>Part 1</i>	
<i>Provision</i>	<i>Circumstances</i>
Sexual Offences Act 1956, section 1 (9)	The offence was committed against a child
Mental Health Act 1959, section 128 (10)	The offence was committed against a child
Mental Health (Northern Ireland) Order 1986, Article 122(1)(a) (11)	The offence was committed against a child
Mental Health (Northern Ireland) Order 1986, Article 123 (12)	The offence was committed against a child
Mental Health (Care and Treatment) (Scotland) Act 2003, section 311 (13)	The offence was committed against a child
Mental Health (Care and Treatment) (Scotland) Act 2003, section 313 (14)	The offence was committed against a child
Sexual Offences Act 2003, section 1 (15)	The offence was committed against a child
Sexual Offences Act 2003, section 2	The offence was committed against a child
Sexual Offences Act 2003, section 30	The offence was committed against a child
Sexual Offences Act 2003, section 31	The person caused or incited to engage in sexual activity was a child
Sexual Offences Act 2003, section 32	The person who was present or in a place from which the person committing the offence could be observed was a child
Sexual Offences Act 2003, section 33	The person caused to watch the sexual activity in question was a child
Sexual Offences Act 2003, section 34	The offence was committed against a child
Sexual Offences Act 2003, section 35	The person induced, threatened or deceived was a child
Sexual Offences Act 2003, section 36	The person who agreed to be present or in a place from which the person committing the offence could be observed was a child
Sexual Offences Act 2003, section 37	The person induced, threatened or deceived was a child
Sexual Offences Act 2003, section 38	The offence was committed against a child

(9) 1956 c.69; section 1 was substituted by section 142 of the Criminal Justice and Public Order Act 1994 (c.33) and repealed by paragraph 11 of Schedule 6 to the Sexual Offences Act 2003.

(10) 1959 c.72; section 128 was amended by paragraph 29 of Schedule 15 to the National Health Service Act 1977 (c.49), paragraph 15 of Schedule 4 to the Mental Health Act 1983 (c.20), and paragraph 2 of Schedule 4 to the Care Standards Act 2000 (c.14), and repealed in part by Schedule 16 to the National Health Service Act 1977.

(11) S.I. 1986/595 (N.I. 4); Article 122(1)(a) was amended by Article 2 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755) (N.I. 2).

(12) Article 123 was amended by Article 2 of the Health and Personal Social Services (Northern Ireland) Order 1994 (S.I. 1994/429) (N.I. 2).

(13) 2003 asp 13.

(14) Section 313 was amended by paragraph 70 of Schedule 28 to the Civil Partnership Act 2004 (c.33).

(15) 2003 c.42.

<i>Part 1</i>	
<i>Provision</i>	<i>Circumstances</i>
Sexual Offences Act 2003, section 39	The person caused or incited to engage in sexual activity was a child
Sexual Offences Act 2003, section 40	The person who was present or in a place from which the person committing the offence could be observed was a child
Sexual Offences Act 2003, section 41	The person caused to watch the sexual activity in question was a child

<i>Part 2</i>	
<i>Provision</i>	
Criminal Law Amendment Act 1885, section 4(16)	
Sexual Offences Act 1956, section 5(17)	
Criminal Law (Consolidation) (Scotland) Act 1995, section 5(1) or (2)(18)	
Sexual Offences Act 2003, section 5	
Sexual Offences Act 2003, section 6	
Sexual Offences Act 2003, section 7	
Sexual Offences Act 2003, section 8	

2. The offences specified for the purposes of regulation 3 are—
- (a) any offence contrary to a provision specified in the table set out in this paragraph;
 - (b) any offence contrary to—
 - (i) section 70 of the Army Act 1955,
 - (ii) section 70 of the Air Force Act 1955, or
 - (iii) section 42 of the Naval Discipline Act 1957,
 which corresponds to an offence contrary to any provision specified in that table; and
 - (c) any offence contrary to section 42 of the Armed Forces Act 2006, where the corresponding offence under the law of England and Wales is one contrary to a provision specified in that table.

Table

<i>Provision</i>
Mental Health (Northern Ireland) Order 1986, Article 122(1)(a)

(16) 1885 c.69; section 4 was repealed by Schedule 4 to the Sexual Offences Act 1956, in relation to England and Wales, and by Schedule 2 to the Sexual Offences (Scotland) Act 1976 (c.67), in relation to Scotland.

(17) Section 5 was repealed by paragraph 11 of Schedule 6 to the Sexual Offences Act 2003.

(18) 1995 c.39, section 5(2) was amended by section 14 of the Crime and Punishment (Scotland) Act 1997 (c.48). Section 5 was amended by section 15 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9).

Provision

Mental Health (Northern Ireland) Order 1986, Article 123

Mental Health (Care and Treatment) (Scotland) Act 2003, section 311

Mental Health (Care and Treatment) (Scotland) Act 2003, section 313

Sexual Offences Act 2003, section 30

Sexual Offences Act 2003, section 31

Sexual Offences Act 2003, section 32

Sexual Offences Act 2003, section 33

Sexual Offences Act 2003, section 34

Sexual Offences Act 2003, section 35

Sexual Offences Act 2003, section 36

Sexual Offences Act 2003, section 37

Sexual Offences Act 2003, section 38

Sexual Offences Act 2003, section 39

Sexual Offences Act 2003, section 40

Sexual Offences Act 2003, section 41

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the criteria which are to have effect for the purposes of articles 2(7) and 4(7) of the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008, [S.I. 2008/473](#) (“the TPO”). Anyone meeting these criteria will not be given the right to make representations as to their inclusion under the TPO in the barred lists (these are the lists maintained by the Independent Barring Board (“IBB”) under section 2 of the Safeguarding Vulnerable Groups Act 2006 (“the Act”).

The criteria will apply only in the case of people whom IBB are required to include in those lists under the TPO (see regulations 2 and 3). They will be people who, at the point at which they are referred to IBB by the Secretary of State, are included in the lists maintained under section 1 of the Protection of Children Act 1999 or section 81 of the Care Standards Act 2000, who are subject to a disqualification order under section 28, 29 or 29A of the Criminal Justice and Court Services Act 2000, or who are subject to a direction made under section 142(1) of the Education Act 2002 on the grounds of unsuitability.

The criteria are that a person has been convicted of, or cautioned in relation to, an offence set out in the Schedule to these Regulations, or a connected offence, which that person committed in any

applicable circumstances that are prescribed in the Schedule in relation to the commission of that offence (see regulation 1(3)). Where no circumstances are prescribed in relation to the commission of an offence, the criteria are met in any case where a person is convicted of, or cautioned in relation to, the offence in question. A connected offence is an offence of attempting, conspiring, or incitement to commit, or aiding, abetting, counselling, or procuring the commission of, an offence set out in the Schedule (regulation 1(2)).

The offence must have been committed within the period of 10 years ending on the day that the Secretary of State refers the individual to IBB (regulations 2 and 3). The effect of regulation 1(5) is that, where an offence has been committed over a period of time, it will be treated as having been committed on the last day of that period.