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STATUTORY INSTRUMENTS

2009 No. 1924

EDUCATION, ENGLAND

The Education (Miscellaneous Amendments relating to Safeguarding Children) (England) Regulations 2009

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| <i>Made</i> | - - - - | <i>16th July 2009</i> |
| <i>Laid before the House of Lords</i> | | <i>20th July 2009</i> |
| <i>Laid before the House of Commons</i> | - - - - | <i>4th November 2009</i> |
| <i>Coming into force</i> | - - | <i>12th October 2009</i> |

The Secretary of State for Children, Schools and Families makes the following Regulations in exercise of the powers conferred by section 342(2) and (4)(a) and section 569(4) of, and paragraph 15(1) and (2)(c) of Schedule 1 to, the Education Act 1996(1), section 1(5) and (7) and section 42(6) and (7) of the Teaching and Higher Education Act 1998(2), section 23A(9), section 72(1)(d) and section 138(7) of the School Standards and Framework Act 1998(3) and section 12(3), section 19(3), section 34(5), section 35(4) and (5), section 36(4) and (5), section 136(c), section 157(1)(d), section 168(1) and (2) and section 210 (7) of the Education Act 2002(4):

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- (1) 1996 c. 56. Section 342 was inserted by section 140(1), Schedule 30, paragraph 82 of the School Standards and Framework Act 1998 (c. 31). Section 342 has also been amended by the Education and Skills Act (c. 25), section 142(2), (3)(a) and (4), section 169(2), Schedule 2 and other provisions in that Act which are not relevant to these Regulations. Section 569 has been amended by the Education and Inspections Act 2006 (c. 40), section 184, Schedule 18, Part 2. Paragraph 15 of Schedule 1 was inserted by section 48 of the Education Act 1997 (c. 44) and amendments to paragraph 15 were made by the School Standards and Framework Act 1998 (c. 31), section 140(1) and (3), Schedule 30, paragraph 184(c). Further amendments to paragraph 15 of Schedule 1 have been made by S.I.s but none is relevant to these Regulations. See section 579 of the Education Act 1996 for the definition of “regulations”. Section 114(1) of that Act defines “prescribed” and “regulations”.
 - (2) 1998 c. 30. An amendment has been made to section 1 by the Education Act 2002 (c. 32) and to section 42 by that Act and the Higher Education Act 2004 (c. 8) but the amendments are not relevant to these Regulations.
 - (3) 1998 c. 31. Section 23A was inserted by section 33(1) of the Education and Inspections Act 2006 (c. 40). Section 72 has been amended by the Education Act 2002 (c. 32) but the amendment is not relevant. Section 138 has been amended by the Education and Inspections Act 2006 (c. 40), section 175, Schedule 17, paragraph 3(1) and (4); other amendments have been made by that Act to section 138 but none is relevant. Amendments have also been made to section 138 by the Education Act 2002 (c. 32) and the Education Act 2005 (c. 18) but the amendments are not relevant to these Regulations. See section 142(1) of the School Standards and Framework Act 1998 for the definition of “regulations”.
 - (4) 2002 c. 32. Section 157 has been amended by the section 47(1) and (2) of the Childcare Act 2006 (c. 21) and the Education and Skills Act 2008 (c. 25), section 169, Schedule 1, Part 1, paragraphs 13 and 16 and Schedule 2. Section 210 is amended by section 21(1), (3)(a) and (c)(i) and (ii) of the Learner Travel (Wales) Measure 2008 (nawm 2). Further amendments are made by that Measure and by the Childcare Act 2006 (c. 21) to section 210 but none is relevant to these Regulations. See section 212(1) of the Education Act 2002 for the definition of “regulations”.

Citation, commencement and application

1.—(1) These Regulations may be cited as the Education (Miscellaneous Amendments relating to Safeguarding Children) (England) Regulations 2009 and come into force on 12th October 2009.

(2) These Regulations apply to England only.

Amendments to the Education (Non-Maintained Special Schools) (England) Regulations 1999

2.—(1) The Education (Non-Maintained Special Schools) (England) Regulations 1999(5) are amended as follows.

(2) In regulation 2—

(a) in paragraph (1)—

(i) omit the definition of “children’s suitability statement”; and

(ii) for the definition of “enhanced criminal record certificate” substitute—

““enhanced criminal record certificate” means an enhanced criminal record certificate within the meaning of section 113B of the Police Act 1997(6) which includes suitability information relating to children within the meaning of section 113BA(2)(7) of that Act;”;

(b) in sub-paragraph (a) of paragraph (1A), omit “accompanied by a children’s suitability statement”; and

(c) in sub-paragraph (c) of paragraph (1C), after “is not” insert “barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006(8) or”.

(3) In sub-paragraph (b) of paragraph 3C(2) of the Schedule, after “whether he is” insert “barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006 or is”.

Amendments to the General Teaching Council for England (Constitution) Regulations 1999

3. The General Teaching Council for England (Constitution) Regulations 1999(9) are amended as follows—

(a) in paragraph (2)(a) of regulation 5, after “he is”, insert “barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006 or is”; and

(b) in paragraph (5)(a) of regulation 10, after “he is”, insert “barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006 or is”.

(5) 1999/2257 as amended by S.I. 2007/1088.

(6) 1997 c. 50. Section 113B was inserted by the Serious Organised Crime and Police Act 2005 (c. 15). Sub-section (2) of section 113B is amended by the Safeguarding Vulnerable Groups Act 2006.

(7) Section 113BA was inserted by the Safeguarding Vulnerable Groups Act 2006 (c. 47), section 63(1), Schedule 9, Part 2, paragraph 14(1) and (4) and amended by section 170(2) of the Education and Inspections Act 2006 (c. 40) and the Education and Skills Act 2008, section 169, Schedule 1, Part 1, paragraph 12(a) and (b).

(8) 2006 c. 47. S.I. 2009/1797 specifies that, for the purposes of section 3(2)(b), the list maintained under Article 6(1)(a) of the Safeguarding Vulnerable Groups Act Order 2007 (S.I. 2007/1351 (N.I. 11)) (i.e. the children’s barred list for Northern Ireland) is a list that corresponds to the children’s barred list established and maintained under section 2(1)(a) of the Safeguarding Vulnerable Groups Act 2006.

(9) S.I. 1999/1726 as amended by S.I. 2004/1935; there are other amending instruments but none is relevant. The regulations relate to the General Teaching Council for England, The functions of the Secretary of State under section 1, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999/672. The functions of the Assembly under that Order now fall to be exercised by the Welsh Ministers under the Government of Wales Act 2006, Schedule 11, paragraph 30,

Amendment to the School Companies Regulations 2002

4. After paragraph 8 of the Schedule to the School Companies Regulations 2002(10), insert—
- “8A. a person who is barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006;”.

Amendment to the School Companies (Private Finance Initiative Companies) Regulations 2002

5. After paragraph 8 of Schedule 1 to the School Companies (Private Finance Initiative Companies) Regulations 2002(11), insert—
- “8A. a person who is barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006;”.

Amendments to the Education (Independent School Standards) (England) Regulations 2003

6.—(1) The Education (Independent School Standards) (England) Regulations 2003(12) are amended as follows.

- (2) In regulation 4—
- (a) in paragraph (1)—
- (i) omit the definition of “children’s suitability statement”; and
- (ii) for the definition of “enhanced criminal record certificate” substitute—
- ““enhanced criminal record certificate” means an enhanced criminal record certificate within the meaning of section 113B of the Police Act 1997 which includes suitability information relating to children within the meaning of section 113BA(2) of that Act;”;
- (b) in sub-paragraph (a) of paragraph (2), omit “and the application for the certificate is accompanied by a children’s suitability statement”.
- (3) In the Schedule—
- (a) in paragraph (d) of paragraph 4(2), after “no such person” insert “is barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006 or”;
- (b) in sub-paragraph (6) of paragraph 4B, for the words from “no such person” to the end of the sub-paragraph insert—
- “no such person—
- (a) is barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006 or”, or
- (b) carries out work , or intends to carry out work, at the school in contravention of any direction made under section 142 of the Education Act 2002 or any disqualification, prohibition or restriction which takes effect as if contained in such a direction.”; and
- (c) in paragraph (b) of paragraph 4C(2) after “whether he is” insert “barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006 or is”.

(10) 2002/2978, to which there are amendments not relevant to these Regulations.

(11) 2002/3177, to which there are amendments not relevant to these Regulations.

(12) 2003/1910 as amended by S.I. 2007/1087; there are other amending instruments but none is relevant to these Regulations.

Amendment to the Education (Provision of Information by Independent Schools) (England) Regulations 2003

7. For paragraph (2) of regulation 4 of the Education (Provision of Information by Independent Schools) (England) Regulations 2003(13), substitute—

“(2) Any reference in these Regulations to a person employed at a school is a reference to a person—

- (a) providing education—
 - (i) at a school;
 - (ii) at a further education institution;
 - (iii) under a contract of employment or for services where the other party to the contract is a local education authority or a person exercising a function relating to the provision of education on behalf of a local education authority;
- (b) taking part in the management of an independent school; or
- (c) carrying on work which—
 - (i) brings that person regularly into contact with children, and
 - (ii) is carried out at the request of or with the consent of a relevant employer (whether or not under a contract).
- (3) For the purposes of paragraph (2), “relevant employer” means—
 - (a) a local education authority;
 - (b) a person exercising a function relating to the provision of education on behalf of a local education authority;
 - (c) the proprietor of a school; or
 - (d) the governing body of a further education institution.”

Amendments to the School Staffing (England) Regulations 2003

8.—(1) The School Staffing (England) Regulations 2003(14) are amended as follows.

(2) In regulation 3—

- (a) in paragraph (1)—
 - (i) omit the definition of “children’s suitability statement”; and
 - (ii) after the definition of “employment business”, insert—

““enhanced criminal record certificate” means an enhanced criminal record certificate within the meaning of section 113B of the Police Act 1997 which includes suitability information relating to children within the meaning of section 113BA(2) of that Act;”;
- (b) in sub-paragraph (c) of paragraph (3), after “is not” insert “barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006 or”.

(3) In regulation 11—

- (a) in paragraph (3), omit “, and the application for such a certificate must be accompanied by a children’s suitability statement”;

(13) 2003/1934, to which there are amendments not relevant to these Regulations.

(14) 2003/1963 as amended by S.I. 2006/3197; there is another amending instrument but this is not relevant.

- (b) in sub-paragraph (b) of paragraph (8), after “whether he is” insert “barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006 or is”; and
- (c) in sub-paragraph (b) of paragraph (11), omit “, with a children’s suitability statement”.
- (4) In sub-paragraph (a)(ii) of regulation 15A(1)(15), omit “accompanied by a children’s suitability statement”.
- (5) In regulation 18A(16), omit “, and the application for such a certificate must be accompanied by a children’s suitability certificate”.
- (6) In regulation 20—
 - (a) in paragraph (3), omit “, and the application for such a certificate must be accompanied by a children’s suitability statement”;
 - (b) in sub-paragraph (b) of paragraph (8), after “whether he is” insert “barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006 or is”; and
 - (c) in sub-paragraph (b) of paragraph (11), omit “, with a children’s suitability statement”.
- (7) In sub-paragraph (a)(ii) of paragraph (1) of regulation 24A(17), omit “accompanied by a children’s suitability statement”.
- (8) In regulation 26A(18), omit “, and the application for such a certificate must be accompanied by a children’s suitability certificate”.

Amendments to the Further Education (Providers of Education) (England) Regulations 2006

9.—(1) The Further Education (Providers of Education) (England) Regulations 2006(19) are amended as follows.

- (2) In regulation 3—
 - (a) in paragraph (1)—
 - (i) omit the definition of “children’s suitability statement”; and
 - (ii) for the definition of “enhanced criminal record certificate” substitute—

““enhanced criminal record certificate” means an enhanced criminal record certificate within the meaning of section 113B of the Police Act 1997(20) which includes suitability information relating to children within the meaning of section 113BA(2)(21) of that Act;” and.
 - (iii) For paragraph (4) substitute—

“(4) In order to carry out an enhanced criminal record check, a person must apply for and obtain an enhanced criminal record certificate.”.
- (3) In paragraph (4) of regulation 5, after “whether he is” insert “barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006 or is”.

(15) Inserted by [S.I. 2006/3197](#).

(16) Inserted by [S.I. 2006/3197](#).

(17) Inserted by [S.I. 2006/3197](#).

(18) Inserted by [S.I. 2006/3197](#).

(19) [S.I. 2006/3199](#).

(20) [1997 c. 50](#). Section 113B was inserted by the Serious Organised Crime and Police Act [2005 \(c. 15\)](#). Sub-section (2) of section 113B is amended by the Safeguarding Vulnerable Groups Act 2006.

(21) Section 113BA was inserted by the Safeguarding Vulnerable Groups Act [2006 \(c. 47\)](#), section 63(1), Schedule 9, Part 2, paragraph 14(1) and (4) and amended by section 170(2) of the Education and Inspections Act [2006 \(c. 40\)](#) and the Education and Skills Act 2008, section 169, Schedule 1, Part 1, paragraph 12(a) and (b)

- (4) In regulation 13, omit “a children’s suitability statement has been submitted and”.
- (5) In sub-paragraph (b) of regulation 17(2), omit “a children’s suitability statement has been submitted and”.
- (6) In paragraph (4) of regulation 18, after “whether he is” insert “barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006 or is”.
- (7) In the Schedule—
- (a) in paragraph 3 of Part 1, after “whether the person” insert “is barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006 or”; and
- (b) in paragraph 2 of Part 2—
- (i) in sub-paragraph (2), after “whether the person” insert “is barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006 or”; and
- (ii) in sub-paragraph (6)(b), omit “and a children’s suitability statement submitted”.

Amendment to the School Governance (Constitution) (England) Regulations 2007

- 10.** In Schedule 6 to the School Governance (Constitution) (England) Regulations 2007(22)—
- (a) after paragraph (b) of paragraph 9, insert—
- “(ba) barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006;”; and
- (b) in paragraph 11, substitute “section 113B” for “section 113A”.

Amendment to the School Governance (New Schools) (England) Regulations 2007

- 11.** In Schedule 2 to the School Governance (New Schools) (England) Regulations 2007(23)—
- (a) after paragraph (b) of paragraph 8, insert—
- “(ba) barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006;”; and
- (b) in paragraph 10, substitute “section 113B” for “section 113A”.

Amendment to the School Organisation (Requirements as to Foundations) (England) Regulations 2007

- 12.** In paragraph 1 of the Schedule to the School Organisation (Requirements as to Foundations) (England) Regulations 2007(24), after paragraph (b), insert—
- “(ba) barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006;”.

Amendment to the Education (Pupil Referral Units) (Management Committees etc.) (England) Regulations 2007

- 13.** In Schedule 2 to the Education (Pupil Referral Units) (Management Committees etc.) (England) Regulations 2007(25)—

(22) [S.I. 2007/957](#).
 (23) [S.I. 2007/958](#).
 (24) [S.I. 2007/1287](#).
 (25) [S.I. 2007/2978](#).

- (a) after paragraph (b) of paragraph 8, insert—
 - “(ba) barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006;” and
- (b) in paragraph 10, after “section 113A”, insert “or, where applicable, section 113B”.

16th July 2009

Delyth Morgan
Parliamentary Under Secretary of State
Department for Children, Schools and Families

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to various sets of regulations made under the Education Act 1996 (c. 56), the Teaching and Higher Education Act 1998 (c. 30), the School Standards and Framework Act 1998 (c. 38) and the Education Act 2002 (c. 32) to reflect changes that will arise as a result of the proposed commencement (on the 12th October 2009) of the barring provisions in the Safeguarding Vulnerable Groups Act 2006 (c. 47) (“the SVGA”) and the commencement of new provisions (inserted by the SVGA) in the Police Act 1997 (c. 50).

In some of the regulations being amended, the amendments made by these Regulations add a reference to whether a person is barred from working with children under the SVGA to the references to the barring provisions pre-dating the SVGA. The Regulations also align provisions in the regulations being amended with new provisions in the Police Act 1997 (inserted by the SVGA) which will apply from 12th October and which relate to the information that will be available when a check is made to ascertain if a person is barred from working with children. For example, amendments have been made to remove references to “children’s suitability statement” and to update the amended regulations, where necessary, with references to “suitability information relating to children” within the meaning of section 113BA(2) of the Police Act 1997.

The amendment at Regulation 6 to regulation 4 of the Education (Provision of Information by Independent Schools) (England) Regulations 2003 (S.I. 2003/1934) is necessary to replace the reference to work to which section 142 of the Education Act 2002 (c. 32) applies as the repeal of section 142 will be commenced on 12th October 2009.

From 12th October, information as to whether a person is barred from working with children will no longer be available with a standard criminal record certificate and will only be provided with an enhanced criminal record certificate in cases prescribed under section 113BA of the Police Act. Amendments to some of the regulations have been included to reflect this change and ensure that where information as to whether a person is barred is currently obtained, it will continue to be available from 12th October 2009.

From 12th October, a certificate which states that someone is barred from working with children will mean that the person is either on one of the current barred lists or is barred from working with children under the new SVGA scheme. A check in relation to both the current lists and the new children’s barred list under the SVGA will continue to be required from 12th October until the ISA has made a decision in all relevant cases about whether to transfer an individual to the children’s barred list. Relevant cases are where an individual is still on one of the existing lists or where a referral to the Secretary of State under the old regime is still being determined after 12th October (for limited purposes) under that regime.