

## 2007 No. 288

## EDUCATION

# Education (Prohibition from Teaching or Working with Children) Regulations (Northern Ireland) 2007

*Coming into operation* 15th June 2007

The Department of Education makes the following Regulations in exercise of the powers conferred by Articles 70(1) and (2), 88A(1) and (2) and 134 of the Education and Libraries (Northern Ireland) Order 1986(1), as read with Article 15(4) to (7) of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003(2).

## Citation and Commencement

**1. These Regulations may be cited as the Education (Prohibition from Teaching and Working with Children) Regulations (Northern Ireland) 2007 and shall come into operation on 15th June 2007.**

## Interpretation

**2.—(1)** In these Regulations—

“the 1986 Order” means the Education and Libraries (Northern Ireland) Order 1986;

“the 2003 Order” means the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003:

“Care Tribunal” means the Care Tribunal established under Article 44 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003(3);

“child” has the same meaning as in the 2003 Order;

“condition D” means any of the conditions D1 to D4 set out in paragraphs 4 to 7 of Part 1 of the Schedule;

“disqualification order” means an order under Article 23 or 24 of the 2003 Order.

(1) S.I. 1986/594 (N.I. 3) Article 70 was substituted by and Article 88A inserted by S.I. 1987/167 (N.I. 2); Article 70 was amended by S.I. 1989/2406 (N.I. 20), S.I. 1993/2810 (N.I. 12), S.I. 1998/1759 (N.I. 13) and S.I. 2003/417 (N.I. 4). Article 88A was amended by S.I. 1997/1772 (N.I. 15), S.I. 1989/2406 (N.I. 20) and S.I. 2003/417 (N.I. 4).

(2) [S.I. 2003/417 \(N.I. 4\)](#).

(3) S.I. 2003/431 (N.I. 9).

(2) Any reference in these Regulations to a person working with children must be construed as employment as a person to whom Article 88A of the 1986 Order applies.

(3) Any reference in these Regulations to condition A, B, C, D, E or F is to the condition (or conditions) set out in paragraphs 1 to 9 of Part 1 of the Schedule bearing the letter A, B, C, D, E or F, as appropriate.

### **Revocation**

3. The Education (Prohibition from Teaching or Working with Children) Regulations (Northern Ireland) 2006<sup>(4)</sup> are revoked.

### **Decision to prohibit from employment**

4.—(1) Where it appears to the Department that a person—

- (a) has been dismissed from employment as a teacher, or from employment as a person to whom Article 88A of the 1986 Order applies, on the grounds of misconduct rendering him unsuitable to teach or work with children; or
- (b) in relation to such employment, has resigned, retired or been made redundant in circumstances such that his employer would have dismissed him, or would have considered dismissing him, on such grounds if he had not resigned, retired or been made redundant;

the Department shall decide whether he should be prohibited from teaching or working with children.

(2) Where the Department decides under paragraph (1) to prohibit a person from teaching or working with children, it shall include him on the list kept under regulation 8.

(3) The Department shall notify the person concerned of the outcome of the decision made under paragraph (1).

### **Representations, evidence and information**

5.—(1) Subject to paragraph (4), where the Department is considering making a decision under regulation 4, it shall—

- (a) afford the person concerned the opportunity to make representations or submit evidence to it within 2 months of the date on which notice of that opportunity is served on the person concerned; or
- (b) where it is satisfied that the person had good reason not to make such representations or submit evidence within that period, allow such further period as it considers reasonable.

(2) The Department may invite observations from the person's employer on the representations or evidence received under paragraph (1)(a) and may take account of any other information it considers relevant.

(3) A notice is deemed to be served for the purposes of this regulation 48 hours after the date on which it is sent.

(4) Paragraph (1) shall not apply where service cannot be effected by reason of the inability of the Department to ascertain the whereabouts of the person concerned.

### **Automatic prohibition**

6.—(1) Subject to paragraph (3), this regulation applies if, in relation to a person—

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(4) [S.R. 2006 No. 51.](#)

- (a) any of conditions A to F is satisfied; and
  - (b) (i) if any of conditions C to E is satisfied, paragraph 10 of Part 1 of the Schedule is also satisfied; and
    - (ii) if condition C or D is satisfied, paragraph 11 of that Part is also satisfied.
- (2) If the Department is satisfied that this regulation applies to a person it shall prohibit that person from teaching or working with children and—
- (a) where the person is so prohibited because condition A applies, the prohibition must be on the grounds that the person is included (otherwise than provisionally) in the list kept by the Department of Health, Social Services and Public Safety under Article 3 of the 2003 Order; or
  - (b) where the person is so prohibited because any of conditions B to F apply, the prohibition must be on the grounds that the person is unsuitable to work with children.
- (3) This regulation does not apply if, in relation to an offence, the Department is aware that the court, having considered whether to make a disqualification order, decided not to.

#### **Automatic prohibition: right to make representations**

7.—(1) This regulation applies if, on or after 15th June 2007 the Department has prohibited a person (“X”) from teaching or working with children by virtue of regulation 6 because condition D, E or F is satisfied.

(2) Subject to paragraph (5), the Department shall afford X the opportunity to make representations or submit evidence to it within 2 months of the date on which notice of that opportunity is served on X or, where he is satisfied that X has good reason not to make such representations or submit such evidence within that period, allow such further period as it considers reasonable.

(3) If it appears to the Department that X is not unsuitable to work with children, the Department shall revoke the prohibition.

(4) A notice is deemed to be served for the purposes of this regulation 48 hours after the date on which it is sent.

(5) Paragraph (2) does not apply where service cannot be effected by reason of the inability of the Department to ascertain X’s whereabouts.

#### **List of persons prohibited from employment**

8. The Department shall keep a list of persons who are prohibited from teaching or working with children under regulation 4 (decision to prohibit from employment) or regulation 6 (automatic prohibition).

#### **Revocation of prohibition**

9.—(1) Save where a person has been prohibited from teaching or working with children—

- (a) because condition A or B is satisfied; or
- (b) on the grounds that a person is unsuitable to work with children and the person claims that he is no longer unsuitable to work with children,

the Department may revoke the prohibition on either or both of the grounds mentioned in paragraph (2).

(2) The grounds upon which the prohibition may be revoked are that—

- (a) the Department is in possession of relevant information which it did not have at the time the prohibition was made; or
  - (b) the Department is in possession of evidence of a material change in the circumstances of the person concerned occurring since the prohibition was made.
- (3) Where a person was prohibited because condition A is satisfied the prohibition shall be revoked if the name of the person concerned is removed from the list kept under Article 3 of the 2003 Order.
- (4) Where a person was prohibited because condition B is satisfied the prohibition shall be revoked if the disqualification order ceases to have effect.
- (5) Where the Department revokes a prohibition, the person shall be removed from the list kept under regulation 8.

### **Appeals to the Care Tribunal**

**10.**—(1) Subject to paragraphs (2) and (3) a person who has been prohibited from teaching or working with children under these Regulations may appeal to the Care Tribunal—

- (a) save where regulation 6 applies, against a decision of the Department to prohibit him from teaching or working with children;
- (b) where regulation 7 applies, against a decision not to revoke a prohibition following consideration of the representations or evidence referred to in that regulation; and
- (c) against a decision not to revoke a prohibition following consideration of the information or evidence referred to in regulation 9(2).

(2) No appeal may be brought on the ground of information or evidence referred to in regulation 9(2) unless that information or evidence has first been brought to the attention of the Department under that regulation.

(3) Where a person has been convicted of any offence involving misconduct, no finding of fact on which the conviction must be taken to have been based shall be challenged on an appeal under these Regulations.

**11.**—(1) The Care Tribunal shall not consider—

- (a) information relevant to the decision to prohibit or the decision not to revoke a prohibition which the Department did not have at the time the decision was made; or
- (b) evidence of a material change of circumstances of the person concerned occurring since the decision to prohibit or the decision not to revoke a prohibition was made.

(2) Where on an appeal under regulation 10 the Care Tribunal considers that the person should not be prohibited from teaching or working with children it may order the Department to revoke the prohibition.

Sealed with the Official Seal of the Department of Education on 18th May 2007



*Dorothy Angus*  
A senior officer of the  
Department of Education

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## SCHEDULE

Regulation 6

### Automatic prohibition: conditions and offences

## PART 1

### Conditions for automatic prohibition

1. Condition A (automatic bar: DHSSPS List) is that the person is included (otherwise than provisionally) in the list kept by the Department of Health, Social Services and Public Safety under Article 3 of the 2003 Order (list of persons unsuitable to work with children).
2. Condition B (automatic bar: disqualification order) is that—
  - (a) on or after 3rd April 2006 the person has been made subject to a disqualification order; and
  - (b) if the order was made before 15th June 2007, the person was a teacher or a person to whom Article 88A of the 1986 Order applies before he was convicted of the offence to which the disqualification order relates.
3. Condition C (automatic bar: Part 2 offence committed in previous 10 years against child under 16) is that—
  - (a) on or after the relevant specified date the person has been found to have committed an offence set out in Part 2;
  - (b) the offence was committed against or involving a child under 16; and
  - (c) the offence was committed not more than 10 years before the date on which the Department decides that he should be prohibited from teaching or working with children.
4. Condition D1 (automatic inclusion: Part 2 offence committed against person aged 16 or over or committed more than 10 years previously against child under 16, and related offences) is that—
  - (a) on or after the relevant specified date the person has been found to have committed—
    - (i) an offence set out in Part 2; or
    - (ii) an offence that is related to such an offence;
  - (b) the offence was committed against or involving—
    - (i) a child under 16; or
    - (ii) if the finding is on or after 15th June 2007, a person aged 16 or over; and
  - (c) where both paragraphs (a)(i) and (b)(i) apply, the offence was committed more than 10 years before the date on which the Department decides that he should be prohibited from teaching or working with children.
5. Condition D2 (automatic inclusion: Part 3 offence) is that—
  - (a) on or after the relevant specified date the person has been found to have committed an offence set out in Part 3 or an offence that is related to such an offence; and
  - (b) the offence was committed against or involving—
    - (i) a child under 16; or
    - (ii) if the finding is on or after 15th June 2007, a person aged 16 or over.
6. Condition D3 (automatic inclusion: Part 4 offence) is that—
  - (a) on or after the relevant specified date the person has been found to have committed an offence set out in Part 4 or an offence that is related to such an offence; and
  - (b) the offence was committed against or involving—

- (i) a child under 16; or
  - (ii) if the finding is on or after 15th June 2007, a child aged 16 or 17.
- 7. Condition D4 (automatic inclusion: Part 5 offence) is that—
  - (a) on or after the relevant specified date the person has been found to have committed an offence set out in Part 5 or an offence that is related to such an offence; and
  - (b) the offence was committed against or involving a child under 16.
- 8.—(1) Condition E (automatic inclusion: overseas offence) is that on or after 15th June 2007 the person has been found to have done an act which—
  - (a) constituted an offence under the law in force in a country outside the United Kingdom; and
  - (b) would constitute an offence mentioned in sub-paragraph (2) if it had been done in any part of the United Kingdom.
  - (2) Sub-paragraph (1)(b) applies in relation to—
    - (a) any offence set out in Parts 2 and 3;
    - (b) any offence set out in Part 4 committed against or involving a child;
    - (c) any offence set out in Part 5 committed against or involving a child under 16; or
    - (d) any offence that is related to an offence mentioned in paragraphs (a) to (c).
  - (3) In sub-paragraph (1) a person has been “found to have done an act which constituted an offence” if, under the law in force in a country outside the United Kingdom—
    - (a) he has been convicted of an offence (whether or not he has been punished for it);
    - (b) he has been cautioned in respect of an offence;
    - (c) a court exercising jurisdiction under that law has made in respect of an offence a finding equivalent to a finding that he is not guilty by reason of insanity; or
    - (d) such a court has made in respect of an offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of the offence.
  - (4) An act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law for the purposes of sub-paragraphs (1) and (3) however it is described in that law.
- 9. Condition F (automatic inclusion: risk of sexual harm orders) is that on or after 15th June 2007 the person has been made subject to a risk of sexual harm order within the meaning of section 123 of the Sexual Offences Act 2003<sup>(5)</sup> or section 2 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005<sup>(6)</sup>.
- 10. Conditions C to E apply only if the person was aged 18 or over on the date the offence was committed.
- 11. If the person was convicted of the offence before 15th June 2007, conditions C and D only apply if the person was a teacher or a person to whom Article 88A of the 1986 Order applies before he was convicted.
- 12. In this Part a person has been “found to have committed” an offence if he has been—
  - (a) convicted of an offence;
  - (b) cautioned by a police officer after he has admitted an offence;
  - (c) found not guilty of an offence by reason of insanity; or

<sup>(5)</sup> 2003 c. 42; section 123 extends to Northern Ireland (*see* section 142(2)(c)).

<sup>(6)</sup> 2005 asp 9.

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- (d) found to be under a disability and to have done the act charged against him in respect of such an offence.
13. In this Part an offence is “related to” an offence if it is an offence of—
- (a) attempting, conspiring or incitement to commit that offence; or
  - (b) aiding, abetting, counselling or procuring the commission of that offence.
14. In this Part “relevant specified date” means—
- (a) in relation to a person who has been convicted of an offence set out in Parts 2 to 5 or an offence of attempting to commit such an offence, the relevant date specified in relation to the substantive offence in Part 2, 3, 4 or 5;
  - (b) in relation to a person who has been convicted of any other offence that is related to an offence set out in Parts 2 to 5, 15th June 2007;
  - (c) in relation to a person who has been found to have committed an offence set out in Parts 2 to 5 or an offence that is related to such an offence other than by having been convicted of the offence, 15th June 2007.
15. In relation to an offence which is committed over a period of time, the references in paragraphs 3(c), 4(c) and 10 to the date on which the offence is committed are to be read as references to the last day of that period.

## PART 2

Offences for the purpose of conditions C and D1: offences against person of any age

### Offences in England and Wales

<i>Offence</i>	<i>Relevant specified date</i>
An offence contrary to section 1 of the Sexual Offences Act 1956 (rape)(7)	3rd April 2006
An offence contrary to section 5 of the Sexual Offences Act 1956 (intercourse with girl under 13)	3rd April 2006
An offence contrary to section 1 of the Sexual Offences Act 2003 (rape)(8)	3rd April 2006
An offence contrary to section 2 of the Sexual Offences Act 2003 (assault by penetration)	3rd April 2006
An offence contrary to section 5 of the Sexual Offences Act 2003 (rape of a child under 13)	3rd April 2006
An offence contrary to section 6 of the Sexual Offences Act 2003 (assault of a child under 13 by penetration)	3rd April 2006

(7) 1956 c. 69; section 1 was substituted by section 142 of the Criminal Justice and Public Order Act 1994 (c. 33) (“the 1994 Act”) and repealed by paragraph 11 of Schedule 6 to the Sexual Offences Act 2003 (c. 42) (“the 2003 Act”). Sections 4 to 7, 10 to 16, 22, 23, 25, 26, 28, 30 and 31 (referred to in this Part and in Part 4) were also repealed by this provision of the 2003 Act.

(8) 2003 c. 42.



<i>Offence</i>	<i>Relevant specified date</i>
An offence contrary to section 7 of the Sexual Offences Act 2003 (sexual assault of a child under 13)	3rd April 2006
An offence contrary to section 8 of the Sexual Offences Act 2003 if subsection (2) of that section applies (causing or inciting a child under 13 to engage in sexual activity: penetration)	3rd April 2006

### Offences in Scotland

<i>Offence</i>	<i>Relevant specified date</i>
An offence of rape, contrary to the common law	3rd April 2006
An offence contrary to section 3 of the Sexual Offences (Scotland) Act 1976 (intercourse with girl under 13)(9)	3rd April 2006
An offence contrary to section 5(1) of the Criminal Law (Consolidation) (Scotland) Act 1995 (intercourse with girl under 13)(10)	3rd April 2006

### Offences in Northern Ireland

<i>Offence</i>	<i>Relevant specified date</i>
An offence of rape, contrary to the common law	3rd April 2006
An offence contrary to section 4 of the Criminal Law Amendment Act 1885 (unlawful carnal knowledge of a girl under 14)(11)	3rd April 2006

## PART 3

Offences for the purpose of condition D2: offences against person of any age

### Offences in England and Wales

<i>Offence</i>	<i>Relevant specified date</i>
An offence of murder, contrary to the common law	3rd April 2006
An offence contrary to section 9 of the Theft Act 1968 (burglary) if the offence which the person intends to commit is rape(12)	15th June 2007

(9) 1976 c. 67; the Sexual Offences (Scotland) Act 1976 was repealed by paragraph 6 of Schedule 1 to the Crime and Punishment (Scotland) Act 1997 (c. 48).

(10) 1995 c. 39.

(11) 1885 c. 69; section 4 was amended by section 13(2) of the Children and Young Persons Act (Northern Ireland) 1950 (c. 5) (N.I.).

(12) 1968 c. 60; section 9, in relation to intent to commit rape, was repealed by paragraph 17 of Schedule 6 to the 2003 Act.

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### Offences in Scotland

<i>Offence</i>	<i>Relevant specified date</i>
An offence of murder, contrary to the common law	3rd April 2006

### Offences in Northern Ireland

<i>Offence</i>	<i>Relevant specified date</i>
An offence of murder, contrary to the common law	3rd April 2006
An offence contrary to section 9(1)(a) of the Theft Act (Northern Ireland) 1969 (burglary) if the offence which the person intends to commit is rape(13)	15th June 2007

## PART 4

Offences for the purpose of condition D3: offences against or involving a child

### Offences in England and Wales and, where relevant, Scotland and Northern Ireland

<i>Offence</i>	<i>Relevant specified date</i>
An offence contrary to section 1 of the Infanticide Act 1938 (infanticide)(14)	15th June 2007
An offence contrary to section 4 of the Sexual Offences Act 1956 (administering drugs to obtain or facilitate intercourse)	15th June 2007
An offence contrary to section 6 of the Sexual Offences Act 1956 (intercourse with girl under 16)(15)	3rd April 2006
An offence contrary to section 7 of the Sexual Offences Act 1956 (intercourse with defective)	15th June 2007
An offence contrary to section 10 of the Sexual Offences Act 1956 (incest by a man)	3rd April 2006
An offence contrary to section 11 of the Sexual Offences Act 1956 (incest by a woman)	3rd April 2006
An offence contrary to section 12 of the Sexual Offences Act 1956 (buggery) except if the other party to the act of buggery was aged 16 or over and consented to the act(16)	3rd April 2006

(13) 1969 c. 16 (N.I.); section 9, in relation to intent to commit rape, was amended by the Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247) (N.I. 13).

(14) 1938 c. 36.

(15) Section 6 was repealed in part by Schedule 2 to the Criminal Law Act 1967 (c. 58) and in full by the 2003 Act.

(16) Section 12 was amended by section 143 of the 1994 Act and sections 1 and 2 of the Sexual Offences (Amendment) Act 2000 (c. 44) ("the 2000 Act") and repealed by the 2003 Act.

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<i>Offence</i>	<i>Relevant specified date</i>
An offence contrary to section 13 of the Sexual Offences Act 1956 (indecentcy between men) except if the other party to the act of gross indecency was aged 16 or over and consented to the act <sup>(17)</sup>	3rd April 2006
An offence contrary to section 14 of the Sexual Offences Act 1956 (indecent assault on a woman)	3rd April 2006
An offence contrary to section 15 of the Sexual Offences Act 1956 (indecent assault on a man)	3rd April 2006
An offence contrary to section 16 of the Sexual Offences Act 1956 (assault with intent to commit buggery)	3rd April 2006
An offence contrary to section 22 of the Sexual Offences Act 1956 (causing prostitution of women)	15th June 2007
An offence contrary to section 23 of the Sexual Offences Act 1956 (procurement of girl under 21)	15th June 2007
An offence contrary to section 25 of the Sexual Offences Act 1956 (permitting girl under 13 to use premises for intercourse)	15th June 2007
An offence contrary to section 26 of the Sexual Offences Act 1956 (permitting girl under 16 to use premises for intercourse) <sup>(18)</sup>	15th June 2007
An offence contrary to section 28 of the Sexual Offences Act 1956 (causing or encouraging prostitution of, intercourse with, or indecent assault on, girl under 16)	15th June 2007
An offence contrary to section 30 of the Sexual Offences Act 1956 (man living on earnings of prostitution)	15th June 2007
An offence contrary to section 31 of the Sexual Offences Act 1956 (woman exercising control over prostitute)	15th June 2007
An offence contrary to section 128 of the Mental Health Act 1959 (sexual intercourse with patients) <sup>(19)</sup>	15th June 2007

<sup>(17)</sup> Section 13 was amended by section 2 of the 2000 Act and repealed by the 2003 Act.

<sup>(18)</sup> Section 26 was repealed in part by section 10 of, and Schedule 2 to, the Criminal Law Act 1967 (c. 58) and in full by the 2003 Act.

<sup>(19)</sup> 1959 c. 72; section 128 was amended by section 1(4) of the Sexual Offences Act 1967 (c. 60) and by other provisions including paragraph 2 of Schedule 4 to the Care Standards Act 2000, and was repealed by the 2003 Act.

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<i>Offence</i>	<i>Relevant specified date</i>
An offence contrary to section 1 of the Indecency with Children Act 1960 (indecent conduct towards young child)(20)	3rd April 2006
An offence contrary to section 4 of the Sexual Offences Act 1967 (procuring others to commit homosexual acts)(21)	15th June 2007
An offence contrary to section 5 of the Sexual Offences Act 1967 (living on earnings of male prostitution)	15th June 2007
An offence contrary to section 4(3) of the Misuse of Drugs Act 1971 (supply of drugs)(22)	15th June 2007
An offence contrary to section 54 of the Criminal Law Act 1977 (inciting girl under 16 to have incestuous sexual intercourse)(23)	3rd April 2006
An offence contrary to section 1(1)(a), (b) or (d) of the Protection of Children Act 1978 (indecent photographs of children)(24)	3rd April 2006
An offence contrary to section 1(1)(c) of the Protection of Children Act 1978 (indecent photographs of children)	3rd April 2006
An offence contrary to section 170 of the Customs and Excise Management Act 1979 (penalty for fraudulent evasion of duty etc.)(25) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (indecent or obscene articles)(26)	15th June 2007
An offence contrary to section 160 of the Criminal Justice Act 1988 (possession of indecent photograph of a child)(27)	3rd April 2006
An offence contrary to section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of position of trust)(28)	15th June 2007
An offence contrary to section 145 of the Nationality, Immigration and Asylum Act 2002 (traffic in prostitution)(29)	15th June 2007

(20) 1960 c. 33; section 1 was amended by section 39 of the Criminal Justice and Court Services Act 2000 (c. 43) and repealed by the 2003 Act.

(21) 1967 c. 60; sections 4 and 5 were repealed by the 2003 Act.

(22) 1971 c. 38; section 4 extends to Scotland and Northern Ireland (see section 40).

(23) 1977 c. 45; section 54 was repealed by the 2003 Act.

(24) 1978 c. 37; section 1 was amended by section 84 of the 1994 Act and paragraph 24 of Schedule 6 to the 2003 Act.

(25) 1979 c. 2; section 170 extends to Scotland and Northern Ireland.

(26) 1876 c. 36.

(27) 1988 c. 33; section 160 was amended by section 84 of the 1994 Act and paragraph 29 of Schedule 6 to the 2003 Act.

(28) 2000 c. 44; section 3 extends to Scotland and Northern Ireland (see section 7(2) and (4)) but was repealed in relation to England and Wales and Northern Ireland by the 2003 Act.

(29) 2002 c. 41; section 145 extends to Northern Ireland (see section 163(2)) but was repealed by the 2003 Act.

<i>Offence</i>	<i>Relevant specified date</i>
An offence contrary to section 3 of the Sexual Offences Act 2003 (sexual assault)	3rd April 2006
An offence contrary to section 4 of the Sexual Offences Act 2003 (causing a person to engage in sexual activity without consent)	3rd April 2006
An offence contrary to section 8 of the Sexual Offences Act 2003 if subsection (2) of that section does not apply (causing or inciting a child under 13 to engage in sexual activity: not penetration)	3rd April 2006
An offence contrary to section 9 of the Sexual Offences Act 2003 (sexual activity with a child)	3rd April 2006
An offence contrary to section 10 of the Sexual Offences Act 2003 (causing or inciting a child to engage in sexual activity)	3rd April 2006
An offence contrary to section 11 of the Sexual Offences Act 2003 (engaging in sexual activity in the presence of a child)	3rd April 2006
An offence contrary to section 12 of the Sexual Offences Act 2003 (causing a child to watch a sexual act)	3rd April 2006
An offence contrary to section 14 of the Sexual Offences Act 2003 (arranging or facilitating commission of a child sex offence)	3rd April 2006
An offence contrary to section 15 of the Sexual Offences Act 2003 (meeting a child following sexual grooming etc.)(30)	3rd April 2006
An offence contrary to section 16 of the Sexual Offences Act 2003 (abuse of position of trust: sexual activity with a child)	3rd April 2006
An offence contrary to section 17 of the Sexual Offences Act 2003 (abuse of position of trust: causing or inciting a child to engage in sexual activity)	3rd April 2006
An offence contrary to section 18 of the Sexual Offences Act 2003 (abuse of position of trust: sexual activity in the presence of a child)	3rd April 2006
An offence contrary to section 19 of the Sexual Offences Act 2003 (abuse of position of trust: causing a child to watch a sexual act)	3rd April 2006
An offence contrary to section 25 of the Sexual Offences Act 2003 (sexual activity with a child family member)	3rd April 2006

(30) Sections 15 to 19 extend to Northern Ireland (*see* section 142(2)(a)).

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<i>Offence</i>	<i>Relevant specified date</i>
An offence contrary to section 26 of the Sexual Offences Act 2003 (inciting a child family member to engage in sexual activity)	3rd April 2006
An offence contrary to section 30 of the Sexual Offences Act 2003 (sexual activity with a person with a mental disorder impeding choice)	15th June 2007
An offence contrary to section 31 of the Sexual Offences Act 2003 (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity)	15th June 2007
An offence contrary to section 32 of the Sexual Offences Act 2003 (engaging in sexual activity in the presence of a person with a mental disorder impeding choice)	15th June 2007
An offence contrary to section 33 of the Sexual Offences Act 2003 (causing a person, with a mental disorder impeding choice, to watch a sexual act)	15th June 2007
An offence contrary to section 34 of the Sexual Offences Act 2003 (inducement, threat or deception to procure sexual activity with a person with a mental disorder)	15th June 2007
An offence contrary to section 35 of the Sexual Offences Act 2003 (causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception)	15th June 2007
An offence contrary to section 36 of the Sexual Offences Act 2003 (engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder)	15th June 2007
An offence contrary to section 37 of the Sexual Offences Act 2003 (causing a person with a mental disorder to watch a sexual act by inducement, threat or deception)	15th June 2007
An offence contrary to section 38 of the Sexual Offences Act 2003 (care workers: sexual activity with a person with a mental disorder)	15th June 2007
An offence contrary to section 39 of the Sexual Offences Act 2003 (care workers: causing or inciting sexual activity)	15th June 2007
An offence contrary to section 40 of the Sexual Offences Act 2003 (care workers: sexual activity in the presence of a person with a mental disorder)	15th June 2007

<i>Offence</i>	<i>Relevant specified date</i>
An offence contrary to section 41 of the Sexual Offences Act 2003 (care workers: causing a person with a mental disorder to watch a sexual act)	15th June 2007
An offence contrary to section 47 of the Sexual Offences Act 2003 (paying for sexual services of a child)(31)	3rd April 2006
An offence contrary to section 48 of the Sexual Offences Act 2003 (causing or inciting child prostitution or pornography)	3rd April 2006
An offence contrary to section 49 of the Sexual Offences Act 2003 (controlling a child prostitute or a child involved in pornography)	3rd April 2006
An offence contrary to section 50 of the Sexual Offences Act 2003 (arranging or facilitating child prostitution or pornography)	3rd April 2006
An offence contrary to section 52 of the Sexual Offences Act 2003 (causing or inciting prostitution for gain)	15th June 2007
An offence contrary to section 53 of the Sexual Offences Act 2003 (controlling prostitution for gain)	15th June 2007
An offence contrary to section 57 of the Sexual Offences Act 2003 (trafficking into the UK for sexual exploitation)	3rd April 2006
An offence contrary to section 58 of the Sexual Offences Act 2003 (trafficking within the UK for sexual exploitation)	3rd April 2006
An offence contrary to section 59 of the Sexual Offences Act 2003 (trafficking out of the UK for sexual exploitation)	3rd April 2006
An offence contrary to section 61 of the Sexual Offences Act 2003 (administering a substance with intent)	15th June 2007
An offence contrary to section 62 of the Sexual Offences Act 2003 (committing an offence with intent to commit a sexual offence) if the relevant sexual offence(32) which he has the intention of committing is an offence referred to in paragraph 8(2) of Part 1 of the Schedule	15th June 2007
An offence contrary to section 63 of the Sexual Offences Act 2003 (trespass with intent to commit a sexual offence) if the relevant	15th June 2007

(31) Sections 47 to 53 and 57 to 59 extend to Northern Ireland (see section 142(2)(a)).

(32) Section 62(2) provides the meaning of “relevant sexual offence”.

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

<i>Offence</i>	<i>Relevant specified date</i>
sexual offence(33) which he has the intention of committing is an offence referred to in paragraph 8(2) of Part 1 of the Schedule	
An offence contrary to section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation)(34)	15th June 2007

### Offences in Scotland

<i>Offence</i>	<i>Relevant specified date</i>
An offence of sodomy, contrary to the common law, unless every person involved in the offence was aged 16 or over and was a willing participant	3rd April 2006
An offence of indecent assault, contrary to the common law	3rd April 2006
An offence of clandestine injury to women, contrary to the common law	15th June 2007
An offence of abduction of woman or girl with intent to rape, contrary to the common law	15th June 2007
An offence of assault with intent to rape or ravish, contrary to the common law	15th June 2007
An offence contrary to section 2A of the Sexual Offences (Scotland) Act 1976 (incest)(35)	3rd April 2006
An offence contrary to section 2B of the Sexual Offences (Scotland) Act 1976 (intercourse with step-child)	3rd April 2006
An offence contrary to section 2C of the Sexual Offences (Scotland) Act 1976 (intercourse of person in position of trust with child under 16)	3rd April 2006
An offence contrary to section 4 of the Sexual Offences (Scotland) Act 1976 (intercourse with girl between 13 and 16)	3rd April 2006
An offence contrary to section 80(7) of the Criminal Justice (Scotland) Act 1980 (committing or procuring a homosexual act) unless every person involved (whether in the offence or the homosexual act) was 16 or over and was a willing participant(36)	3rd April 2006

(33) Section 63(2) provides that “relevant sexual offence” has the same meaning as in section 62.

(34) 2004 c. 19; section 4 was amended by paragraph 7 of Schedule 6 to the Human Tissue Act 2004 (c. 30) and extends to Scotland and Northern Ireland (*see* section 49(1) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004).

(35) Sections 2A to 2C were inserted by section 1 of the Incest and Related Offences (Scotland) Act 1986 (c. 36) but repealed by the Crime and Punishment (Scotland) Act 1997 (c. 48).

(36) 1980 c. 62; section 80(7) was amended by section 145(2) of the 1994 Act and repealed by Schedule 5 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40).



<i>Offence</i>	<i>Relevant specified date</i>
An offence contrary to section 52 of the Civic Government (Scotland) Act 1982 (indecent photographs of children)(37)	3rd April 2006
An offence contrary to section 52A of the Civic Government (Scotland) Act 1982 (possession of indecent photographs of persons under 16)(38)	15th June 2007
An offence contrary to section 1 of the Criminal Law (Consolidation) (Scotland) Act 1995 (incest)	3rd April 2006
An offence contrary to section 2 of the Criminal Law (Consolidation) (Scotland) Act 1995 (intercourse with step-child)	3rd April 2006
An offence contrary to section 3 of the Criminal Law (Consolidation) (Scotland) Act 1995 (intercourse of person in position of trust with child under 16)	3rd April 2006
An offence contrary to section 5(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (attempted intercourse with girl under 13)	3rd April 2006
An offence contrary to section 5(3) of the Criminal Law (Consolidation) (Scotland) Act 1995 (intercourse or attempted intercourse with girl under 16)	3rd April 2006
An offence contrary to section 6 of the Criminal Law (Consolidation) (Scotland) Act 1995 (indecent behaviour towards girl between 12 and 16)	3rd April 2006
An offence contrary to section 7 of the Criminal Law (Consolidation) (Scotland) Act 1995 (procuring)	15th June 2007
An offence contrary to section 8 of the Criminal Law (Consolidation) (Scotland) Act 1995 (abduction and unlawful detention)	15th June 2007
An offence contrary to section 9 of the Criminal Law (Consolidation) (Scotland) Act 1995 (permitting girl to use premises for intercourse)	15th June 2007
An offence contrary to section 10 of the Criminal Law (Consolidation) (Scotland) Act 1995 (seduction, prostitution etc. of girl under 16)	15th June 2007

(37) [1982 c. 45](#); section 52 was amended by section 84 of the 1994 Act and section 16 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act [2005 \(asp 9\)](#).

(38) Section 52A was inserted by section 161 of the Criminal Justice Act [1988 \(c. 33\)](#).

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<i>Offence</i>	<i>Relevant specified date</i>
An offence contrary to section 11 of the Criminal Law (Consolidation) (Scotland) Act 1995 (trading in prostitution and brothel keeping)	15th June 2007
An offence contrary to section 13 of the Criminal Law (Consolidation) (Scotland) Act 1995 (homosexual offences) unless every person involved (whether in the offence or the homosexual act) was 16 or over and was a willing participant <sup>(39)</sup>	3rd April 2006
An offence contrary to section 22 of the Criminal Justice (Scotland) Act 2003 (traffic in prostitution etc.) <sup>(40)</sup>	15th June 2007
An offence contrary to section 311 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (non-consensual sexual acts) <sup>(41)</sup>	15th June 2007
An offence contrary to section 313 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (persons providing care services: sexual offences) <sup>(42)</sup>	15th June 2007
An offence contrary to section 1 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (meeting a child following certain preliminary contact) <sup>(43)</sup>	15th June 2007
An offence contrary to section 9 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (paying for sexual services of a child)	15th June 2007
An offence contrary to section 10 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (causing or inciting provision by child of sexual services or child pornography)	15th June 2007
An offence contrary to section 11 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (controlling a child providing sexual services or involved in pornography)	15th June 2007
An offence contrary to section 12 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (arranging or	15th June 2007

<sup>(39)</sup> Section 13 was amended by sections 1 and 2 of the 2000 Act, section 10 of the Convention Rights (Compliance) (Scotland) Act 2001 ([asp 7](#)) and Schedule 5 to the Mental Health (Care and Treatment) (Scotland) Act 2003 ([asp 13](#)).

<sup>(40)</sup> 2003 asp 7.

<sup>(41)</sup> 2003 asp 13.

<sup>(42)</sup> Section 313 was amended by paragraph 70 of Schedule 28 to the Civil Partnership Act 2004 ([c. 33](#)).

<sup>(43)</sup> 2005 asp 9.

<i>Offence</i>	<i>Relevant specified date</i>
facilitating provision by child of sexual services or child pornography)	

### Offences in Northern Ireland

<i>Offence</i>	<i>Relevant specified date</i>
An offence contrary to section 52 of the Offences against the Person Act 1861 (indecent assault on a woman)(44)	3rd April 2006
An offence contrary to section 61 of the Offences against the Person Act 1861 (buggery) except not if the other party to the act of buggery was aged 17 or over and consented to the act(45)	3rd April 2006
An offence contrary to section 62 of the Offences against the Person Act 1861 (attempt to commit buggery, assault with intent to commit buggery or indecent assault on a male)(46)	3rd April 2006
An offence contrary to section 2 of the Criminal Law Amendment Act 1885 (procurement)(47)	15th June 2007
An offence contrary to section 3 of the Criminal Law Amendment Act 1885 (procuring defilement of woman by threats or fraud etc.)	15th June 2007
An offence contrary to section 5 of the Criminal Law Amendment Act 1885 (unlawful carnal knowledge of a girl under 17)(48)	3rd April 2006
An offence contrary to section 6 of the Criminal Law Amendment Act 1885 (permitting unlawful carnal knowledge of a young girl)	15th June 2007
An offence contrary to section 7 of the Criminal Law Amendment Act 1885 (abduction of girl with intent to have carnal knowledge)(49)	15th June 2007
An offence contrary to section 8 of the Criminal Law Amendment Act 1885 (unlawful detention with intent to have carnal knowledge)	15th June 2007
An offence contrary to section 11 of the Criminal Law Amendment Act 1885 (gross indecency between men) except if the other party to the	3rd April 2006

(44) [1861 c. 100](#).

(45) Section 61 was repealed so far as relevant by paragraph 1 of Schedule 1 to The Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247) (N.I. 13) ("the 2003 Northern Ireland Order").

(46) Section 62 was amended by the Schedule to The Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (S.I. 1983/1120) (N.I. 13) and repealed so far as relevant by paragraph 2 of Schedule 1 to the 2003 Northern Ireland Order.

(47) Section 2 was repealed in part by Schedule 6 to the 2003 Act.

(48) Sections 5 and 6 of the Criminal Law Amendment Act 1885 (c. 69) were amended by subsections (2) and (3) of section 13 of the Children and Young Persons Act (Northern Ireland) 1950 (c. 5) (N.I.).

(49) Section 7 was amended by Schedule 9 to the Children (Northern Ireland) Order 1995 (S.I. 1995/755) (N.I. 2).

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<i>Offence</i>	<i>Relevant specified date</i>
act of gross indecency was aged 17 or over and consented to the act(50)	
An offence contrary to section 1 of the Punishment of Incest Act 1908 (incest by a man)(51)	3rd April 2006
An offence contrary to section 2 of the Punishment of Incest Act 1908 (incest by a woman)	3rd April 2006
An offence contrary to section 1 of the Infanticide Act (Northern Ireland) 1939(52)	15th June 2007
An offence contrary to section 21 of the Children and Young Persons Act (Northern Ireland) 1968 (causing or encouraging seduction etc. of a girl under 17)(53)	15th June 2007
An offence contrary to section 22 of the Children and Young Persons Act (Northern Ireland) 1968 (indecency with or towards a child)(54)	3rd April 2006
An offence contrary to Article 3 of the Protection of Children (Northern Ireland) Order 1978 (indecent photographs of children)(55)	3rd April 2006
An offence contrary to Article 9 of the Criminal Justice (Northern Ireland) Order 1980 (inciting a girl under 16 to have incestuous sexual intercourse)(56)	3rd April 2006
An offence contrary to Article 122 of the Mental Health (Northern Ireland) Order 1986 (offences against women suffering from severe mental handicap)(57)	15th June 2007
An offence contrary to Article 123 of the Mental Health (Northern Ireland) Order 1986 (offences against patients)	15th June 2007
An offence contrary to Article 15 of the Criminal Justice (Evidence etc.) (Northern Ireland) Order 1988 (possession of indecent photograph of child)(58)	15th June 2007

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

(51) 1908 c. 45.

(52) 1939 c. 5 (N.I.).

(53) 1968 c. 34 (N.I.); section 21 was amended by paragraph 18(2) of Schedule 6 to the 2003 Act.

(54) Section 22 was amended by section 40 of the Criminal Justice and Court Services Act 2000 (c. 43).

(55) S.I. 1978/1047 (N.I. 17); Article 3 was amended by section 84 of the 1994 Act.

(56) S.I. 1980/704 (N.I. 6).

(57) S.I. 1986/595 (N.I. 4).

(58) S.I. 1988/1847 (N.I. 17); Article 15 was amended by section 84 of the 1994 Act.

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<i>Offence</i>	<i>Relevant specified date</i>
An offence contrary to Article 19 of the Criminal Justice (Northern Ireland) Order 2003 (buggery)(59)	15th June 2007
An offence contrary to Article 20 of the Criminal Justice (Northern Ireland) Order 2003 (assault with intent to commit buggery)	15th June 2007
An offence contrary to Article 21 of the Criminal Justice (Northern Ireland) Order 2003 (indecent assault on a male)	15th June 2007

## PART 5

Offences for the purpose of condition D4:  
offences against or involving a child under 16

### Offences in England and Wales

<i>Offence</i>	<i>Relevant specified offence</i>
An offence contrary to section 66 of the Sexual Offences Act 2003 (exposure)(60)	15th June 2007
An offence contrary to section 67 of the Sexual Offences Act 2003 (voyeurism)	15th June 2007

### Offences in Scotland

<i>Offence</i>	<i>Relevant specified offence</i>
An offence involving lewd, indecent or libidinous behaviour or practices, contrary to the common law	15th June 2007

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which revoke and replace the Education (Prohibition from Teaching or Working with Children) Regulations (Northern Ireland) 2006, make provision for prohibiting the employment or further employment of teachers and non-teaching staff on the grounds that they are unsuitable to teach or work with children.

(59) [S.I. 2003/1247 \(N.I. 13\)](#); Article 19 was amended by paragraph 52 of Schedule 6 to the 2003 Act.

(60) Sections 66 and 67 extend to Northern Ireland.

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The Department must decide whether a person who has been dismissed from employment (or would have been dismissed but for his resignation, retirement or redundancy) on the grounds of misconduct rendering him unsuitable to work with children, should be prohibited from teaching or working with children. The Department shall afford a person under consideration the opportunity to make representations or submit evidence in support of his case and can invite observations from the person's employer (*regulations 4 and 5*).

These Regulations extend the circumstances in which the Department must prohibit a person from teaching or working with children (*regulation 6*). The Schedule attached to these Regulations sets out the detailed conditions relating to regulation 6.

These Regulations extend the circumstances in which the Department must prohibit a person from teaching or working with children in the following ways:

- (a) They add new offences – any offence in Parts 2 to 5 of the Schedule for which the relevant specified date is 15th June 2007.
- (b) They extend the scope of existing offences to cover offences committed against or involving children aged 16 or 17 (instead of only children aged under 16); and, in relation to a limited number of offences, they extend the scope to victims of all ages (*see* subparagraph (ii) of paragraphs 4(b), 5(b) and 6(b) of Part 1 of the Schedule).
- (c) In addition to convictions for an offence, they add cautions and other findings that a person has committed an offence (paragraph 12 of Part 1 of the Schedule provides the meaning of “found to have committed” an offence for the purpose of conditions C and D in paragraphs 3 to 7 of that Part).
- (d) In addition to offences which are a completed offence or an attempt to commit an offence, they add offences of conspiracy or incitement to commit an offence and where a person is a secondary party to the offence (paragraph 13 of Part 1 of the Schedule provides the meaning of an offence that is “related to” an offence for the purpose of conditions D and E in paragraphs 4 to 8 of that Part).
- (e) For convictions after 15th June 2007, they lift the requirement that a person must have been a teacher or a person to whom Article 88A of the 1986 Order applies before he was convicted of the offence (*see* paragraph 11 of Part 1 of the Schedule); and they lift the similar requirement in relation to persons who are prohibited because they are subject to a “disqualification order” (*see* paragraph 2(b) of Part 1 of the Schedule).
- (f) They add comparable overseas offences (*see* condition E, paragraph 8 of Part 1 of the Schedule).
- (g) They add “risk of sexual harm orders” (*see* condition F, paragraph 9 of Part 1 of the Schedule).

So far as these Regulations extend the circumstances in which the Department must prohibit a person from teaching or working with children, they do so only in relation to convictions etc. after the date on which these Regulations come into force.

These Regulations narrow the circumstances in which the Department must prohibit a person from teaching or working with children in one way, relating to offences where the court has decided not to give a disqualification order (*regulation 6(3)*).

In some circumstances where the Department is required to prohibit a person from teaching or working with children these Regulations create a new right for the individual to make representations to the Department (*regulation 7*). If, after consideration of the representations, it appears to the Department that the person is not unsuitable to work with children, it must revoke the prohibition and remove the person from the list (*see regulation 9*).

This right to make representations and the consequent function of the Department in relation to revoking the prohibition only apply where a person is prohibited by virtue of condition D, E or F – namely:

- (a) Where the offence is a “Part 2 offence” that is:
  - (i) an offence that is “related to” an offence set out in Part 2 of the Schedule (*see* paragraph 13 of Part 1 of the Schedule for the meaning of “related to”);
  - (ii) committed against a child aged under 16 but more than 10 years before the decision; or
  - (iii) committed against a person aged 16 or over (condition D1).
- (b) Where an offence is an offence in, or related to, Part 3, 4 or 5 (conditions D2, D3 and D4).
- (c) Where the person has been found to have done an act which constituted a comparable overseas offence (condition E).
- (d) Where the person is subject to a “risk of sexual harm order” (condition F).

The Department must keep a list of persons considered unsuitable to teach or work with children (*regulation 8*).

The Department may revoke a prohibition where new information comes to light or there has been a material change in the circumstances of the person who is prohibited. This does not apply: (a) if the person was prohibited on the ground he was included on the list kept under Article 3 of the Protection of Children and Vulnerable Adults (Northern Ireland) 2003 (“the DHSSPS list”) or because he is subject to a disqualification order; or (b) if the person was prohibited on the ground that he is unsuitable to work with children and that person claims he is no longer unsuitable. The prohibition may also be revoked where a disqualification order ceases to have effect, or where the person’s name has been removed from the DHSSPS List (*regulation 9*).

A person who has been prohibited may appeal to the Care Tribunal against a decision of the Department to prohibit him from teaching or working with children (although not where he has been automatically prohibited under regulation 6) or a decision not to revoke a prohibition following consideration of representations under regulation 7 or new evidence or information under regulation 9(2) (*regulation 10*).

A person cannot bring an appeal to the Care Tribunal on the ground of new information or evidence unless the Department has already considered that information or evidence.

A person who has been convicted of an offence of misconduct cannot challenge on appeal any finding of fact upon which his conviction is based. Where the Care Tribunal considers the prohibition is not appropriate it may order the Department to revoke it (*regulation 11*).