

2009 No. 304 (C. 20)

SAFEGUARDING VULNERABLE GROUPS

**Safeguarding Vulnerable Groups (Regulated Activity,
Transitional Provisions and Commencement No. 4) Order
(Northern Ireland) 2009**

Made - - - - *1st September 2009*

Coming into operation - *12th October 2009*

To be laid before Parliament

The Secretary of State makes the following Order in exercise of the powers conferred by Article 1(3), 9(3) and 61(1), (2)(a) and (3) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007(a).

PART 1

Introduction

Citation and commencement

1. This Order may be cited as the Safeguarding Vulnerable Groups (Regulated Activity, Transitional Provisions and Commencement No. 4) Order (Northern Ireland) 2009 and comes into operation on 12th October 2009.

Interpretation

2.—(1) In this Order—

“the 1999 Act” means the Protection of Children Act 1999(b);

“the 2000 Act” means the Care Standards Act 2000(c);

“the 2002 Act” means the Education Act 2002(d);

“the 2003 Act” means the Protection of Children (Scotland) Act 2003(e);

(a) S.I. 2007/1351 (N.I. 11).
(b) 1999 c. 14.
(c) 2000 c. 14.
(d) 2002 c. 32.
(e) 2003 asp 5.

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

“the 2006 Act” means the Safeguarding Vulnerable Groups Act 2006(b);

“the 2007 Order” means the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007;

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

“relevant person” means a person who immediately before the relevant day—

- (a) is engaging in regulated activity with the permission of a regulated activity provider, and
- (b) is not included in the list kept under Article 3 or 35 of the 2003 Order or the list kept under regulation 8 of the 2007 Regulations or barred from regulated activity;

“relevant day” means the first day on which a person may make a monitoring application;

“the first transitional period” means the period starting on and including the day on which this Order comes into operation and ending immediately before the relevant day;

“the second transitional period” means the period starting on and including the relevant day and ending on and including the day on which—

- (c) Schedule 7 comes into operation in relation to the Education and Libraries (Northern Ireland) Order 1986(d);
- (d) Schedule 8 to the 2007 Order comes into operation in relation to the 2003 Order for all purposes;
- (e) Schedule 10 to the 2006 Act comes into force in relation to the 1999 Act, the 2000 Act and the 2002 Act for all purposes; and
- (f) Schedule 4 to the Protection of Vulnerable Groups (Scotland) Act 2007(e) comes into force in relation to the 2003 Act.

“the third transitional period” means the period starting on and including the day on which this Order comes into operation and ending on and including the day on which Article 28 of the 2007 Order comes into operation in relation to relevant persons.

Provisions coming into operation on 12th October 2009

3. 12th October 2009 is the day appointed for the coming into operation of the following provisions of the 2007 Order—

- (a) paragraph 3 of Schedule 7;
- (b) Schedule 8 in so far as it relates to the repeal of sections 113C, D and F of the Police Act 1997(f);
- (c) Article 60 in so far as it relates to the provisions specified in paragraphs (a) and (b).

Revocations

4. The Safeguarding Vulnerable Groups (Transitory Provisions) Order (Northern Ireland) 2009(g) is revoked.

(a) S.I. 2003/417 (N.I. 4). The 2003 Order is to be repealed by Schedule 8 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.

(b) 2006 c. 47.

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

(d) S.I. 1986/594 (N.I. 3).

(e) 2007 asp 14.

(f) 1997 c. 50.

(g) S.R. 2009 No. 38.

PART 2

Provisions applying during the first transitional period

Transitional modifications applying during the first transitional period

5. Articles 6 to 10 apply during the first transitional period.

Modification to section 113BA of the Police Act 1997

6.—(1) Section 113BA(a) of the Police Act 1997 has effect subject to the following modification.

(2) For subsection (2) substitute—

“(2) Suitability information relating to children is whether the applicant is—

- (a) barred from regulated activity relating to children;
- (b) provisionally included in the list kept under Article 3 of the 2003 Order;
- (c) included in the list kept under Article 3 of the 2003 Order otherwise than provisionally and disqualified from working with children for the purposes of Article 30 of that Order;
- (d) included in the list kept under regulation 8 of the 2007 Regulations;
- (e) provisionally included in the list kept under section 1 of the 1999 Act;
- (f) included in the list kept under section 1 of the 1999 Act otherwise than provisionally and disqualified from working with children for the purposes of section 35 of the 2000 Act;
- (g) subject to a direction made under section 142 of the 2002 Act;
- (h) provisionally included in the list kept under section 1(1) of the 2003 Act;
- (i) included in the list kept under section 1(1) of the 2003 Act and disqualified from working with children for the purposes of section 17 of that Act.

(2A) If the applicant is provisionally included in the list kept under—

- (a) Article 3 of the 2003 Order, the suitability information includes the fact that the applicant must not be employed or, as the case may be, must cease to be employed in a childcare position with a childcare organisation in accordance with Article 16 of that Order; or
- (b) section 1 of the 1999 Act, the suitability information includes the fact that the applicant must not be employed or, as the case may be, must cease to be employed in a childcare position with a childcare organisation in accordance with section 7 of that Act.

(2B) If the applicant is subject to a direction made under section 142 of the 2002 Act, the suitability information includes—

- (a) details of any prohibition or restriction on the applicant’s employment;
- (b) the grounds on which the direction was made, and, where the grounds are misconduct, details of the misconduct.

(2C) In subsection (2A)(a), “childcare position” and “childcare organisation” have the same meaning as in Article 20 of the 2003 Order.

(2D) In subsection (2A)(b), “childcare position” and “childcare organisation” have the same meaning as in section 12 of the 1999 Act.”.

(a) Section 113BA is inserted by paragraph 14(4) of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006. An amendment to section 126 of the Police Act 1997 by paragraph 3 of Schedule 7 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 makes section 113BA applicable to Northern Ireland.

Modification to section 113BB of the Police Act 1997

7.—(1) Section 113BB(a) of the Police Act 1997 has effect subject to the following modification.

(2) For subsection (2) substitute—

“(2) Suitability information relating to vulnerable adults is whether the applicant is—

- (a) barred from regulated activity relating to vulnerable adults;
- (b) provisionally included in the list kept under Article 35 of the 2003 Order;
- (c) included in the list kept under Article 35 of the 2003 Order otherwise than provisionally and prohibited from working in a care position.
- (d) provisionally included in the list kept under section 81 of the 2000 Act;
- (e) included in the list kept under section 81 of the 2000 Act otherwise than provisionally and prohibited from working in a care position.

(2A) If the applicant is provisionally included in the list kept under—

- (a) Article 35 of the 2003 Order, the suitability information includes the fact that the applicant must not be employed or, as the case may be, must cease to be employed in a care position in accordance with Article 46 of that Order; or
- (b) section 81 of the 1999 Act, the suitability information includes the fact that the applicant must not be employed or, as the case may be, must cease to be employed in a care position in accordance with section 89 of that Act.

(2B) In subsections (2)(c) and (2A)(a), “care position” has the same meaning as in Article 48 of the 2003 Order.

(2C) In subsections (2)(e) and (2A)(b), “care position” has the same meaning as in Part 7 of the 2000 Act.”.

Modification to section 119 of the Police Act 1997

8.—(1) Section 119(b) of the Police Act 1997 has effect subject to the following modification.

(2) In subsection (1A), for “any person who keeps a list mentioned in section 113C(3) or 113D(3) above” substitute “any person who keeps a list under Article 3 of the 2003 Order, regulation 8 of the 2007 Regulations, section 1 of the 1999 Act, section 1(1) of the 2003 Act, Article 35 of the 2003 Order or section 81 of the 2000 Act; or maintains a list under Article 6 of the 2007 Order or section 2 of the 2006 Act.”.

Modification to section 120A of the Police Act 1997

9.—(1) Section 120A(c) of the Police Act 1997 has effect subject to the following modification.

(2) In subsection (3)(b), for “list mentioned in section 113C(3) or 113D(3)” substitute “list kept under Article 3 of the 2003 Order, regulation 8 of the 2007 Regulations, section 1 of the 1999 Act, section 1(1) of the 2003 Act, Article 35 of the 2003 Order or section 81 of the 2000 Act; or maintained under Article 6 of the 2007 Order or section 2 of the 2006 Act.”.

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- (a) Section 113BB is inserted by paragraph 14(4) of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006. An amendment to section 126 of the Police Act 1997 by paragraph 3 of Schedule 7 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 makes section 113BB applicable to Northern Ireland.
 - (b) Section 119 was amended by sections 325 and 423 of, and paragraph 112, Part 7, of Schedule 34 to, the Greater London Authority Act 1999 (c. 29), section 134(2) of the Criminal Justice and Police Act 2001 (c. 16) and section 165(1) of, and paragraphs 1 and 4 of Schedule 14 to, the Serious Organised Crime and Police Act 2005 (c. 15). It is to be amended by paragraph 14(1) and (7) of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006.
 - (c) Section 120A was inserted by section 134(1) of the Criminal Justice and Police Act 2001 and was amended by paragraphs 1 and 8 of Schedule 35 to the Criminal Justice Act 2003 (c. 44), section 165 of, and paragraphs 1 and 8 of Schedule 14 to, the Serious Organised Crime and Police Act 2005 and by S.I. 2009/203.

Modifications to Schedule 1 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007

- 10.—(1) Schedule 1 to the 2007 Order has effect subject to the following modifications.
- (2) In paragraph 1, for sub-paragraphs (2) and (3) substitute—
“(2) If IBB is satisfied that this paragraph applies to the person, it must include the person in the children’s barred list.”.
- (3) In paragraph 2, for sub-paragraphs (2) and (3) substitute—
“(2) If IBB is satisfied that this paragraph applies to the person, it must—
(a) include the person in the children’s barred list;
(b) give the person an opportunity to make representations as to why the person should be removed from the children’s barred list.”.
- (4) In paragraph 7, for sub-paragraphs (2) and (3) substitute—
“(2) If IBB is satisfied that this paragraph applies to the person, it must include the person in the adults’ barred list.”.
- (5) In paragraph 8, for sub-paragraphs (2) and (3) substitute—
“(2) If IBB is satisfied that this paragraph applies to the person, it must—
(a) include the person in the adults’ barred list;
(b) give the person an opportunity to make representations as to why the person should be removed from the adults’ barred list.”.

PART 3

Provisions applying during the second transitional period

Transitional modifications applying during the second transitional period

11. Articles 12 and 13 apply during the second transitional period.

Modification to section 113BA of the Police Act 1997

- 12.—(1) Section 113BA of the Police Act 1997 has effect subject to the following modification.
- (2) For subsection (2) substitute—
“(2) Suitability information relating to children is—
(a) whether the applicant is included in the list kept under Article 3 of the 2003 Order;
(b) whether the applicant is included in the list kept under regulation 8 of the 2007 Regulations;
(c) whether the applicant is included in the list kept under section 1 of the 1999 Act;
(d) whether the applicant is subject to a direction made under section 142 of the 2002 Act;
(e) whether the applicant is included in the list kept under section 1(1) of the 2003 Act;
(f) whether the applicant is barred from regulated activity relating to children;
(g) if the applicant is barred from such regulated activity, such details as are prescribed of the circumstances in which he became barred;
(h) whether the applicant is subject to monitoring in relation to regulated activity relating to children;

- (i) whether the Independent Barring Board is considering whether to include the applicant in the children’s barred list in pursuance of paragraph 3 or 5 of Schedule 1 to the 2007 Order.
- (2A) If the applicant is included in the list kept under—
- (a) Article 3 of the 2003 Order, the suitability information includes whether the inclusion is provisional and—
 - (i) if it is provisional, the fact that the applicant must not be employed or, as the case may be, must cease to be employed in a childcare position with a childcare organisation in accordance with Article 16 of that Order;
 - (ii) if it is not provisional, the fact that the applicant is disqualified from working with children for the purposes of Article 30 of that Order.
 - (b) regulation 8 of the 2007 Regulations, the suitability information includes the fact that the applicant is disqualified from working with children for the purposes of Article 30 of the 2003 Order.
 - (c) section 1 of the 1999 Act, the suitability information includes whether the inclusion is provisional and—
 - (i) if it is provisional, the fact that the applicant must not be employed or, as the case may be, must cease to be employed in a childcare position with a childcare organisation in accordance with section 7 of that Act;
 - (ii) if it is not provisional, the fact that the applicant is disqualified from working with children for the purposes of section 35 of the Criminal Justice and Court Services Act 2000(a).
 - (d) section 1(1) of the 2003 Act, the suitability information includes whether the inclusion is provisional and, if it is not provisional, the fact that the applicant is disqualified from working with children for the purposes of section 17 of that Act.
- (2B) If the applicant is subject to a direction made under section 142 of the 2002 Act, the suitability information includes—
- (a) details of any prohibition or restriction on the applicant’s employment;
 - (b) the grounds on which the direction was made, and, where the grounds are misconduct, details of the misconduct.
- (2C) In subsection (2A)(a)(i), “childcare position” and “childcare organisation” have the same meaning as in Article 20 of the 2003 Order.
- (2D) In subsection (2A)(c)(i), “childcare position” and “childcare organisation” have the same meaning as in section 12 of the 1999 Act.”.

Modification to section 113BB of the Police Act 1997

13.—(1) Section 113BB of the Police Act 1997 has effect subject to the following modification.

(2) For subsection (2) substitute—

“(2) Suitability information relating to vulnerable adults is—

- (a) whether the applicant is included in the list kept under Article 35 of the 2003 Order;
- (b) whether the applicant is included in the list kept under section 81 of the 2000 Act;
- (b) whether the applicant is barred from regulated activity relating to vulnerable adults;
- (c) if the applicant is barred from such regulated activity, such details as are prescribed of the circumstances in which he became barred;

(a) 2000 c. 43.

- (d) whether the applicant is subject to monitoring in relation to regulated activity relating to vulnerable adults;
 - (e) whether the Independent Barring Board is considering whether to include the applicant in the adults' barred list in pursuance of paragraph 9 or 11 of Schedule 1 to the 2007 Order.
- (2A) If the applicant is included in the list kept under—
- (a) Article 35 of the 2003 Order, the suitability information includes whether the inclusion is provisional and—
 - (i) if it is provisional, the fact that the applicant must not be employed or, as the case may be, must cease to be employed in a care position in accordance with Article 46 of that Order;
 - (ii) if it is not provisional, the fact that the applicant is prohibited from working in a care position.
 - (b) section 81 of the 2000 Act, the suitability information includes whether the inclusion is provisional and—
 - (i) if it is provisional, the fact that the applicant must not be employed or, as the case may be, must cease to be employed in a care position;
 - (ii) if it is not provisional, the fact that the applicant is prohibited from working in a care position.
- (2B) In subsections (2A)(a)(i) and (2A)(a)(ii), “care position” has the same meaning as in Article 48 of the 2003 Order.
- (2C) In subsections (2A)(b)(i) and (2A)(b)(ii), “care position” has the same meaning as in Part 7 of the 2000 Act.”.

PART 4

Provisions applying during the first and second transitional periods

Transitional modifications and provisions applying during the first and second transitional periods

14. Articles 15 and 16 apply during the first transitional period and second transitional period.

Modification to section 116 of the Police Act 1997

15.—(1) Section 116(a) of the Police Act 1997 has effect subject to the following modification.

(2) For subsection (3) substitute—

“(3) Section 113B(3) to (11) and sections 113BA, 113BB and 113E, as modified by the Safeguarding Vulnerable Groups (Regulated Activity, Transitional Provisions and Commencement No. 4) Order (Northern Ireland) 2009, shall apply in relation to this section with any necessary further modifications.”.

Teachers’ pensions – entitlement to payment of retirement benefits

16.—(1) The Teachers’ Superannuation Regulations (Northern Ireland) 1998(b) have effect subject to the modifications set out in this Article.

(a) Section 116 was amended by paragraphs 1 and 5 of Schedule 35 to the Criminal Justice Act 2003 and by section 163(3) of, and paragraphs 1 and 3 of Schedule 14 to, the Serious Organised Crime and Police Act 2005. It is to be amended by paragraph 14(1) and (6) of the Safeguarding Vulnerable Groups Act 2006.

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

(2) In regulation E4 a person also falls within Case C if the requirements of paragraph (4) of that regulation are met and—

- (a) the Department of Education has notified the person in writing that the requirement specified in paragraph (3) is met; or
- (b) the requirement specified in paragraph (4) is met.

(3) The requirement is that IBB has not included, and is not considering including, the person in a barred list.

(4) The requirement is that IBB has included, or is considering including, the person in a barred list but the Department of Education is satisfied that there are exceptional circumstances relating to the person which make it appropriate that he should fall within Case C.

(5) Accordingly, in Case C the entitlement takes effect—

- (a) where, immediately before the person became incapacitated he was in excluded employment, on the day after the last day of his excluded employment; and
- (b) in any other case, as soon as the person falls within the Case or as soon as the person would have fallen within the Case had there not been a requirement that the Department of Education notify that person that the requirement specified in paragraph (3) is met.

(6) In paragraph (5) “excluded employment” has the same meaning as in the Teachers’ Superannuation Regulations (Northern Ireland) 1998.

PART 5

Further Transitional Provisions

Transitional provisions relating to the provision of information

17.—(1) Article 18 applies from the coming into operation of this Order until the end of the first transitional period.

(2) Article 19 applies from the coming into operation of this Order until the end of the second transitional period or the third transitional period, whichever is the later.

(3) Articles 20 and 21 apply from the coming into operation of this Order until the end of the third transitional period.

Information provided to IBB

18. A person who holds records of convictions or cautions for the use of police forces generally must make those records available to IBB.

Information provided by IBB

19.—(1) IBB may provide to either of the persons specified in paragraph (2) any information specified in paragraph (3).

(2) The persons are—

- (a) the Department of Education for the purposes of its functions under the Teachers’ Superannuation Regulations (Northern Ireland) 1998(a);

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

- (b) the Secretary of State for the purposes of his functions under Part 5 of the Police Act 1997; and
- (c) the Scottish Ministers for the purposes of their functions under Part 5(a) of the Police Act 1997.

(3) The information is—

- (a) information provided to IBB under paragraph 20 of Schedule 1 to the 2007 Order;
- (b) the fact that a person is included in a barred list;
- (c) the fact that IBB is considering including a person in a barred list;
- (d) the personal details of any person referred to in sub-paragraph (b) or (c);

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

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

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

(7) If IBB—

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

it must provide that information to the General Teaching Council for Northern Ireland(c).

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

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

and includes information specified in paragraph (3).

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

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

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

Information provided by the Department of Education

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

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

(a) By virtue of section 53 of the Scotland Act 1998 (c. 46), the functions of the Secretary of State under Part 5 of the Police Act 1997 (c. 50) are exercised by the Scottish Ministers.

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

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

Relevant conduct engaged in before the repeal of Article 23 and 24 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003

22.—(1) In relation to conduct engaged in during the relevant period, paragraph 3(4) of Schedule 1 to the 2007 Order has effect as if the words “before the commencement of Article 6” were omitted.

(2) “Relevant period” means the period—

- (a) starting on and including the day on which this Order comes into operation; and
- (b) ending with the coming into operation of the repeal by the 2007 Order of Articles 23 and 24 of the 2003 Order.

PART 6

Provisions relating to Part 1 of Schedule 2 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007

Regulated activity relating to Children

Definition of relevant child care premises

23.—(1) Paragraph 3 of Schedule 2 to the 2007 Order is amended in accordance with paragraph (2).

(2) After sub-paragraph 3(2) insert—

“(3) But premises on which a person acts as child minder or provides day care are not relevant childcare premises if the premises are the home of a parent of at least one child to whom the day care or child minding is provided.

(4) For the purposes of paragraph (3) “parent” includes any person who has parental responsibility for a child or who has care of a child.

(5) “Parental responsibility” has the same meaning as in the Children Order(a).”.

Office holders and other amendments to paragraph 4 of Schedule 2 to the 2007 Order

24.—(1) Paragraph 4 of Schedule 2 to the 2007 Order is amended in accordance with paragraphs (2) to (6).

(2) In sub-paragraph (1)(a), after “member of” insert “or secretary to”.

(3) In sub-paragraph (1), after paragraph (a) insert—

“(aa) person co-opted by the voting members of a Board of Governors of a grant-aided school under Articles 122 and 139 of the Education Reform (Northern Ireland) Order 1989 (NI 20) to be a member of the Board of Governors of the school;”.

(4) In sub-paragraph (1), after paragraph (b) insert—

“(bb) chief executive officer of a HSC body;”.

(5) In sub-paragraph (1), after paragraph (j) insert—

“(k) an individual carrying on or managing a regulated establishment or agency which provides care, accommodation or services wholly or mainly for or in relation to children.”.

(6) After sub-paragraph (1) insert—

“(1A) For the purposes of sub-paragraph (1)(a), a person is a secretary to the governing body of an educational establishment mentioned in Article 12(5) if—

(a) S.I. 1995 (N.I. 2)

- (a) the person is appointed in accordance with a scheme of management as mentioned in Article 9A or 9B of the Education and Libraries (Northern Ireland) Order 1986 (NI 3) as a secretary to the governing body of a grant-aided school, or
- (b) the person is appointed in relation to the governing body of any other educational establishment mentioned in Article 12(5) and has functions similar to those of a person falling within paragraph (a).

(1B) For the purposes of sub-paragraph (1)(k) an establishment or agency is a regulated establishment or agency if the person carrying it on or managing it is required to be registered in respect of it under Article 12 of the 2003 Order(a).”.

PART 7

Provisions relating to Part 2 of Schedule 2 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007

Regulated activity relating to vulnerable adults

Office holders and other amendments to paragraph 8 of Schedule 2 to the Order

25.—(1) Paragraph 8 of Schedule 2 is amended in accordance with paragraphs (2) to (4).

(2) In sub-paragraph (1), after paragraph (a) insert—

“(aa) chief executive officer of a HSC body;”.

(3) In sub-paragraph (1), after paragraph (e) insert—

“(f) an individual carrying on or managing a regulated establishment or agency which provides care, accommodation or services wholly or mainly for or in relation to vulnerable adults.”.

(4) After sub-paragraph (3) insert—

“(4) For the purposes of sub-paragraph (1)(f) an establishment or agency is a regulated establishment or agency if the person carrying it on or managing it is required to be registered in respect of it under Article 12 of the 2003 Order.”.

Northern Ireland Office
1st September 2009

Paul Goggins
Minister of State

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (“the Order”), amends the definition of regulated activity in Schedule 2 to the Order and the Regulations which prescribe the criteria on the basis of which a person will be included automatically in the barred lists maintained under Article 6 of the Order. It also brings into force amendments to, and the repeal of, provisions in the Police Act 1997 (c. 50) (“the Police Act”) relating to enhanced criminal record certificates and makes transitional provision relating to the issuing of such

(a) S.I. 2003 (N. I. 9).

certificates and to the provision of information by and to the Independent Barring Board (“IBB”) (which is established under section 1 of the Safeguarding Vulnerable Groups Act 2006).

On the coming into operation of this Order, there will be people who are still disqualified from working with children in Northern Ireland by virtue of Article 30 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (“the 2003 Order”) and section 35 of the Criminal Justice and Court Services Act 2000 (c. 43) [which extends to Northern Ireland]. An individual included on the list kept under Article 35 of the 2003 Order will also continue to be prohibited from work in a care position with vulnerable adults. Under Article 32 of the 2003 Order, it is also possible for the Department of Health, Social Services and Public Safety to disqualify from work with children in Northern Ireland an individual who is subject of an equivalent prohibition or disqualification under the law of any other jurisdiction. It is under this provision that individuals included in the list kept under section 1 of the Protection of Children (Scotland) Act 2003 (“the 2003 Act”) would be disqualified from work in Northern Ireland. To retain the existing disqualification regime in Northern Ireland, it is intended to specify the existing 2003 Act list under Article 7 of the Order. It is also intended to specify the list kept under section 89 of the Care Standards Act 2000 (c. 14), which will prohibit individuals included on that list from obtaining work with vulnerable adults in Northern Ireland.

Until such times that existing disqualification or barred lists cease to exist, it will be necessary for these bars to be indicated on enhanced criminal records certificates issued by AccessNI in Northern Ireland. To make this possible, suitability information in relation to children and vulnerable adults as defined in sections 113BA and 113B of the Police Act 1997 must be modified to include references to existing barred lists across the UK, in addition to the barred lists established under the Order. Without modification, enhanced disclosure certificates would only indicate that the applicant was barred from regulated activity).

Article 6 modifies the effect of section 113BA of the Police Act (which will be brought into operation by a separate Commencement Order) so that, during the first transitional period (defined in Article 1), suitability information relating to children includes whether a person is included in any of the existing children’s barred lists across the UK, including provisional inclusion in those lists. These are listed in full in Article 5. Suitability information also includes an indication of whether an individual is barred from regulated activity relating to children under Article 7 of the Order.

Article 7 modifies the effect of section 113BB of the Police Act (which will also be brought into operation by a separate Commencement Order) so that, during the first transitional period (defined in Article 1), suitability information relating to vulnerable adults includes whether a person is included in any of the existing adults’ barred lists across the UK, including provisional inclusion in those lists. These are listed in full in Article 6. Suitability information also includes an indication of whether an individual is barred from regulated activity relating to vulnerable adults under Article 7 of the Order.

Articles 8 and 9 make provision consequential on the repeal of sections 113C and 113D of the Police Act brought into operation by Article 3.

Article 10 modifies the effect of Schedule 1 to the Order so that, during the first transitional period, a person is not to be included automatically in either of the barred lists maintained under Article 7 of the Order unless IBB, rather than the Secretary of State, is satisfied that criteria prescribed for the purposes of paragraph 1, 2, 7 or 8 of Schedule 1 are met. IBB will satisfy itself by accessing information made available to it under Article 18 of this Order and by exercising the powers provided for under paragraph 19(1) of Schedule 1 to the Order.

Article 12 modifies the effect of section 113BA of the Police Act during the second transitional period. During this period a greater range of information will be shown on criminal records certificates, and suitability information relating to children will include whether a person is subject to monitoring and whether IBB is considering whether to include a person in the children’s barred list (maintained under Article 7 of the Order).

Article 13 makes equivalent provision in relation to section 113BB of the Police Act.

Article 15 makes consequential modifications to section 116 of the Police Act.

Article 16 modifies the effect of the Teachers' Superannuation Regulations (Northern Ireland) 1998 (S.R. 1998 No. 333) in relation to people included, or considered for inclusion, in a barred list who apply for ill-health pensions.

Article 18 makes provision for IBB to provide information to other persons during the first and second transitional periods. This will enable IBB to provide AccessNI and its equivalents in England, Wales and Scotland with information about people who are included in the children's or adults' barred lists or the lists kept under Article 3 or 35 of the 2003 Order or the list kept under regulation 8 of the 2007 Regulations. IBB will be able to provide similar information to the Department of Education, for example, for the purposes of its functions under the Teachers' Superannuation Regulations (Northern Ireland) 1998. It will also be able to confirm to the General Teaching Council for Northern Ireland whether a person is subject to any of the disqualifications set out in paragraph (3).

Articles 20 and 21 similarly make provision for the Department of Health, Social Services and Public Safety and the Department of Education to continue to advise employers or prospective employers whether a person was included in the lists kept under Article 3 or 35 of the 2003 Order or regulation 8 of the 2007 Regulations.

Article 22 modifies the effect of Schedule 1 to the 2007 Order in relation to any conduct occurring between the coming into operation of this Order and the repeal of the provisions of the 2003 Order which provide for the making of disqualification orders (Articles 23 and 24). The effect of this is that IBB is not to include a person in the children's barred list under paragraph 3 of Schedule 1 if the only conduct it has to consider is conduct which has occurred during that period, the conduct has already been considered by a court, and the court has decided not to impose a disqualification order on the person in question.

Parts 6 and 7 of the Order amend the definition of regulated activity in Schedule 2 to the 2007 Order.

Article 23 provides an exception to the definition of relevant childcare premises. Where a person provides care for a child on premises that are the home of the parent of the child (or the home of one of the children being cared for), such premises are excluded from the definition of relevant childcare premises. This would, for example, apply where a nanny takes care of children in the home of the parents of the children. The intention is to ensure that activities or workers (such as cleaners who are not involved in caring for the children) on premises which are the home of the parents are not caught within the definition of regulated activity.

Articles 24 and 25 bring within the definition of regulated activity, persons who occupy certain positions where, although they may not always work with or have contact with vulnerable groups, they exercise some degree of control or participate in making decisions relating to vulnerable groups. These persons are referred to as "office-holders". For example, the chief executive officer of a HSC body is added to the list of office-holders and, as a consequence, will be engaging in regulated activity relating to children and regulated activity relating to vulnerable adults. Other office-holders added to the list of office-holders engaging in regulated activity relating to children are secretaries to governing bodies and individuals (known as "co-opted members") appointed by the governing body of a grant-aided school.

A further category of office-holder that is added to the definition of regulated activity (relating to children and to vulnerable adults) is an individual who carries on or manages an establishment or agency in respect to which that individual is required to be registered under Article 12 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

| <i>Provision</i> | <i>Date of Commencement</i> | <i>S.R. No.</i> |
|--|-----------------------------|-------------------------|
| Article 6(2) to (5) partially | 14th March 2008 | 2008 No. 127 (C. 5) |
| Article 6 partially | 14th April 2008 | 2008 No. 127 (C. 5) |
| Article 6(2), (3) and (4) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 6 partially | 13th March 2009 | 2009 No. 41 (C. 2) |
| Article 7(2)(b) and (3)(b) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 8 partially | 14th April 2008 | 2008 No. 127 (C. 5) |
| Article 8 in so far as not already in operation | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 9(1) and (2) partially | 14th April 2008 | 2008 No. 127 (C. 5) |
| Article 9(3) and (4) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 9 | 13th March 2009 | 2009 No. 41 (C. 2) |
| Article 10 partially | 14th April 2008 | 2008 No. 127 (C. 5) |
| Article 10(12) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 10 partially | 13th March 2009 | 2009 No. 41 (C. 2) |
| Article 15(2) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 16(1) and (2) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 17(1) and (5) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 18(1), (2) and (3) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 25 partially | 13th March 2009 | 2009 No. 41 (C. 2) |
| Article 26(1) to (4), (5)(a) and (b) and (6) partially | 13th March 2009 | 2009 No. 41 (C. 2) |
| Article 27(3) partially | 13th March 2009 | 2009 No. 41 (C. 2) |
| Article 28(1)(c) and (d), (8)(a) and (c), (10), (11) and (12)(d) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 29 | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 30(1) partially | 29th May 2008 | 2008 No. 233 (C. 11) |

| | | |
|--------------------------------------|-----------------|-------------------------|
| Article 32(7) and (8) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 33(6) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 34(10) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 35(3) and (4)(b) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 37(1) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 38(1), (2) and (3) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 39 partially | 14th April 2008 | 2008 No. 127 (C. 5) |
| Article 39(2) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 39 | 13th March 2009 | 2009 No. 41 (C. 2) |
| Article 40 partially | 14th April 2008 | 2008 No. 127 (C. 5) |
| Article 40 partially | 13th March 2009 | 2009 No. 41 (C. 2) |
| Article 41(1) and (5) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 42 partially | 14th April 2008 | 2008 No. 127 (C. 5) |
| Article 42(2) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 42 | 13th March 2009 | 2009 No. 41 (C. 2) |
| Article 43(1), (5) and (8) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 43(7) partially | 13th March 2009 | 2009 No. 41 (C. 2) |
| Article 44 partially | 14th April 2008 | 2008 No. 127 (C. 5) |
| Article 44(2) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 44 | 13th March 2009 | 2009 No. 41 (C. 2) |
| Article 45(3) to (5) partially | 14th April 2008 | 2008 No. 127 (C. 5) |
| Article 45(7) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 46(6) and (7) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 47(1), (5) and (9) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 47(7) partially | 13th March 2009 | 2009 No. 41 (C. 2) |
| Article 48 partially | 14th April 2008 | 2008 No. 127 (C. 5) |

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|--|-----------------|-------------------------|
| Article 48(1)(a) and (2) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 48 | 13th March 2009 | 2009 No. 41 (C. 2) |
| Article 49(6) and (7) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 50(6), (7) and (8) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 51(6), (7) and (8) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 52 partially | 14th April 2008 | 2008 No. 127 (C. 5) |
| Article 53 partially | 14th April 2008 | 2008 No. 127 (C. 5) |
| Article 55 partially | 14th April 2008 | 2008 No. 127 (C. 5) |
| Article 55 | 13th March 2009 | 2009 No. 41 (C. 2) |
| Article 56(1) and (2) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Article 57 partially | 14th April 2008 | 2008 No. 127 (C. 5) |
| Article 57 | 13th March 2009 | 2009 No. 41 (C. 2) |
| Article 59 partially | 14th March 2008 | 2008 No. 127 (C. 5) |
| Article 59 | 14th April 2008 | 2008 No. 127 (C. 5) |
| Article 60(1) partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Schedule 1 | | |
| Paragraphs 1(1), 2(1), 7(1), 8(1), 15(1) and (2), 18(3)(b) and (6), and 24(1), (2) and (9) partially | 14th March 2008 | 2008 No. 127 (C. 5) |
| Paragraphs 6(1)(b), (2) and (3), 12(1)(b), (2) and (3), 16(5), 19(1)(b) and 21 partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Paragraphs 1 to 3, 4(1) to (4) and (6), 5, 7 to 9, 10(1) to (4) and (6), 11, 14 to 20, 22, 23, 24(3) to (7) and 25 | 13th March 2009 | 2009 No. 41 (C. 2) |
| Schedule 2 | | |
| Schedule 2 partially | 14th April 2008 | 2008 No. 127 (C. 5) |
| Paragraphs 2(1)(f), 6, 7(1)(f) and 9 partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Schedule 2 | 13th March 2009 | 2009 No. 41 (C. 2) |
| Schedule 3 | | |
| Paragraphs 1(1), 2(1)(a), 3(1)(c) and (2), 4(1)(c) and (2), 5, 6(1)(c) and (2), 7(1)(c) and (2), 8, 9(1)(c) and (2), 10(1)(c) and (2) and 14 partially | 29th May 2008 | 2008 No. 233 (C. 11) |

| | | |
|--------------------------------|-----------------|-------------------------|
| Schedule 4 | | |
| Paragraph 2(1) and 5 partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Schedule 5 | | |
| Paragraph 1 and 2 partially | 29th May 2008 | 2008 No. 233 (C. 11) |
| Schedule 6 | | |
| Paragraphs 2 to 4 partially | 14th March 2008 | 2008 No. 127 (C. 5) |
| Schedule 6 | 14th April 2008 | 2008 No. 127 (C. 5) |
| Schedule 7 | | |
| Paragraph 4 partially | 29th May 2008 | 2008 No. 233 (C. 11) |

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SAFEGUARDING VULNERABLE GROUPS

Safeguarding Vulnerable Groups (Regulated Activity,
Transitional Provisions and Commencement No. 4) Order
(Northern Ireland) 2009