

2009 No. 346 (C. 24)

SAFEGUARDING VULNERABLE GROUPS

**Safeguarding Vulnerable Groups (2007 Order) (Commencement
No. 5, Transitional Provisions and Savings) Order (Northern
Ireland) 2009**

Made - - - -

12th October 2009

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

PART 1

Introduction

Citation

1. This Order may be cited as the Safeguarding Vulnerable Groups (2007 Order) (Commencement No. 5, Transitional Provisions and Savings) Order (Northern Ireland) 2009.

Interpretation

2.—(1) In this Order

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

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

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

“the 2008 Order” means the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008(d);

“disqualification order” means an order under Article 23 or 24 of POCVA;

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

“the relevant provisions of POCVA” means the provisions of that Order specified in the Schedule to this Order.

(a) S.I. 2007/1351 (N.I. 11).

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

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

(d) S.R. 2008 No. 200.

(e) 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 The 2003 Order is to be repealed by Schedule 8 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.

PART 2

Commencement

Provisions coming into operation on 12th October 2009

3.—(1) 12th October 2009 is the day appointed for the coming into operation of the provisions of the Order specified in column 1 of the Schedule.

(2) Where a particular purpose is specified in column 2 of the Schedule in relation to any such provision, the provision shall come into operation on that date for that purpose only.

Repeal of provisions of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003

4.—(1) The repeal of the remaining provisions of POCVA by Article 60(2) and Schedule 8 to the Order shall come into operation on 12th October 2009 for the purposes specified in the following provisions of this Article.

(2) The provisions of POCVA referred to in paragraph (1) shall cease to have effect for the purposes of enabling a disqualification order to be made in relation to a person who is barred from regulated activity by virtue of Article 7(2) of the Order.

(3) Article 30 of POCVA shall cease to have effect for the purpose of making it an offence for a person knowingly to apply for, to offer to do, to accept or to do any work in a regulated position (within the meaning of Article 31 of that Order) where—

- (a) the person falls within paragraph (4); and
- (b) is disqualified from working with children only by reason of a disqualification order falling within paragraph (5).

(4) A person (“P”) falls within this paragraph if P—

- (a) is or has at any time been barred from regulated activity by virtue of Article 7(2) of the Order; or
- (b) has been included in the children’s barred list pursuant to Article 3(2)(a) of the 2008 Order, but is removed from that list by the IBB(a) in accordance with Article 3(4) of that Order.

(5) A disqualification order falls within this paragraph if—

- (a) P was subject to a disqualification order immediately before IBB included P in the children’s barred list; and
- (b) at the time IBB was aware that P was subject to the disqualification order.

(6) In paragraph (1) “the remaining provisions of POCVA” means the provisions of that Order other than those specified in the Schedule to this Order.

PART 3

Transitional provisions and savings

Persons included in the list of persons unsuitable to work with children: Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003

5.—(1) Notwithstanding the commencement under Article 3 of the repeal of the relevant provisions of POCVA, those provisions shall continue to have effect in relation to a person falling

(a) See section 1 of the Safeguarding Vulnerable Groups Act 2006 (2006 c. 47) for the meaning of this term. It is a reference to the Independent Barring Board established under that section.

within paragraph (4) (“P”) for any of the purposes specified in paragraph (2) until one of the matters described in paragraph (5) applies to P.

- (2) The relevant provisions of POCVA shall continue to have effect for the purposes of—
- (a) keeping the list under Article 3 of that Order;
 - (b) providing for the effect of P’s inclusion in that list in accordance with Article 16 of that Order;
 - (c) determining whether P is to be removed from that list and providing for P’s removal.

(3) For the purposes of paragraph (2)(c), the reference to determining whether P is to be removed from the list includes consideration of whether P should be removed on an appeal under Article 11 of that Order or on an application under Article 12 of that Order.

- (4) P is a person—
- (a) who immediately before 12th October 2009 is included in the list kept under Article 3 of POCVA, and
 - (b) in relation to whom none of the matters described in paragraph (5)(b) to (e) has occurred before that date.

- (5) The matters referred to in paragraph (1) are—
- (a) P is removed from the list kept under Article 3 of POCVA in accordance with a provision of that Order;
 - (b) P is included in the children’s barred list pursuant to Article 3(2)(a) of the 2008 Order and either—
 - (i) IBB is not required under paragraph (2)(b) of Article 3 of that Order to give P the opportunity to make representations as to why P should be removed from that list, or
 - (ii) where IBB is required under that paragraph to give P the opportunity to make such representations, IBB decides under that Article not to remove P from that list;
 - (c) P is included in the children’s barred list other than in accordance with Article 3(2)(a) of the 2008 Order;
 - (d) in accordance with Article 3(4) of the 2008 Order, IBB removes P from the children’s barred list;
 - (e) where P is referred to IBB in accordance with Article 4 of the 2008 Order, IBB makes a decision not to include P in the children’s barred list.

(6) Article 7 of the Order does not apply to P until the relevant provisions of POCVA cease to have effect in relation to P in accordance with this Article.

Persons included in the list of persons unsuitable to work with vulnerable adults: Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003

6.—(1) Notwithstanding the commencement under Article 3 of the repeal of the relevant provisions of POCVA, those provisions shall continue to have effect in relation to a person falling within paragraph (4) (“P”) for any of the purposes specified in paragraph (2) until one of the matters described in paragraph (5) applies to P.

- (2) The relevant provisions of POCVA shall continue to have effect for the purposes of—
- (a) keeping the list under Article 35 of that Order;
 - (b) providing for the effect of P’s inclusion in that list in accordance with Article 46 of that Order;
 - (c) determining whether P is to be removed from that list and providing for P’s removal.

(3) For the purposes of paragraph (2)(c), the reference to determining whether P is to be removed from the list includes consideration of whether P should be removed on an appeal under Article 42 of that Order or on an application under Article 43.

- (4) P is a person—

- (a) who immediately before 12th October 2009 is included in the list kept under Article 35 of POCVA, and
 - (b) in relation to whom none of the matters described in paragraph (5)(b) to (e) has occurred before that date.
- (5) The matters referred to in paragraph (1) are—
- (a) P is removed from the list kept under Article 35 of POCVA in accordance with a provision of that Order;
 - (b) P is included in the adults’ barred list pursuant to Article 5(2)(a) of the 2008 Order and either—
 - (i) IBB is not required under paragraph (2)(b) of Article 5 of that Order to give P the opportunity to make representations as to why P should be removed from that list, or
 - (ii) where IBB is required under that paragraph to give P the opportunity to make such representations, IBB decides under that Article not to remove P from that list;
 - (c) IBB includes P in the adults’ barred list other than in accordance with Article 5(2)(a) of the 2008 Order;
 - (d) in accordance with Article 5(4) of the 2008 Order, IBB removes P from the adults’ barred list;
 - (e) where P is referred to IBB in accordance with Article 6 of the 2008 Order, IBB makes a decision not to include P in the adults’ barred list.
- (6) Article 7 of the Order does not apply to P until the relevant provisions of POCVA cease to have effect in relation to P in accordance with this Article.

Persons prohibited from teaching or working with children: The Education (Prohibition from Teaching or Working with Children) Regulations (Northern Ireland) 2007

7.—(1) Notwithstanding the commencement under Article 3 of—

- (a) paragraph 2 of Schedule 7 to the Order; and
- (b) the repeal of the relevant provisions of POCVA,

those provisions shall continue to have effect in relation to a person falling within paragraph (3) (“P”) for any of the purposes specified in paragraph (2) until one of the matters described in paragraph (4) applies to P.

(2) The provisions mentioned in paragraph (1) continue to have effect for the purposes of—

- (a) keeping a list under regulation 8 of the 2007 Regulations;
- (b) providing for the effect of P’s inclusion in that list in accordance with Article 16 of POCVA;
- (c) determining whether a prohibition in relation to P should be revoked under regulation 9 (revocation by the Department of Education) or regulation 11 (revocation on appeal to the Care Tribunal(a) under regulation 10) of the 2007 Regulations and revoking such a prohibition;
- (d) giving effect to the 2007 Regulations in so far as those regulations are relevant for the purposes specified in sub-paragraphs (a) to (c).

(3) P is a person—

- (a) who immediately before the 12th October 2009—
 - (i) is included in the list kept under Article 3 of POCVA; or

(a) “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 [S.I. 2003/431 (N.I. 9)].

- (ii) is not included in that list but who is included in the list kept under regulation 8 of the 2007 Regulations on the grounds referred to in Article 70(2)(e)(iii) or Article 88A(2)(b)(iii) of the 1986 Order; and
 - (b) in relation to whom none of the matters described in paragraph (4)(b) to (e) has occurred before that date.
- (4) The matters referred to in paragraph (1) are—
- (a) a prohibition in relation to P is revoked under regulation 9 or 11 of 2007 Regulations;
 - (b) P is included in the children’s barred list pursuant to Article 3(2)(a) of the 2008 Order and either—
 - (i) IBB is not required under Article 3(2)(b) of that Order to give P the opportunity to make representations as to why P should be removed from that list, or
 - (ii) where IBB is required under that paragraph to give P the opportunity to make such representations, IBB decides under that Article not to remove P from that list;
 - (c) P is included in the children’s barred list other than in accordance with Article 3(2)(a) of the 2008 Order;
 - (d) in accordance with Article 3(4) of the 2008 Order, IBB removes P from the children’s barred list;
 - (e) where P is referred to the IBB in accordance with Article 4 of the 2008 Order, IBB makes a decision not to include P in the children’s barred list.
- (5) Article 7 of the Order does not apply to a person falling within paragraph (3)(a)(ii) until the provisions referred to in paragraph (1) cease to have effect in relation to that person in accordance with this Article.

Northern Ireland Office
12th October 2009

Paul Goggins
Minister of State

SCHEDULE

Article 3

Provisions coming into operation on 12th October 2009

<i>Column 1</i>	<i>Column 2</i>
Article 6 (in so far as it is not already in operation)	
Article 7 (in so far as it is not already in operation)	
Article 10 (in so far as it is not already in operation)	
Article 11	
Article 13	
Article 22	In so far as it relates to an offence under Article 13 or 40
Article 23(2) and (5)	
Article 23(8)	In so far as it relates to Article 23(2)
Article 24(1)	In so far as it relates to an offence under Article 23(2)
Article 25	In so far as it relates to Articles 37 to 38, 41, 43 and 47
Article 26	In so far as it relates to Articles 37 to 39, 41, 43 and 47
Articles 27(1) and (2)	
Article 27(3)	In so far as it relates to Article 37
Articles 37 (in so far as it is not already in operation)	
Articles 38 (in so far as it is not already in operation)	
Articles 40 (in so far as it is not already in operation)	
Articles 41 (in so far as it is not already in	

operation)

Articles 43 (in so far as it is not already in operation)

Articles 47 (in so far as it is not already in operation)

Articles 53 (in so far as it is not already in operation)

Article 54

Article 56 (in so far as it is not already in operation)

Article 60

In so far as it relates to the repeals in Schedule 8 specified below

Paragraphs 4(5), 6, 10(5), 12, 13 and 21(a) of Schedule 1 (in so far as they are not already in operation)

In Schedule 7 paragraphs 1 to 3 and 5

Schedule 8

In so far as it relates to—
Chapter I of Part II and Part III of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003(a); and

the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003(b).

(a) S.I. 2003/417 (N.I. 4).

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

EXPLANATORY NOTE

(This note is not part of the Order)

Article 3 of the Order brings into operation Article 7 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (“the Order”) which has the effect of barring from regulated activity a person who is included in one of the barred lists under Article 6 of the Order, namely the children’s barred list and the adults’ barred list. The barred lists are established under Article 6 of the Order and are maintained by the Independent Barring Board (“IBB”) which is a body established under section 1 of the Safeguarding Vulnerable Groups Act 2006 (c.47).

Article 3 also brings into operation Articles 11, 13 and other Articles in the Order that relate to the offences created under the Order in relation to a person who engages in regulated activity whilst on one of the barred lists.

This Order also brings into operation the duties to refer prescribed information to the IBB under Articles 37, 38, 41, 43 and 47 of the Order. Duties under sections 39, 42, 44 and 48 to provide IBB with prescribed information on request came into operation on the 13th March 2009 (S.R. 2009 No. 41). The Safeguarding Vulnerable Groups (Prescribed Information) Regulations (Northern Ireland) 2009 (S.R. 2009 No. 40) specifies the information prescribed in relation to the duties to refer and to provide information on request. Article 3 also commences the offence under Article 40 of the Order for failure to comply with any of the duties under Article 37, 38 or 39 of the Order to provide information.

Article 4 provides for partial commencement of the repeal of the provisions of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (“POCVA”) from 12th October 2009. The effect of Article 4 is that where a person is barred from regulated activity by virtue of Article 7 of the Order, no disqualification order under Article 23 or 24 of POCVA can be made in relation to that person. Article 4 also has the effect of excluding from the scope of Article 30 of POCVA persons subject to disqualification orders falling within the description in paragraph (5) of Article 4. Article 30 of POCVA makes it an offence for persons disqualified from working with children to apply for, to offer to do, to accept or to do any work in a regulated position.

Articles 5 to 7 consist of transitional provisions and savings in relation to individuals who immediately before 12th October 2009 are still subject to the old barring regimes (i.e. those included in the lists kept under Articles 3 and 35 of POCVA, and regulation 8 of the Education (Prohibition from Teaching or Working with Children) Regulations (Northern Ireland) 2007 (“the 2007 Regulations”) (S.R. 2007 No. 288). Where such a person has not been included in the children’s barred list by that date, or where the person has been included in that list under Article 3, 4, 5 or 6 of the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008 (S.R. 2008 No. 200) but no final decision has been taken on their inclusion, the relevant old barring regime will continue to apply instead of Article 7 of the Order until one of the events referred to in Article 5(5), 6(5) or 7(4) occurs.

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)
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)
Article 60 partially	12th October 2009	2009 No. 304 (C. 20)
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)
Paragraph 3	12th October 2009	2009 No. 304 (C. 20)
Schedule 8 partially	12th October 2009	2009 No. 304 (C. 20)

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