
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Education (Prohibition from Teaching or Working with Children) Regulations 2003 (S.I. 2003/1184) as amended by S.I. 2004/1493 (“the 2003 Regulations”).

Regulation 4 of these Regulations substitutes a new regulation 8, extending the circumstances in which the Secretary of State must give a direction under section 142(1)(a) of the Education Act 2002 (c. 32). A person who is the subject of a direction under section 142(1)(a) is prohibited from carrying out any work with children to which section 142 applies. Regulation 10 of these Regulations substitutes new Schedule 2 which sets out the detailed conditions relating to regulation 8.

These Regulations extend the circumstances in which the Secretary of State must give a direction in the following ways:

- (a) They add new offences - any offence in Parts 2 to 5 of Schedule 2 for which the relevant specified date is 28th February 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 Schedule 2).
- (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 Schedule 2 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 Schedule 2 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 28th February 2007, they lift the requirement that a person must have been in work to which section 142 applies before he was convicted of the offence (*see* paragraph 11 of Part 1 of Schedule 2); and they lift the similar requirement in relation to persons who are made subject to a direction because they are subject to a “disqualification order” (*see* paragraph 2(b) of Part 1 of Schedule 2).
- (f) They add comparable overseas offences (*see* condition E, paragraph 8 of Part 1 of Schedule 2).
- (g) They add “risk of sexual harm orders” (*see* condition F, paragraph 9 of Part 1 of Schedule 2).

So far as these Regulations extend the circumstances in which the Secretary of State must give a direction, 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 Secretary of State must give a direction in one way, relating to offences where the court has decided not to give a disqualification order (*see* substituted regulation 8(3)).

In some circumstances where the Secretary of State is required to give a direction these Regulations create a new right for the individual to make representations to the Secretary of State (*see*

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new regulation 8A inserted by regulation 4 of these Regulations). If, after consideration of the representations, it appears to the Secretary of State that the person is not unsuitable to work with children, he must revoke the direction. This right to make representations and the consequent function of the Secretary of State in relation to revoking the direction only apply where a person is subject to a direction 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 Schedule 2 (*see* paragraph 13 of Part 1 of Schedule 2 for the meaning of “related to”);
 - (ii) committed against a child aged under 16 but more than 10 years before the direction;
or
 - (iii) committed against a person aged 16 or over (condition D1).
- (b) Where the 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).

If, following this consideration of a person’s representations under the new regulation 8A, the Secretary of State refuses to revoke a direction, the person may appeal to the Tribunal established under section 9 of the Protection of Children Act 1999 (c. 14) (“the Care Standards Tribunal”) (*see* sub-paragraph (aa) of regulation 12(1) of the 2003 Regulations inserted by regulation 9(a) of these Regulations).

These Regulations create a new right to apply to the Care Standards Tribunal for a review (*see* new regulation 10A inserted by regulation 7 of these Regulations) where a person was given a direction under regulation 8 of the 2003 Regulations (or the similar provision in earlier Regulations) prior to these Regulations coming into force. There are exceptions to this right of review where a person satisfies any of conditions A to C - namely:

- (a) the person is on the “PoCA List” (condition A);
- (b) the person is subject to a “disqualification order” (condition B); or
- (c) the person has committed an offence against a child under 16 that is an offence set out in Part 2 of Schedule 2 that was committed not more than 10 years before the direction (condition C).

The Tribunal may, on hearing the review, revoke a direction if it satisfied that the person is no longer unsuitable to work with children (*see* regulation 10 of the 2003 Regulations, as amended by regulation 6 of these Regulations).

Regulations 3, 5, 8 and 9(b) of these Regulations make amendments consequential on the changes made by the new regulations 8 and 10A inserted by these Regulations.