
STATUTORY INSTRUMENTS

2003 No. 1184

Education (Prohibition from Teaching or Working with Children) Regulations 2003

Citation, commencement and application

1.—(1) These Regulations may be cited as the Education (Prohibition from Teaching or Working with Children) Regulations 2003.

(2) These Regulations shall come into force on 1st June 2003.

(3) Subject to paragraph (4), these Regulations shall apply to England and Wales.

(4) Regulation 4 does not apply to Wales.

Interpretation

2. In these Regulations—

“the 1998 Act” means the Teaching and Higher Education Act 1998;

“the 2002 Act” means the Education Act 2002;

“the 2000 Regulations” means the Education (Restriction of Employment) Regulations 2000(1);

“agent” has the meaning given by section 15A(1) of the 1998 Act;

“arrangements” means arrangements of the kind referred to in section 15A(1) of the 1998 Act for a worker to carry out work in England;

“certificate of conviction” has the meaning given by section 73(2) of the Police and Criminal Evidence Act 1984(2);

“child” has the meaning given by section 142(9) of the 2002 Act;

“disqualification order” means an order under section 28 or 29 of the Criminal Justice and Court Services Act 2000(3);

“relevant date” has the same meaning as in section 33(6) of the Criminal Justice and Court Services Act 2000;

“relevant employer” has the meaning given by section 142(9) of the 2002 Act;

“relevant issue” means an issue which arises where the circumstances of the case, including occasions of conduct other than that in question, are such as to raise an issue concerning the safety and welfare of children;

“relevant offence” has the same meaning as in Schedule 2 to the 1998 Act;

“services” means services provided to a relevant employer in England and includes professional and voluntary services;

(1) S.I.2000/2419.

(2) 1984 c. 60; subsection (2) was amended by section 90(1) of, and paragraphs 125 and 128 of Schedule 13 to, the Access to Justice Act 1999 (c. 22).

(3) 2000 c. 43.

“Tribunal” means the tribunal established under section 9 of the Protection of Children Act 1999(4); and

“worker” has the meaning given by section 15A(1) of the 1998 Act.

Revocations, transitional and modifying provisions

3.—(1) The 2000 Regulations and the Education (Restriction of Employment) (Amendment) Regulations 2001(5) are revoked.

(2) Any prohibition or restriction on a person’s employment in force immediately before 1st June 2003 which—

(a) is contained in a direction under regulation 5 of the 2000 Regulations; or

(b) has effect, by virtue of regulation 2 of the 2000 Regulations, as if so contained,

shall have effect as if it were contained in a direction under section 142 of the 2002 Act.

(3) Any such direction given on the grounds that the person concerned is not a fit and proper person to be employed as a teacher or worker with children or young persons shall have effect as if it were given on the grounds that the person is unsuitable to work with children.

(4) Subject to paragraph (5), any order disqualifying a person from being the proprietor of any independent school or (as the case may be) from being a teacher or other employee in any school made under section 470 or 471 of the Education Act 1996(6) shall have effect as if it was a direction under section 142 of the 2002 Act.

(5) Any order disqualifying a person from being the proprietor of any independent school or (as the case may be) from being a teacher or other employee in any school made under section 470 or 471 of the Education Act 1996 on the grounds that the person is unsuitable to work with children shall have effect as if it was a direction under section 142 of the 2002 Act given on the grounds that the person is unsuitable to work with children.

(6) During the period beginning on 1st June 2003 and ending on the day on which section 468 of the Education Act 1996(7) is repealed in accordance with section 216(4) of, and Part 3 of Schedule 22 to, the 2002 Act, section 468 shall have effect as though there were substituted for the words “regulations under section 218(6) of the Education Reform Act 1988 (employment prohibited or restricted on medical grounds or for misconduct etc)”, the words “a direction under section 142 of the Education Act 2002 (prohibition from teaching, etc.)”.

Supply of information following dismissal, resignation, etc

4.—(1) Where a relevant employer—

(a) has ceased to use a person’s services on a ground—

(i) that the person is unsuitable to work with children;

(ii) relating to the person’s misconduct; or

(iii) relating to the person’s health where a relevant issue is raised, or

(b) might have ceased to use a person’s services on such a ground had the person not ceased to provide those services,

(4) 1999 c. 14; section 9 was amended by section 116 of, and paragraph 26 of Schedule 4 to, the Care Standards Act 2000(c. 14); section 74 of, and paragraphs 154 and 157 of Schedule 7 to, the Criminal Justice and Court Services Act 2000; and section 215 of, and paragraph 122 of Schedule 21 to, the 2002 Act.

(5) S.I. 2001/1269.

(6) 1996 c. 56; section 470(2)(f) was substituted by section 100(2) of the Care Standards Act 2000.

(7) Section 468 was amended by section 74 of, and paragraphs 127 and 128 of Schedule 7 to, the Criminal Justice and Court Services Act 2000.

the relevant employer shall report the facts of the case and provide all the information listed in Part 1 of Schedule 1 that is available to the relevant employer in relation to such person to the Secretary of State.

- (2) Where an agent—
- (a) has terminated arrangements on a ground—
 - (i) that the person is unsuitable to work with children;
 - (ii) relating to the person’s misconduct; or
 - (iii) relating to the person’s health where a relevant issue is raised;
 - (b) might have terminated the arrangements on such a ground if the worker had not terminated them; or
 - (c) might have refrained from making new arrangements for a worker on such a ground if the worker had not ceased to make himself available for work,

the agent shall report the facts of the case and provide all the information listed in Part 2 of Schedule 1 that is available to the agent in relation to such person to the Secretary of State.

(3) A relevant employer or agent shall provide the Secretary of State such further information as may be requested by the Secretary of State which he considers relevant to the exercise of his functions under section 142 of the 2002 Act.

Consultation

5.—(1) Save where regulation 8 applies, where the Secretary of State is satisfied that a person is carrying out work to which section 142 of the 2002 Act applies, he shall not exercise his powers under that section in relation to that person without first consulting his relevant employer.

(2) Save where regulation 8 applies, where the Secretary of State is satisfied that a person is carrying out work to which section 142 of the 2002 Act applies pursuant to arrangements made by an agent, he shall not exercise his powers under that section in relation to that person without first consulting that agent.

Representations, evidence and information

6.—(1) Subject to paragraph (3) and save where regulation 8 applies, where the Secretary of State is considering exercising his powers under section 142 of the 2002 Act he shall afford the person concerned the opportunity to make representations to him and, where appropriate, submit medical evidence or other evidence to him within 2 months of the date on which notice of that opportunity is served on the person concerned or, where he is satisfied that the person had good reason not to make such representations or submit such evidence within that period, such further period as the Secretary of State considers reasonable.

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

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

Medical examination and evidence

7.—(1) Where the Secretary of State is considering exercising his powers under section 142 of the 2002 Act he may request the person concerned to submit himself for examination by a qualified medical practitioner appointed by the Secretary of State.

(2) At any time before such medical examination, the Secretary of State or the person concerned may submit to the qualified medical practitioner appointed by the Secretary of State a statement containing evidence or other matter relevant to the examination.

(3) The medical examination may be attended by a qualified medical practitioner appointed for the purpose by the person being examined.

Automatic prohibition

8.—(1) This regulation applies in the case of a person who—

(a) subject to paragraph (5), on or after 1st November 1995—

(i) has pleaded guilty to or been found guilty of an offence set out in Schedule 2 against or involving a child under the age of sixteen or who has pleaded guilty to or been found guilty of an attempt to commit any such offence, before or by a court in the United Kingdom;

(ii) was carrying out work to which section 142 of the 2002 Act applies before or at the time he committed or was convicted of the offence; and

(iii) was aged eighteen or over at the time the offence was committed;

(b) is included (otherwise than provisionally) in the list kept by the Secretary of State under section 1 of the Protection of Children Act 1999 (list of persons considered unsuitable to work with children); or

(c) on or after 1st June 2003—

(i) is made subject to a disqualification order; and

(ii) was carrying out work to which section 142 of the 2002 Act applies before or at the time he committed or was convicted of the offence to which the disqualification order relates.

(2) Where paragraph (1)(a) applies the Secretary of State shall, on receipt of a certificate of conviction in respect of an offence referred to in that paragraph committed by the person concerned, determine that the person concerned is unsuitable to work with children, and give a direction in accordance with section 142(1)(a) of the 2002 Act.

(3) Where paragraph (1)(b) applies, the Secretary of State shall, on receipt of notification that the person concerned has been included in the list referred to in that paragraph, give a direction in accordance with section 142(1)(a) of the 2002 Act.

(4) Where paragraph (1)(c) applies, the Secretary of State shall, on receipt of notification that the person concerned is subject to a disqualification order, determine that the person is unsuitable to work with children, and give a direction in accordance with section 142(1)(a) of the 2002 Act.

(5) In relation to the offences of murder (paragraphs 14, 31 and 44 of Schedule 2) and the offences contrary to section 1(1)(c) of the Protection of Children Act 1978⁽⁸⁾, section 52(1)(c) of the Civil Government (Scotland) Act 1982⁽⁹⁾ and article 3(1)(c) of the Protection of Children (Northern Ireland) Order 1978⁽¹⁰⁾ (possession of indecent photographs of children in paragraphs 13, 27 and 42 of Schedule 2) this regulation only applies where a person has pleaded guilty or been found guilty on or after 1st June 2003.

Review by the Secretary of State

9.—(1) Save where—

⁽⁸⁾ 1978 c. 36; section 1 was amended by sections 84 and 168 of, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33).

⁽⁹⁾ 1982 c. 45; section 52(1) was amended by section 84 of the Criminal Justice and Public Order Act 1994.

⁽¹⁰⁾ S.I. 1978/1047 (N.I. 17).

- (a) regulation 8(1)(b) or (c) applies, or
- (b) a direction was given 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,

a direction given under section 142 of the 2002 Act (“the earlier direction”) may be revoked or varied by a subsequent direction on either or both of the grounds referred to in paragraph (2).

(2) The grounds upon which an earlier direction may be revoked or varied under paragraph (1) are that—

- (a) the Secretary of State is in possession of information relevant to the decision to give the earlier direction which he did not have at the time that the decision was made; and
- (b) the Secretary of State is in possession of evidence of a material change of circumstances of the person concerned occurring since the earlier direction was given.

(3) Where regulation 8(1)(b) applies an earlier direction shall be revoked if the name of the person concerned is removed from the list referred to in that paragraph.

(4) Where regulation 8(1)(c) applies an earlier direction shall be revoked if the disqualification order ceases to have effect.

Review by the Tribunal

10.—(1) Subject to regulation 11, a person subject to a direction given under section 142 of the 2002 Act on the grounds that he is unsuitable to work with children may make an application to the Tribunal under this regulation.

(2) On an application under this regulation the Tribunal shall determine whether or not the individual should continue to be subject to the direction.

(3) If the Tribunal is satisfied that the person is no longer unsuitable to work with children it shall revoke the direction; otherwise it shall dismiss the application.

11.—(1) A person may only make an application under regulation 10 with the leave of the Tribunal.

(2) An application for leave under this regulation may not be made unless the appropriate conditions are satisfied in the person’s case.

(3) In the case of a person who was a child when he was made subject to a direction given under section 142 of the 2002 Act, the appropriate conditions are satisfied if—

- (a) at least five years have elapsed since—
 - (i) where regulation 8(1)(b) applies, he was included in the list kept under section 1 of the Protection of Children Act 1999;
 - (ii) where regulation 8(1)(c) applies, the relevant date; or
 - (iii) otherwise, he was made subject to the direction, and
- (b) in the period of five years ending with the time when he makes the application under this regulation, he has made no such other application.

(4) In the case of any other person, the appropriate conditions are satisfied if—

- (a) at least ten years have elapsed since—
 - (i) where regulation 8(1)(b) applies, he was included in the list kept under section 1 of the Protection of Children Act 1999;
 - (ii) where regulation 8(1)(c) applies, the relevant date; or
 - (iii) otherwise, he was made subject to the direction, and

- (b) in the period of ten years ending with the time when he makes the application under this regulation, he has made no other such application.
- (5) The Tribunal shall not grant an application under this regulation unless it considers—
 - (a) that the person’s circumstances have changed since he was made subject to the direction, or, as the case may be, since he last made an application under this regulation; and
 - (b) that the change is such that leave should be granted.

Appeals

12.—(1) Subject to paragraphs (2) and (3) an appeal to the Tribunal may be brought by a person in respect of whom a direction has been given under section 142 of the 2002 Act—

- (a) save where regulation 8 applies, against a direction given to him by the Secretary of State under section 142 of the 2002 Act; and
- (b) save where regulation 8(1)(b) or (c) applies, against a refusal by the Secretary of State to revoke or vary a direction given to him under section 142 of the 2002 Act following consideration of the information or evidence referred to in regulation 9.

(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 Secretary of State under regulation 9.

(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.

The Tribunal’s powers

13.—(1) Where on an appeal under regulation 12 the Tribunal considers that the direction is not appropriate it may order the Secretary of State to revoke or vary the direction.

- (2) The Tribunal shall not, in exercising its powers under this regulation, consider—
 - (a) any information relevant to the decision to give a direction or not to revoke or vary a direction which the Secretary of State did not have at the time the decision was made; or
 - (b) any evidence of a material change of circumstances of the person concerned occurring since the decision to give a direction or not to revoke or vary a direction was given.

29th April 2003

David Miliband
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