

2008 No. 200

SAFEGUARDING VULNERABLE GROUPS

**The Safeguarding Vulnerable Groups (Transitional Provisions)
Order (Northern Ireland) 2008**

Made - - - - - *6th May 2008*

Coming into operation - *16th June 2008*

To be laid before Parliament

The Secretary of State makes the following Order in exercise of the powers conferred by Article 61(1) of, and paragraphs 2 and 3 of Schedule 6 to, the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007(a).

Citation and Commencement

1. This Order may be cited as the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008 and shall come into operation on 16th June 2008.

Interpretation

2. In this Order—

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

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

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

“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(d);

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

(a) S.I. 2007 No. 1351 (N.I. 11).

(b) S.I. 2003 No. 417 (N.I. 4) as amended by S.I. 2003 No. 431 (N.I. 9) and which is to be repealed by Schedule 8 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (“the 2007 Order”) which was not in operation on the making of this Order.

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

(d) S.I. 2003 No. 431 (N.I. 9).

(e) An order of the court made under Article 23 or 24 disqualifies the person in respect of whom it is made from working with children.

Inclusion in the children's barred list: persons disqualified from working with children

3.—(1) This Article applies to a person, other than a person to whom Article 4(1) applies, (“X”)—

- (a) who is—
 - (i) included (otherwise than provisionally) in the list kept under Article 3 of the 2003 Order (persons unsuitable to work with children);
 - (ii) subject to a disqualification order; or
 - (iii) included in the list kept for the purposes of the 2007 Regulations(a) (prohibition from teaching etc);
- (b) who has no appeal or review outstanding under the 2003 Order(b) or representations, appeal or revocation outstanding under the 2007 Regulations(c) or in whose case the time limit for making representations or appealing under those Orders has expired; and
- (c) who is referred by the Department of Health, Social Services and Public Safety or the Department of Education to IBB(d).

(2) IBB must—

- (a) include X in the children's barred list(e), and
- (b) subject to paragraphs (5) and (7), give X the opportunity to make representations as to why X should be removed from the children's barred list.

(3) Regulation 3 (representations) of the Safeguarding Vulnerable Groups (Barring Procedure) Regulations (Northern Ireland) 2008(f) applies in relation to representations made under paragraph (2)(b) as it applies in relation to representations made under Schedule 1 to the Order.

(4) IBB must consider any representations made by X and if it appears to IBB in light of those representations that it is not appropriate for X to be included in the children's barred list, it must remove X from that list.

(5) Part 3 of Schedule 1 to the Order in its application to the functions of IBB under this Article has effect subject to the following modifications—

- (a) in paragraph 16(1)—
 - (i) for “any provision of this Schedule” substitute “Article 3 of the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008”; and
 - (ii) for “this Schedule” substitute “that Article”;
- (b) after paragraph 16(1) insert—

“(1A) A person to whom Article 3(2)(b) of the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008 applies may make representations as to why he should be removed from the children's barred list in accordance with that provision only in relation to his engaging in regulated activity relating to children which does not constitute work in a regulated position within the meaning of Article 31 of the 2003 Order.”;

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- (a) See regulation 8 of the 2007 Regulations.
 - (b) An individual included in the list kept under Article 3 of the 2003 Order may appeal to the Care Tribunal under Article 11(1) against inclusion in the list or apply to the Care Tribunal under Article 12(1) to be removed from the list. An individual subject to a disqualification order under the 2003 Order may appeal under Article 26 and may apply to the Care Tribunal under Article 27 for a review of that disqualification order.
 - (c) An individual included in the list kept for the purposes of the 2007 Regulations may in certain circumstances make representations under regulation 7, seek a revocation of the prohibition by the Department of Education under regulation 9 and may appeal to the Care Tribunal under regulation 10 of those Regulations.
 - (d) The Independent Barring Board (“IBB”) was established by section 1 of the Safeguarding Vulnerable Groups Act 2006.
 - (e) See Article 2(2) of the Order for the meaning of the children's barred list. Although X is included in the children's barred list, X will not be barred from engaging in regulated activity in relation to children until Article 7(2) of the Order comes into operation. X will remain subject to the current restrictions until the provisions repealing the restrictions are brought into operation subject to any savings.
 - (f) S.R. 2008 No. 203.

- (c) in paragraph 16(2), for “Schedule” substitute “Article 3 of the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008”;
- (d) in paragraph 18(4), for the words “he was included” to “(as the case may be)” substitute “the date of the most recent disqualification decision made in respect of him”;
- (e) after paragraph 18(4), insert—
 - “(4A) In sub-paragraph (4), “disqualification decision” means—
 - (a) a decision of the Department of Health, Social Services and Public Safety—
 - (i) to include the person (otherwise than provisionally) in the list kept under Article 3 of the 2003 Order, or
 - (ii) not to remove him from that list;
 - (b) a decision of the Care Tribunal not to direct the person’s removal from the list referred to in sub-paragraph (4A)(a);
 - (c) a decision of the court to make a disqualification order (within the meaning of paragraph 24(6)(b)) in respect of the person;
 - (d) a decision of the Care Tribunal that the person should continue to remain subject to that disqualification order;
 - (e) a decision of the Department of Education—
 - (i) to include the person in the list kept for the purposes of the 2007 Regulations, or
 - (ii) not to revoke a prohibition^(a);
 - (f) a decision of the Care Tribunal not to order the Department of Education to revoke the decision referred to in sub-paragraph (4A)(e).”; and
 - (f) in paragraph 19(1)(a) and (d) for “any of paragraphs 1 to 5 or 7 to 11”, substitute “Article 3(1) of the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008”.

(6) X may appeal to the Care Tribunal against a decision under this Article not to remove him from the children’s barred list and Article 8 of the Order applies in relation to an appeal under this paragraph as it applies in relation to an appeal under paragraph (1) of that Article.

(7) Paragraph (2)(b) does not apply to a person if any of the criteria prescribed for the purposes of paragraph 1 of Schedule 1 to the Order as it has effect for the purposes of this paragraph is satisfied in relation to that person.

Inclusion in the children’s barred list: on transfer from the Pre-Employment Consultancy Service Register

- 4.—(1) This Article applies to a person (“Y”)—
- (a) who—
 - (i) is included in the list kept under Article 3 of the 2003 Order on transfer from the Pre-Employment Consultancy Service Register under Article 10 of that Order;
 - (ii) is not subject to a disqualification order; and
 - (iii) does not satisfy any of the conditions C to F specified in Part 1 of the Schedule to the 2007 Regulations;
 - (b) who has no appeal or review outstanding under the 2003 Order or in whose case the time limit for appealing under that Order has expired; and
 - (c) who is referred by the Department of Health, Social Services and Public Safety or the Department of Education to IBB.

(a) in accordance with regulation 9 of S.R. 2007 No. 288.

(2) IBB must consider including Y in the children’s barred list in accordance with paragraphs 3 to 5 of Schedule 1 to the Order.

Inclusion in the adults’ barred list: persons considered unsuitable to work with vulnerable adults

5.—(1) This article applies to a person (“X”)—

- (a) who is included (otherwise than provisionally) in the list kept under Article 35 of the 2003 Order (individuals considered unsuitable to work with vulnerable adults);
- (b) who has no appeal or review outstanding under the 2003 Order(a) or in whose case the time limit for appealing under that Order has expired; and
- (c) who is referred by the Department of Health, Social Services and Public Safety to IBB.

(2) IBB must—

- (a) include X in the adults’ barred list(b); and
- (b) subject to paragraphs (5) and (7), give X the opportunity to make representations as to why he should be removed from the adults’ barred list.

(3) Regulation 3 (representations) of the Safeguarding Vulnerable Groups (Barring Procedure) Regulations (Northern Ireland) 2008 applies in relation to representations made under paragraph (2)(b) as it applies in relation to representations made under Schedule 1 to the Order.

(4) IBB must consider any representations made by X and if it appears to IBB in light of those representations that it is not appropriate for X to be included in the adults’ barred list, it must remove X from that list.

(5) Part 3 of Schedule 1 to the Order in its application to the functions of IBB under this Article has effect subject to the following modifications—

- (a) in paragraph 16(1)—
 - (i) for “any provision of this Schedule” substitute “Article 5 of the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008”; and
 - (ii) for “this Schedule” substitute “that Article”;

(b) after paragraph 16(1) insert—

“(1A) A person to whom Article 5(2)(b) of the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008 applies may make representations as to why he should be removed from the adults’ barred list in accordance with that provision only in relation to his engaging in regulated activity relating to vulnerable adults which does not constitute work in a care position within the meaning of Article 48(1)(a) and (c) of the 2003 Order.”;

(c) in paragraph 16(2), for “Schedule” substitute “Article 5 of the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008”;

(d) in paragraph 18(4), for the words “he was included” to “(as the case may be)” substitute “the date of the most recent disqualification decision made in respect of him”;

(e) after paragraph 18(4), insert—

“(4A) In sub-paragraph (4), “disqualification decision” means—

- (a) a decision of the Department of Health, Social Services and Public Safety—
 - (i) to include the person (otherwise than provisionally) in the list kept under Article 35 of the 2003 Order, or

(a) A person included in the list kept under Article 35 of the 2003 Order may appeal to the Tribunal under Article 42 against inclusion in the list or apply to the Care Tribunal under Article 43 to be removed from the list.

(b) See Article 2(2) of the Order for the meaning of “the adults’ barred list”. Although X is included in the adults’ barred list, he will not be barred from engaging in regulated activity relating to vulnerable adults until Article 7(3) of the Order comes into operation. X will remain included in the list kept under Article 35 of the 2003 Order until that provision is repealed subject to any savings.

- (ii) not to remove him from that list; or
- (b) a decision of the Care Tribunal not to direct the person's removal from the list referred to in sub-paragraph (4A)(a)."; and
- (f) in paragraphs 19(1)(a) and (d) for "any of paragraphs 1 to 5 or 7 to 11", substitute "Article 5(1) of the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008".

(6) X may appeal to the Care Tribunal against a decision under this Article not to remove him from the adults' barred list and Article 8 of the Order applies in relation to an appeal under this paragraph as it applies to an appeal under paragraph (1) of that Article.

(7) Paragraph (2)(b) does not apply to a person if any of the criteria prescribed for the purposes of paragraph 7 of Schedule 1 to the Order as it has effect for the purposes of this paragraph is satisfied in relation to that person.

Inclusion in the adults' barred list: on transfer from the Pre-Employment Consultancy Service Register

6.—(1) This Article applies to a person ("Y")—

- (a) who—
 - (i) is included in the list kept under Article 35 of the 2003 Order on transfer from the Pre-Employment Consultancy Service Register under Article 41 of that Order;
 - (ii) is not subject to a disqualification order; and
 - (iii) does not satisfy any of the conditions C to F specified in Part 1 of the Schedule to the 2007 Regulations;
- (b) who has no appeal or review outstanding under the 2003 Order or in whose case the time limit for appealing under that Act has expired; and
- (c) who is referred by the Department of Health, Social Services and Public Safety to IBB.

(2) IBB must consider including Y in the adults' barred list in accordance with paragraphs 9 to 11 of Schedule 1 to the Order.

Northern Ireland Office
6th May 2008

Paul Goggins
Minister of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

This Order, made under the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (“the Order”), makes transitional provision in relation to those subject to existing restrictions relating to working with children or vulnerable adults. The Order requires the Independent Barring Board (“IBB”) established under section 1 of the Safeguarding Vulnerable Groups Act 2006 to include, or consider including, those subject to existing restrictions in the new barred lists. The individuals included in the new barred lists will not be barred from engaging in regulated activity relating to children or, as the case may be, vulnerable adults, until Article 7(2) and (3) of the Order (bar from engaging in regulated activity) comes into operation. The existing restrictions are to remain in place until then.

Article 3 applies to persons who are included in the list kept under Article 3 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (“the 2003 Order”) (other than those to whom Article 4(1)(a) applies), disqualified from working with children by virtue of a disqualification order (that is an order under Article 23 or 24 of the 2003 Order) or included in the list kept for the purposes of the Education (Prohibition from Teaching or Working with Children) Regulations (Northern Ireland) 2007 (“the 2007 Regulations”) and have no appeal etc. outstanding. IBB must include those individuals in the children’s barred list established and maintained by the IBB under Article 6 of the Order but the bar will not take effect until the date on which Article 7(2) of the Order comes into operation (Article 3(2)). At that point a person who is included in the children’s barred list will be barred from engaging in regulated activity relating to children. The individual will remain subject to the existing restrictions until that date. The IBB must give the individual an opportunity to make representations as to why they should be removed from the list, unless any of the criteria prescribed for the purposes of paragraph 1 of Schedule 1 to the Order as it has effect for the purposes of Article 3(7) is satisfied in relation to that individual. That right to make representations is limited (Article 3(5)). Article 3(6) provides that an individual may appeal against the decision of IBB not to remove the individual from the children’s barred list and Article 8 of the Order applies in relation to any appeal.

Article 4 applies to those included in the list kept under Article 3 of the 2003 Order who were transferred to that list under Article 10 of that Order - Pre-Employment Consultancy Service Register cases (unless subject to a disqualification order or if any of Conditions C to F of the 2007 Regulations is met). IBB must consider including such individuals in the children’s barred list in accordance with paragraphs 3 to 5 of Schedule 1 to the Order. There is a right of appeal against the decision of IBB to include an individual in the children’s barred list under Article 8 of the Order.

Article 5 makes similar provision to Article 3 in relation to those included in the list kept under Article 35 of the 2003 Order (individuals considered unsuitable to work with vulnerable adults). IBB must include those individuals in the adults’ barred list maintained under Article 6 of the Order but the bar will not take effect until Article 7(3) of the Order comes into operation (Article 5(2)). At that point an individual who is included in the adults’ barred list will be barred from engaging in regulated activity relating to vulnerable adults. The individual will remain subject to the existing restriction until that date. IBB must give the individual an opportunity to make representations as to why he should be removed from the adults’ barred list, unless any of the criteria prescribed for the purposes of paragraph 7 of Schedule 1 to the Order as it has effect for the purposes of Article 5(7) is satisfied in relation to that individual. That right to make representations is limited (Article 5(5)). Article 5(6) provides that an individual may appeal against a decision of IBB not to remove the individual from the adults’ barred list and Article 8 of the Order applies in relation to any appeal.

Article 6 makes similar provision to Article 4 in relation to those included in the list kept under Article 35 of the 2003 Order who were transferred under Article 41 of that Order - Pre-Employment Consultancy Service Register cases (unless subject to a disqualification order or any of Conditions C to F of the 2007 Regulations is met). IBB must consider including such

individuals in the adults' barred list in accordance with paragraphs 9 to 11 of Schedule 1 to the Order. There is a right of appeal against the decision of IBB to include an individual in the adults' barred list under Article 8 of the Order.

Articles 3(3) and 5(3) provide that regulation 3 of the Safeguarding Vulnerable Groups (Barring Procedure) Regulations (Northern Ireland) 2008 which governs representations to IBB applies in relation to representations made under these Articles.