

**2008 No. 201**

**SAFEGUARDING VULNERABLE GROUPS**

**The Safeguarding Vulnerable Groups (Prescribed Criteria)  
(Transitional Provisions) Regulations (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 Regulations in exercise of the powers conferred by Article 61(1) of, and paragraphs 1(1), 7(1) and 24(1) to (3)(a) of Schedule 1 to, the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007(b).

**Citation and Commencement**

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

**Interpretation**

2.—(1) In these Regulations—

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

“connected offence” means, in relation to an offence specified in the Schedule, an offence of—

- (a) attempting, conspiring, or incitement to commit that offence, or
- (b) aiding, abetting, counselling or procuring the commission of that offence;

“disqualification order” means an order of the court under Article 23 or 24 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003(c);

“relevant circumstances” means—

- (a) in relation to an offence specified in sub-paragraph (a) or (b) of paragraph 1 of the Schedule, the circumstances described in the relevant sub-paragraph which relate to the commission of that offence, and

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(a) Paragraphs 1 and 7 of Schedule 1 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (“the Order”) refer to criteria prescribed for the purposes of those paragraphs. Paragraph 24 of Schedule 1 to the Order makes provision as to the criteria that may be prescribed for the purposes of paragraphs 1 and 7 of that Schedule. Article 2(2) of the Order defines “prescribed” as meaning prescribed by regulations made by the Secretary of State.

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

(c) S.I. 2003 No. 417 (N.I. 4) as amended by S.I. 2003 No. 431 (N.I. 9). 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. The Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 is to be repealed by Schedule 8 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 which was not in operation on the making of these Regulations.

(b) in relation to an offence specified in sub-paragraph (c), (e) or (g)(i) of that paragraph, the circumstances referred to in the relevant sub-paragraph in relation to the commission of that offence.

(2) In regulation 3, a reference to an offence specified in paragraph 1(a) to (c), (e) or (g)(i) of the Schedule is a reference to that offence only where it was committed in relevant circumstances.

(3) In regulations 3 and 4, a reference to an offence specified in the Schedule includes a reference to an offence which is a connected offence in relation to the specified offence.

(4) For the purposes of regulations 3 and 4, an offence committed over a period of time must be treated as having been committed on the last day of that period.

#### **Prescribed criteria – children’s barred list**

3.—(1) 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) of the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008<sup>(a)</sup> are that the person has been convicted of, or cautioned in relation to, an offence specified in paragraph 1 of the Schedule which that person committed within the period of 10 years ending on the day that the Department of Health, Social Services and Public Safety or the Department of Education refers the person to IBB under Article 3(1)(c) of that Order for inclusion in the children’s barred list.

(2) Paragraph 1 does not apply in relation to the commission of an offence specified in paragraph 1 of the Schedule if the court, having considered whether to make a disqualification order in relation to that commission of that offence, decided not to.

#### **Prescribed criteria – adults’ barred list**

4. 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) of the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008 are that the person has been convicted of, or cautioned in relation to, an offence specified in paragraph 2 of the Schedule which that person committed within the period of 10 years ending on the day that the Department of Health, Social Services and Public Safety refers the person to IBB under Article 5(1)(c) of that Order for inclusion in the adults’ barred list.

Northern Ireland Office  
6th May 2008

*Paul Goggins*  
Minister of State

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(a) S.R. 2008 No. 200

## SCHEDULE

Regulations 3 and 4

1. The offences specified for the purposes of regulation 3 are—
- (a) the offence of rape contrary to the common law of Scotland, where the offence was committed against a child;
  - (b) the offence of rape contrary to the common law of Northern Ireland, where the offence was committed against a child;
  - (c) any offence contrary to a provision specified in the first column of Part 1 of the table set out in this paragraph, where it was committed in circumstances specified in the corresponding entry in the second column of that Part of that table;
  - (d) any offence contrary to a provision specified in Part 2 of that table;
  - (e) any offence contrary to—
    - (i) section 70 of the Army Act 1955(a),
    - (ii) section 70 of the Air Force Act 1955(b), or
    - (iii) section 42 of the Naval Discipline Act 1957(c),which corresponds to an offence contrary to any provision specified in the first column of Part 1 of that table and which was committed in circumstances specified in the entry in the second column of that Part of that table that corresponds to the relevant entry in the first column of that Part of that table;
  - (f) any offence contrary to—
    - (i) section 70 of the Army Act 1955,
    - (ii) section 70 of the Air Force Act 1955, or
    - (iii) section 42 of the Naval Discipline Act 1957,which corresponds to an offence contrary to any provision specified in Part 2 of that table; and
  - (g) any offence contrary to section 42 of the Armed Forces Act 2006(d), where—
    - (i) the corresponding offence under the law of England and Wales is one contrary to a provision specified in the first column of Part 1 of that table, and the offence under the Armed Forces Act 2006 was committed in circumstances specified in the entry in the second column of that Part of that table that corresponds to the relevant entry in the first column of that Part of that table, or
    - (ii) the corresponding offence under the law of England and Wales is one contrary to a provision specified in Part 2 of that table.

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- (a) 1955 c.18; so far as relevant, section 70 was amended by Schedule 1 to the Suicide Act 1961 (c. 60), section 1(6) of the Genocide Act 1969 (c. 12), section 5(1) of the Biological Weapons Act 1974 (c. 6), section 7(1) of the Criminal Attempts Act 1981 (c. 47), section 35(a) of the Chemical Weapons Act 1996 (c. 6), section 12(a) of the Nuclear Explosions (Prohibition and Inspections) Act 1998 (c. 7), section 74(2)(a) and (b), and (3) of, and Schedule 10 to, the International Criminal Court Act 2001 (c. 17), and paragraph 9(a) and (b) of Schedule 6, and Schedule 7, to the Sexual Offences Act 2003 (c. 42). Section 70 is to be repealed by Schedule 17 to the Armed Forces Act 2006 (c. 52).
  - (b) 1955 c.19; so far as relevant, section 70 was amended by Schedule 1 to the Suicide Act 1961, section 1(6)(b) of the Genocide Act 1969, section 5(1) of the Biological Weapons Act 1974, section 7(1) of the Criminal Attempts Act 1981, section 35(b) of the Chemical Weapons Act 1996, section 12(b) of the Nuclear Explosions (Prohibition and Inspections) Act 1998, section 74(2)(a) and (b), and (3) of, and Schedule 10 to, the International Criminal Court Act 2001, and paragraph 10(a) and (b) of Schedule 6, and Schedule 7, to the Sexual Offences Act 2003. Section 70 is to be repealed by Schedule 17 to the Armed Forces Act 2006.
  - (c) 1957 c. 53; so far as relevant, section 42 was amended by section 34(3) of the Armed Forces Act 1971 (c. 33), section 7(1) of the Criminal Attempts Act 1981, paragraph 3 of Schedule 1, and Schedule 2, to the Armed Forces Act 1986 (c. 21), and paragraph 5(1) and (2) of Schedule 3, and paragraph 34(1), (2), (3) and (4) of Schedule 6, and Schedule 7, to the Armed Forces Act 2001 (c. 19). Section 42 is to be repealed by Schedule 17 to the Armed Forces Act 2006.
  - (d) 2006 c. 52.

## Table

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### Part 1

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<i>Provision</i>	<i>Circumstances</i>
Sexual Offences Act 1956, section 1(a)	The offence was committed against a child
Mental Health Act 1959, section 128(b)	The offence was committed against a child
Mental Health (Northern Ireland) Order 1986, Article 122(1)(a)(c)	The offence was committed against a child
Mental Health (Northern Ireland) Order 1986, Article 123(d)	The offence was committed against a child
Mental Health (Care and Treatment)(Scotland) Act 2003, section 311(e)	The offence was committed against a child
Mental Health (Care and Treatment)(Scotland) Act 2003, section 313(f)	The offence was committed against a child
Sexual Offences Act 2003, section 1(g)	The offence was committed against a child
Sexual Offences Act 2003, section 2	The offence was committed against a child
Sexual Offences Act 2003, section 30	The offence was committed against a child
Sexual Offences Act 2003, section 31	The person caused or incited to engage in sexual activity was a child
Sexual Offences Act 2003, section 32	The person who was present or in a place from which the person committing the offence could be observed was a child
Sexual Offences Act 2003, section 33	The person caused to watch the sexual activity in question was a child
Sexual Offences Act 2003, section 34	The offence was committed against a child
Sexual Offences Act 2003, section 35	The person induced, threatened or deceived was a child
Sexual Offences Act 2003, section 36	The person who agreed to be present or in a place from which the person committing the offence could be observed was a child
Sexual Offences Act 2003, section 37	The person induced, threatened or deceived was a child
Sexual Offences Act 2003, section 38	The offence was committed against a child
Sexual Offences Act 2003, section 39	The person caused or incited to engage in sexual activity was a child
Sexual Offences Act 2003, section 40	The person who was present or in a place from which the person committing the offence could be observed was a child
Sexual Offences Act 2003, section 41	The person caused to watch the sexual activity in question was a child

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### Part 2

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#### *Provision*

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- (a) 1956 c. 69; section 1 was substituted by section 142 of the Criminal Justice and Public Order Act 1994 (c. 33) and repealed by paragraph 11 of Schedule 6 to the Sexual Offences Act 2003.
- (b) 1959 c. 72; section 128 was amended by paragraph 29 of Schedule 15 to the National Health Service Act 1977 (c. 49), paragraph 15 of Schedule 4 to the Mental Health Act 1983 (c. 20), and paragraph 2 of Schedule 4 to the Care Standards Act 2000 (c. 14), and repealed in part by Schedule 16 to the National Health Service Act 1977.
- (c) S.I. 1986/595 (N.I. 4); Article 122(1)(a) was amended by Article 2 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755) (N.I. 2).
- (d) Article 123 was amended by Article 2 of the Health and Personal Social Services (Northern Ireland) Order 1994 (S.I. 1994/429) (N.I. 2).
- (e) 2003 asp 13.
- (f) Section 313 was amended by paragraph 70 of Schedule 28 to the Civil Partnership Act 2004 (c. 33).
- (g) 2003 c. 42.

Criminal Law Amendment Act 1885, section 4(a)  
 Sexual Offences Act 1956, section 5(b)  
 Criminal Law (Consolidation) (Scotland) Act 1995, section 5(1) or (2)(c)  
 Sexual Offences Act 2003, section 5  
 Sexual Offences Act 2003, section 6  
 Sexual Offences Act 2003, section 7  
 Sexual Offences Act 2003, section 8

2. The offences specified for the purposes of regulation 4 are—

- (a) any offence contrary to a provision specified in the table set out in this paragraph;
- (b) any offence contrary to—
  - (i) section 70 of the Army Act 1955,
  - (ii) section 70 of the Air Force Act 1955, or
  - (iii) section 42 of the Naval Discipline Act 1957,
 which corresponds to an offence contrary to any provision specified in that table; and
- (c) any offence contrary to section 42 of the Armed Forces Act 2006, where the corresponding offence under the law of England and Wales is one contrary to a provision specified in that table.

**Table**

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*Provision*

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Mental Health (Northern Ireland) Order 1986, Article 122(1)(a)  
 Mental Health (Northern Ireland) Order 1986, Article 123  
 Mental Health (Care and Treatment)(Scotland) Act 2003, section 311  
 Mental Health (Care and Treatment)(Scotland) Act 2003, section 313  
 Sexual Offences Act 2003, section 30  
 Sexual Offences Act 2003, section 31  
 Sexual Offences Act 2003, section 32  
 Sexual Offences Act 2003, section 33  
 Sexual Offences Act 2003, section 34  
 Sexual Offences Act 2003, section 35  
 Sexual Offences Act 2003, section 36  
 Sexual Offences Act 2003, section 37  
 Sexual Offences Act 2003, section 38  
 Sexual Offences Act 2003, section 39  
 Sexual Offences Act 2003, section 40  
 Sexual Offences Act 2003, section 41

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(a) 1885 c. 69; section 4 was repealed by Schedule 4 to the Sexual Offences Act 1956, in relation to England and Wales, and by Schedule 2 to the Sexual Offences (Scotland) Act 1976 (c. 67), in relation to Scotland.  
 (b) Section 5 was repealed by paragraph 11 of Schedule 6 to the Sexual Offences Act 2003.  
 (c) 1995 c. 39, section 5(2) was amended by section 14 of the Crime and Punishment (Scotland) Act 1997 (c. 48). Section 5 was amended by section 15 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9).

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations prescribe the criteria which are to have effect for the purposes of Articles 3(7) and 5(7) of the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008 (“the TPO”). Anyone meeting these criteria will not be given the right to make representations as to their inclusion under the TPO in the barred lists (these are the lists established and maintained by the Independent Barring Board (“IBB”) under Article 6 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (“the Order”)).

The criteria will apply only in the case of people whom IBB is required to include in those lists under the TPO (see regulations 3 and 4). They will be people who, at the point at which they are referred to IBB by the Department of Health, Social Services and Public Safety or the Department of Education, are included in the lists maintained under Article 3 or 35 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (“the 2003 Order”), who are subject to a disqualification order under Article 23 or 24 of the 2003 Order or who are included in the list kept for the purposes of the Education (Prohibition from Teaching or Working with Children) Regulations (Northern Ireland) 2007.

The criteria are that a person has been convicted of, or cautioned in relation to, an offence set out in the Schedule to these Regulations, or a connected offence, which that person committed in any applicable circumstances that may be prescribed in the Schedule in relation to the commission of that offence (see regulation 2(3)). Where no circumstances are prescribed in relation to the commission of an offence, the criteria are met in any case where a person is convicted of, or cautioned in relation to, the offence in question. A connected offence is an offence of attempting, conspiring, or incitement to commit, or aiding, abetting, counselling, or procuring the commission of, an offence set out in the Schedule (regulation 2(1)).

The offence must have been committed within the period of 10 years ending on the day that the Department of Health, Social Services and Public Safety or the Department of Education refers the individual to IBB (regulations 3 and 4). The effect of regulation 2(4) is that, where an offence has been committed over a period of time, it will be treated as having been committed on the last day of that period.