

2008 No. 203

SAFEGUARDING VULNERABLE GROUPS

**The Safeguarding Vulnerable Groups (Barring Procedure)
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 15(1) and (2), and 18(3)(b) and (6)(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 (Barring Procedure) Regulations (Northern Ireland) 2008 and come into operation on 16th June 2008.

Interpretation

2. In these Regulations—

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

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

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

“Care Tribunal” means the Tribunal established under Article 44 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003(e);

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

“offence against a child” has the same meaning as in Article 22 of the 2003 Order; and

“previous restriction” means any of—

(a) Paragraph 18(3)(b) and (6) of Schedule 1 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 refer to periods prescribed for the purposes of those provisions. Article 2(2) of that Order defines “prescribed” as meaning prescribed by regulations made by the Secretary of State.

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

(c) S.I. 2003/417 (N.I. 4) as amended by S.I. 2003 No. 431 (N.I. 9) and which is to be repealed by Schedule 8 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (“the 2007 Order”) which was not in operation on the making of these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

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

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

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

- (a) inclusion (otherwise than provisionally) in the list kept under Article 3 of the 2003 Order;
- (b) inclusion (otherwise than provisionally) in the list kept under Article 35 of the 2003 Order;
- (c) a disqualification order; or
- (d) inclusion in a list kept for the purposes of the 2007 Regulations^(a) (other than on the grounds that condition A or condition B in Part 1 of the Schedule to those Regulations is satisfied in relation to a person).

Representations

3.—(1) This paragraph applies to any person to whom IBB must, in accordance with any provision of Schedule 1 to the Order, give the opportunity to make representations as to his removal from, or inclusion in, a barred list.

(2) IBB must give any person falling within paragraph (1) notice in writing that he may make such representations.

(3) IBB shall give any notice under paragraph (2) to the person in question by sending it to him by post.

(4) A notice sent in accordance with paragraph (3) shall be treated as having been received by the person in question 48 hours after and including the date on which it was sent unless the contrary is proved.

(5) A person to whom notice is given in accordance with paragraph (3) may make representations as to his removal from, or inclusion in, a barred list^(b) within the period of 8 weeks starting on the day on which he is treated as having received the notice.

(6) Where—

- (i) a person has not completed making his representations within the period provided for under paragraph (5), and
- (ii) IBB is satisfied that the person has good reason for not doing so,

IBB may allow that person such further period to make his representations as IBB considers reasonable.

The minimum barred period: persons subject to previous restrictions (children’s barred list)

4. In the case of any person who is included by IBB in the children’s barred list pursuant to Article 3 of the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008^(c) (inclusion in the children’s barred list: persons disqualified from working with children) the minimum barred period is the period calculated in the manner set out in regulations 5 to 8.

The minimum barred period: persons included in the list kept under Article 3 of the 2003 Order

5.—(1) In relation to any person mentioned in regulation 4 who, at the point at which he is included in the children’s barred list, is included (otherwise than provisionally) in the list kept by the Department of Health, Social Services and Public Safety under Article 3 of the 2003 Order—

- (a) where the person was under the age of 18 at the date of the most recent restriction decision, subtract from the period of 5 years the period starting on and including the date of that restriction decision and ending on the date on which he is included by IBB in the children’s barred list;

(a) see regulation 8.

(b) The barred lists are the children’s barred list and the adults’ barred list which IBB is required to establish and maintain under Article 6 of the 2007 Order.

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

- (b) where the person had reached the age of 18 at the date of the most recent restriction decision, subtract from the period of 10 years the period starting on and including the date of that restriction decision and ending on the date on which he is included by IBB in the children’s barred list.
- (2) In paragraph (1), restriction decision means a decision of—
- (a) the Department of Health, Social Services and Public Safety—
 - (i) to include the person in the list kept under Article 3 of the 2003 Order, or
 - (ii) not to remove the person from that list;
 - (b) the Care Tribunal not to direct the person’s removal from that list.

The minimum barred period: persons subject to disqualification orders

6.—(1) In relation to any person mentioned in regulation 4 who, at the point at which he is included in the children’s barred list, is subject to a disqualification order in connection with the commission of an offence against a child—

- (a) where the person was under the age of 18 when he committed the offence in question, subtract from the period of 5 years the period starting on and including the date of the most recent disqualification decision and ending on the date on which he is included by IBB in the children’s barred list;
- (b) where the person had reached the age of 18 when he committed the offence in question, subtract from the period of 10 years the period starting on and including the date of the most recent disqualification decision and ending on the date on which he is included by IBB in the children’s barred list.

- (2) In paragraph (1), disqualification decision means a decision of—
- (a) the Court, to make the person subject to the disqualification order;
 - (b) the Care Tribunal, that the person should continue to be subject to the disqualification order.

The minimum barred period: persons included in the list kept for the purposes of the 2007 Regulations

7.—(1) In relation to any person mentioned in regulation 4 who, at the point at which he is included in the children’s barred list, is included in the list kept for the purposes of the 2007 Regulations (other than on the grounds that condition A or condition B in Part 1 of the Schedule to those Regulations is satisfied in relation to that person)—

- (a) where the person was under the age of 18 when he was included in the list, subtract from the period of 5 years the period starting on and including the date of the most recent restriction decision and ending on the date on which he is included by IBB in the children’s barred list;
- (b) where the person had reached the age of 18 when he was included in the list, subtract from the period of 10 years the period starting on and including the date of the most recent restriction decision and ending on the date on which he is included by IBB in the children’s barred list.

- (2) In paragraph (1), restriction decision means a decision of—
- (a) 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);
 - (b) the Care Tribunal not to order the Department to revoke the prohibition.

(a) see regulation 9 of S.R. 2007 No. 288.

The minimum barred period: persons subject to more than one previous disqualification

8.—(1) In relation to any person mentioned in regulation 4 who, at the point at which he is included in the children’s barred list, is subject to more than one of the previous restrictions referred to in regulations 5 to 7, the minimum barred period is the period calculated in the manner set out in this regulation.

(2) Where the person was under the age of 18 at the date of the most recent unsuitability decision made in relation to him, subtract from the period of 5 years the period starting on and including the date of that unsuitability decision and ending on the date on which he is included by IBB in the children’s barred list.

(3) Where the person had reached the age of 18 at the date of the most recent unsuitability decision made in relation to him, subtract from the period of 10 years the period starting on and including the date of that unsuitability decision and ending on the date on which he is included by IBB in the children’s barred list.

(4) In this regulation, unsuitability decision means—

- (a) a restriction decision within the meaning of regulation 5(2);
- (b) a disqualification decision within the meaning of regulation 6(2);
- (c) a restriction decision within the meaning of regulation 7(2).

The minimum barred period: persons subject to previous restrictions (adults’ barred list)

9.—(1) In the case of any person who is included by IBB in the adults’ barred list pursuant to Article 5 of the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008 (inclusion in the adults’ barred list: persons considered unsuitable to work with vulnerable adults) the minimum barred period is the period calculated in the manner set out in this regulation.

(2) Where the person was under the age of 18 at the date of the most recent restriction decision, subtract from the period of 5 years the period starting on and including the date of that restriction decision and ending on the date on which he is included by IBB in the adults’ barred list.

(3) Where the person had reached the age of 18 at the date of the most recent restriction decision, subtract from the period of 10 years the period starting on and including the date of that restriction decision and ending on the date on which he is included by IBB in the adults’ barred list.

(4) In paragraphs (2) and (3), restriction decision means a decision of—

- (a) the Department of Health, Social Services and Public Safety—
 - (i) to include the person in the list kept under Article 35 of the 2003 Order, or
 - (ii) not to remove the person from that list;
- (b) the Care Tribunal not to direct the person’s removal from that list.

The minimum barred period: persons not subject to previous restrictions

10.—(1) This regulation applies to any person to whom none of regulations 5 to 9 apply.

(2) In relation to any person who has not reached the age of 18 when IBB includes him in a barred list the minimum barred period is 1 year.

(3) In relation to any person who has reached the age of 18 but has not reached the age of 25 when IBB includes him in a barred list the minimum barred period is 5 years.

(4) In relation to any person who has reached the age of 25 when IBB includes him in a barred list the minimum barred period is 10 years.

Start of minimum barred period

11.—(1) In relation to a person who is included in a barred list because he satisfies any of the criteria prescribed for the purposes of paragraph 1(1), 2(1), 7(1) or 8(1) of Schedule 1 to the Order, the minimum barred period starts when the person satisfies the relevant criteria.

(2) In any other case the minimum barred period starts when the IBB includes the person in a barred list.

Review

12.—(1) The period prescribed for the purposes of paragraph 18(3)(b) of Schedule 1 to the Order (period within which a person must not have applied for permission to apply for review) is the period determined in accordance with paragraphs (2) to (6).

(2) In relation to a person who has not reached the age of 18, the period is one year;

(3) In relation to a person who—

- (i) has reached the age of 18,
- (ii) had been eligible before he reached that age to apply for permission pursuant to paragraph (2),
- (iii) did not do so before he reached that age, and
- (iv) has not done so since he reached that age,

the period is one year.

(4) In relation to a person who has not reached the age of 25 but to whom neither paragraph (2) nor paragraph (3) applies, the period is 5 years.

(5) In relation to a person who—

- (i) has reached the age of 25,
- (ii) is not eligible to apply for permission pursuant to paragraph (3),
- (iii) had been eligible before he reached the age of 25 to apply for permission pursuant to paragraph (4),
- (iv) did not do so before he reached that age, and
- (v) has not done so since he reached that age,

the period is 5 years.

(6) In any other case, the period is 10 years.

(7) In this regulation, a reference to permission means the permission of IBB to make an application for review of a person's inclusion in a barred list.

Northern Ireland Office
6th May 2008

Paul Goggins
Minister of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for parts of the procedure to be followed by the Independent Barring Board (“IBB”) established under section 1 of, and Schedule 1 to, the Safeguarding Vulnerable Groups Act 2006.

Regulation 3 stipulates the manner in which individuals should be invited to make representations as to whether they should be included in one of the barred lists maintained under Article 6 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (“the Order”) and the time that they should be given to do so. This regulation will apply to all representations which individuals are permitted to make to IBB, including any made under the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008 (“the TPO”).

Regulations 4 to 10 set the minimum period that a person will remain barred before they are permitted to apply for permission to apply for a review of their inclusion in one of the barred lists.

Regulations 4 to 9 set the minimum barred period in relation to any person whom IBB is required to include in one of the barred lists pursuant to Articles 3 or 5 of the TPO. These are people who, when they are included in one of the barred lists, are already prohibited from particular types of work because they are included in the list kept under Article 3 or 35 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003, or are subject to a disqualification order, or are 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”). The repeal of the provisions providing for these “previous restrictions” (see regulation 2) will not affect a person’s minimum barred period or their inclusion in one or both lists.

Regulation 10 sets the minimum barred period in relation to all other cases.

Regulation 11 determines the point at which the minimum barred period set by regulations 4 to 10 starts.

Regulation 12 must be read against paragraph 18 of Schedule 1 to the Order. Paragraph 18(3) of that Schedule states that a person may only make an application to IBB for permission to apply for a review of his inclusion in a barred list if (i) the minimum barred period relating to him has expired and (ii) he has not, during a prescribed period, made an application for permission. Regulation 12 prescribes that period.

In general, if a person is under 18, the period within which they must not have made an application is one year. If they have reached the age of 18 but are less than 25 years old, it is five years. And if they are aged 25 years or older, it is 10 years. However, paragraphs (3) and (5) of this regulation address the possibility that a person might pass from one age category to the next without having exercised their right to apply for permission to seek a review. The effect of paragraph (3) is that, where a person had the right to make an application before they reached the age of 18 but failed to apply before they reached that age, his eligibility to make an application continues. However, this will depend on him not having made an application within the previous year, rather than the previous 5 years (or 10 years, if he has still failed to make an application by the time that he reaches the age of 25). Paragraph (5) has a similar effect in relation to a person who had started with the right to make an application if he had not done so in the previous 5 years. If he has not exercised this right he does not lose it by virtue of reaching the age of 25. So the requirement not to have made an application within the previous 10 years does not affect him until he has made an application.

© Crown Copyright 2008

Published and printed in the UK by The
Stationery Office Limited
under the authority and
superintendence of Carol
Tullo, Controller of
Her Majesty's Stationery
Office being the Government
Printer for Northern Ireland and
the Officer appointed to print the
Acts of the Northern Ireland Assembly

Dd. N3636. C3. 5/08. Gp. 130. 14567.

£3.00