

2010 No. 145 (C. 10)

SAFEGUARDING VULNERABLE GROUPS

**Safeguarding Vulnerable Groups (2007 Order) (Commencement
No.6 and Safeguarding Vulnerable Groups (2007 Order)
(Commencement No.5, Transitional Provisions and Savings)
(Amendment)) Order (Northern Ireland) 2010**

Made - - - -

6th April 2010

The Secretary of State makes the following Order in exercise of the powers conferred by Articles 1(3) and 61(1) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007(a).

PART 1

Introduction

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Safeguarding Vulnerable Groups (2007 Order) (Commencement No. 6 and Safeguarding Vulnerable Groups (2007 Order) (Commencement No. 5, Transitional Provisions and Savings) (Amendment)) Order (Northern Ireland) 2010.

(2) Articles 4 to 9 come into operation on the day after the day on which this Order is made.

(3) In this Order—

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

“the 1986 Order” means the Education and Libraries (Northern Ireland) Order 1986(b);

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

“the 2008 Order” means the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008(d);

“the 2009 Order” means the Safeguarding Vulnerable Groups (2007 Order) (Commencement No.5, Transitional Provisions and Savings) Order 2009 (Northern Ireland) 2009(e);

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

“disqualification order” means an order under Article 23 or 24 of POCVA;

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

(b) S.I. 1986/594 (N.I.3).

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

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

(e) S.R. 2009 No. 346.

(f) S.I. 2003/417 (N.I.4). The 2003 Order is to be repealed by Schedule 8 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.

“disqualified from working with children” means disqualified from working with children for the purposes of Part II of POCVA;

“ISA” means the Independent Safeguarding Authority(a);

“a regulated position” is one falling within Article 31 of POCVA.

PART 2

Commencement

Provisions of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 coming into operation on the day after the day on which this Order is made

2. In so far as they are not already in operation, the day after the day on which this Order is made is the day appointed for the coming into operation of Articles 25 and 26 of the Order.

Further repeal of provisions of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003

3.—(1) The repeal of the remaining provisions of POCVA by Article 60(2) of, and Schedule 8 to the Order shall come into operation on the day after the day on which this Order is made for the purposes specified in paragraph (2).

(2) Article 30 of POCVA shall cease to have effect for the purpose of making it an offence for a person knowingly to—

- (a) offer work in a regulated position to,
- (b) procure work in a regulated position for, or
- (c) fail to remove from a regulated position

a person falling within paragraph (3).

(3) A person (“P”) falls within this paragraph if P is disqualified from working with children only by reason of a disqualification order falling within paragraph (4) and P—

- (a) is or has at any time been barred from regulated activity relating to children by virtue of Article 7(2) of the Order, or
- (b) has been included in the children’s barred list pursuant to Article 3(2)(a) of the 2008 Order, but is removed from that list by the ISA in accordance with Article 3(4) of that Order.

(4) A disqualification order falls within this paragraph if—

- (a) P was subject to the disqualification order immediately before ISA included P in the children’s barred list, and
- (b) at that time ISA was aware that P was subject to the disqualification order.

(5) In paragraph (1) “the remaining provisions of POCVA” means the provisions of that Order other than those referred to in the Schedule to the 2009 Order.

(a) The ISA was established under section 1 of the Safeguarding Vulnerable Groups Act 2006 as the Independent Barring Board or IBB. Section 81 of the Policing and Crime Act 2009 (c.26) formally renames the IBB as the Independent Safeguarding Authority or ISA. References to the Independent Barring Board or IBB in the Safeguarding Vulnerable Groups Act 2006, the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 and in other legislation are replaced with (or are to be read as) references to the Independent Safeguarding Authority or ISA.

PART 3

Amendment of the Safeguarding Vulnerable Groups (2007 Order) (Commencement No.5, Transitional Provisions and Savings) Order (Northern Ireland) 2009

Amendment of the Safeguarding Vulnerable Groups (2007 Order) (Commencement No.5, Transitional Provisions and Savings) Order (Northern Ireland) 2009

4. The 2009 Order is amended in accordance with Articles 5 to 9.

Amendment of Article 2 of the 2009 Order (interpretation)

5. At the appropriate place in Article 2(1) of the 2009 Order insert—

““disqualified from working with children” means disqualified from working with children for the purposes of Part II of POCVA;”.

Amendment of Article 5 of the 2009 Order (transitional provisions and savings: persons included in the list of persons unsuitable to work with children: Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003)

6.—(1) Article 5 of the 2009 Order is amended in accordance with paragraphs (2) to (5).

(2) At the end of paragraph (5)(a) insert—

“and—

- (i) there is no outstanding appeal relating to P’s removal from the list, and
- (ii) the period of time in which any appeal relating to the removal of P from the list may be expired;”.

(3) For paragraph (5)(b) substitute—

“(b) P is included in the children’s barred list pursuant to Article 3(2)(a) of the 2008 Order and—

- (i) ISA is not required under Article 3(2)(b) of the 2008 Order to give P the opportunity to make representations as to why P should be removed from that list; or
- (ii) where ISA is required under that Article to give P the opportunity to make such representations, it decides under that Article not to remove P from that list; and
- (iii) where paragraph (i) or (ii) applies—
 - (aa) there is no outstanding review of P’s inclusion in the list kept under Article 3 of POCVA,
 - (bb) there is no outstanding appeal relating to P’s inclusion in that list, and
 - (cc) the period of time in which any appeal relating to P’s inclusion in that list may be made has expired;”.

(4) After paragraph (5) insert—

“(5A) Where P has been included in the children’s barred list in accordance with Article 3(2)(a) of the 2008 Order and where paragraph (5)(a) is satisfied at any time whilst P is so included, ISA must remove P from the list unless it is satisfied that paragraph 1 or 2 of Schedule 1 to the Order (prescribed criteria for automatic inclusion in the children’s barred list) applies to P.”.

(5) After paragraph (6) insert—

“(7) For the purposes of paragraph (5)(b)(iii)(aa), “outstanding review” means a review being carried out by the Department of Health, Social Services and Public Safety for the purposes of determining whether P should be removed from the list pursuant to Article 3(3) of POCVA.”.

Amendment of Article 6 of the 2009 Order (transitional provisions and savings: persons included in the list of persons unsuitable to work with vulnerable adults: Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003)

- 7.—(1) Article 6 of the 2009 Order is amended in accordance with paragraphs (2) to (5).
- (2) At the end of paragraph (4)(a) insert—
- “and—
- (i) there is no outstanding appeal relating to P’s removal from the list, and
 - (ii) the period of time in which any appeal relating to the removal of P from the list may be made has expired;”.

(3) For paragraph (5)(b) substitute—

“(b) P is included in the adults’ barred list pursuant to Article 5(2)(a) of the 2008 Order and

 - (i) ISA is not required under Article 5(2)(b) of the 2008 Order to give P the opportunity to make representations as to why P should be removed from that list, or
 - (ii) where ISA is required under that Article to give P the opportunity to make such representations, it decides under that Article not to remove P from that list, and
 - (iii) where paragraph (i) or (ii) applies—
 - (aa) there is no outstanding review of P’s inclusion in the list kept under Article 35 of POCVA,
 - (bb) there is no outstanding appeal relating to P’s inclusion in that list, and
 - (cc) the period of time in which any appeal relating to P’s inclusion in that list may be made has expired;”.

(4) After paragraph (5) insert—

“(5A) Where P has been included in the adults’ barred list in accordance with Article 5(2)(a) of the 2008 Order and where paragraph (5)(a) is satisfied at any time whilst P is so included, ISA must remove P from the list unless it is satisfied that paragraph 7 or 8 of Schedule 1 to the Order (prescribed criteria for automatic inclusion in the adult’s barred list) applies to P.”.

(5) After paragraph (6) insert—

“(7) For the purposes of paragraph (5)(b)(iii)(aa), “outstanding review” means a review being carried out by the Department of Health, Social Services and Public Safety for the purposes of determining whether P should be removed from the list pursuant to Article 35(3) of POCVA.”.

Amendment of Article 7 of the 2009 Order (transitional and savings provisions: persons prohibited from teaching or working with children: The Education (Prohibition from Teaching or Working with Children) Regulations (Northern Ireland) 2007)

- 8.—(1) Article 7 of the 2009 Order is amended in accordance with paragraphs (2) to (6).
- (2) In paragraph (2)(c) for “regulation 9” substitute “regulation 7 or 9”.
- (3) For paragraph (4)(a) substitute—
- “(a) a prohibition in relation to P is revoked under regulation 7, 9 or 11 of the 2007 Regulations and—
- (i) there is no outstanding appeal relating to the revocation of the prohibition, and
 - (ii) the period of time in which any appeal relating to the revocation of the prohibition may be made has expired.”.

(4) For paragraph (4)(b) substitute—

“(b) P is included in the children’s barred list pursuant to Article 3(2)(a) of the 2008 Order and—

- (i) ISA is not required under Article 3(2)(b) of the 2008 Order to give P the opportunity to make representations as to why P should be removed from that list, or
- (ii) where ISA is required under that Article to give P the opportunity to make such representations, it decides not to remove P from that list, and
- (iii) where paragraph (i) or (ii) applies—
 - (aa) there is no outstanding review relating to a prohibition made in relation to P under regulations 4 or 6 of the 2007 Regulations,
 - (bb) there is no outstanding appeal relating to a decision not to revoke a prohibition made in relation to P, and
 - (cc) the period of time in which any appeal relating to the decision not to revoke a prohibition in relation to P may be made has expired;”.

(5) After paragraph (4) insert—

“(4A)Where P has been included in the children’s barred list in accordance with Article 3(2)(a) of the 2008 Order and where paragraph (4)(a) is satisfied at any time whilst P is so included, ISA must remove P from that list unless it is satisfied that paragraph 1 or 2 of Schedule 1 to the Order (prescribed criteria for automatic inclusion in the children’s barred list) applies to P.”.

(6) After paragraph (5) insert—

“(6) For the purposes of paragraph (4)(b)(iii)(aa), “outstanding review” means a review being carried out by the Department of Education for the purposes of determining whether a prohibition made in relation to P should be revoked under regulation 7 or 9 of the 2007 Regulations.”.

Minor Amendments of the 2009 Order (Article 3 and the Schedule to that Order)

9. In column 2 of the Schedule to the 2009 Order, in the entry that corresponds to the reference in column 1 to “Article 25”, for “to 38” insert “, 38”.

Northern Ireland Office
6th April 2010

Paul Goggins
Minister of State

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, commences further provisions of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (“the Order”), and makes amendments to transitional and savings in the Safeguarding Vulnerable Groups (2007 Order) (Commencement No.5, Transitional Provisions and Savings) Order 2009 (“the 2009 Order”).

Article 2 commences articles 25 and 26 of the Order (definitions of controlled activity). These provisions have been partially commenced in earlier commencement orders under the Order but are now commenced in full. “Controlled activity” is defined in Articles 25 and 26 of the Order and covers ancillary support work with children or vulnerable adults in further education, health

settings and adult social care. It also extends to work which provides access to educational, health and personal social services records. In Northern Ireland, Enhanced Disclosure Certificates are being obtained on individuals working in controlled activity in advance of the Vetting and Barring Scheme going live in full for the purpose of strengthening safeguards for children and vulnerable adults.

Article 3 supplements the 2009 Order which repeals Article 30 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (POCVA) in specified circumstances. The offence in article 30 of POCVA consists of a person disqualified under that Order (“persons disqualified from working with children”) knowingly applying for, offering to work in or accepting or working in a regulated position. In the same set of circumstances, Article 3 of this Order repeals the offence in Article 30(2) of POCVA. The offence in Article 30(2) of POCVA arises where a person knowingly offers work to or employs a disqualified person, etc. in a regulated position. A regulated position is one that falls within Article 31 of POCVA and consists mainly of specified types of work with or in relation to children. In very general terms, the Article 30(2) offence falls away if a disqualified person is or has ever been barred from regulated activity relating to children but only if the bar took into account the fact that the person was subject to the disqualification order.

Articles 4 to 8 of the Order make amendments to the 2009 Order to remedy some potential unintended consequences of that Order in relation to people who are in the process of being transferred (under the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008 from the old barring regimes to the barred lists under the Order. The purpose of the amendments is to ensure that where any outstanding review (by the Department of Health, Social Services and Public Safety, the Department of Education or the Care Tribunal) under the old barring legislation or any appeal under that legislation is outstanding, Article 7 of the Order (bar from engaging in regulated activity) does not commence in relation to that person until the relevant review or appeal is finally determined and any period in which an appeal may be made has expired.

Article 9 makes minor amendments to the 2009 Order.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.R. No.</i>
Article 6(2) to (5) partially	14th March 2008	2008 No. 127 (C. 5)
Article 6 partially	14th April 2008	2008 No. 127 (C. 5)
Article 6(2), (3) and (4) partially	29th May 2008	2008 No. 233 (C. 11)
Article 6 partially	13th March 2009	2009 No. 41 (C. 2)
Article 6	12 th October 2009	2009 No. 346 (C.24)
Article 7(2)(b) and (3)(b) partially	29th May 2008	2008 No. 233 (C. 11)
Article 7	12 th October 2009	2009 No. 346 (C.24)
Article 8 partially	14th April 2008	2008 No. 127 (C. 5)

Article 8 in so far as not already in operation	29th May 2008	2008 No. 233 (C. 11)
Article 9(1) and (2) partially	14th April 2008	2008 No. 127 (C. 5)
Article 9(3) and (4) partially	29th May 2008	2008 No. 233 (C. 11)
Article 9	13th March 2009	2009 No. 41 (C. 2)
Article 10 partially	14th April 2008	2008 No. 127 (C. 5)
Article 10(12) partially	29th May 2008	2008 No. 233 (C. 11)
Article 10 partially	13th March 2009	2009 No. 41 (C. 2)
Article 10	12 th October 2009	2009 No. 346 (C.24)
Article 11	12 th October 2009	2009 No. 346 (C.24)
Article 13	12 th October 2009	2009 No. 346 (C.24)
Article 15(2) partially	29th May 2008	2008 No. 233 (C. 11)
Article 16(1) and (2) partially	29th May 2008	2008 No. 233 (C. 11)
Article 17(1) and (5) partially	29th May 2008	2008 No. 233 (C. 11)
Article 18(1), (2) and (3) partially	29th May 2008	2008 No. 233 (C. 11)
Article 22 partially	12 th October 2009	2009 No. 346 (C.24)
Article 23(2) and (5)	12 th October 2009	2009 No. 346 (C.24)
Article 23(8) partially	12 th October 2009	2009 No. 346 (C.24)
Article 24(1) partially	12 th October 2009	2009 No. 346 (C.24)
Article 25 partially	13th March 2009	2009 No. 41 (C. 2)
Article 25 partially	12 th October 2009	2009 No. 346 (C.24)
Article 26(1) to (4), (5)(a) and (b) and (6) partially	13th March 2009	2009 No. 41 (C. 2)
Article 26 partially	12 th October 2009	2009 No. 346 (C.24)
Article 27(3) partially	13th March 2009	2009 No. 41 (C. 2)
Article 27(1) and (2)	12 th October 2009	2009 No. 346 (C.24)
Article 27(3)	12 th October 2009	2009 No. 346 (C.24)
Article 28(1)(c) and (d), (8)(a) and (c), (10), (11) and (12)(d) partially	29th May 2008	2008 No. 233 (C. 11)
Article 29	29th May 2008	2008 No. 233

		(C. 11)
Article 30(1) partially	29th May 2008	2008 No. 233 (C. 11)
Article 32(7) and (8) partially	29th May 2008	2008 No. 233 (C. 11)
Article 33(6) partially	29th May 2008	2008 No. 233 (C. 11)
Article 34(10) partially	29th May 2008	2008 No. 233 (C. 11)
Article 35(3) and (4)(b) partially	29th May 2008	2008 No. 233 (C. 11)
Article 37(1) partially	29th May 2008	2008 No. 233 (C. 11)
Article 37	12 th October 2009	2009 No. 346 (C.24)
Article 38(1), (2) and (3) partially	29th May 2008	2008 No. 233 (C. 11)
Article 38	12 th October 2009	2009 No. 346 (C.24)
Article 39 partially	14th April 2008	2008 No. 127 (C. 5)
Article 39(2) partially	29th May 2008	2008 No. 233 (C. 11)
Article 39	13th March 2009	2009 No. 41 (C. 2)
Article 40 partially	14th April 2008	2008 No. 127 (C. 5)
Article 40 partially	13th March 2009	2009 No. 41 (C. 2)
Article 40	12 th October 2009	2009 No. 346 (C.24)
Article 41(1) and (5) partially	29th May 2008	2008 No. 233 (C. 11)
Article 41	12 th October 2009	2009 No. 346 (C.24)
Article 42 partially	14th April 2008	2008 No. 127 (C. 5)
Article 42(2) partially	29th May 2008	2008 No. 233 (C. 11)
Article 42	13th March 2009	2009 No. 41 (C. 2)
Article 43(1), (5) and (8) partially	29th May 2008	2008 No. 233 (C. 11)
Article 43(7) partially	13th March 2009	2009 No. 41 (C. 2)
Article 43	12 th October 2009	2009 No. 346 (C.24)
Article 44 partially	14th April 2008	2008 No. 127 (C. 5)
Article 44(2) partially	29th May 2008	2008 No. 233 (C. 11)
Article 44	13th March 2009	2009 No. 41

		(C. 2)
Article 45(3) to (5) partially	14th April 2008	2008 No. 127 (C. 5)
Article 45(7) partially	29th May 2008	2008 No. 233 (C. 11)
Article 46(6) and (7) partially	29th May 2008	2008 No. 233 (C. 11)
Article 47(1), (5) and (9) partially	29th May 2008	2008 No. 233 (C. 11)
Article 47(7) partially	13th March 2009	2009 No. 41 (C. 2)
Article 47	12 th October 2009	2009 No. 346 (C.24)
Article 48 partially	14th April 2008	2008 No. 127 (C. 5)
Article 48(1)(a) and (2) partially	29th May 2008	2008 No. 233 (C. 11)
Article 48	13th March 2009	2009 No. 41 (C. 2)
Article 49(6) and (7) partially	29th May 2008	2008 No. 233 (C. 11)
Article 50(6), (7) and (8) partially	29th May 2008	2008 No. 233 (C. 11)
Article 51(6), (7) and (8) partially	29th May 2008	2008 No. 233 (C. 11)
Article 52 partially	14th April 2008	2008 No. 127 (C. 5)
Article 53 partially	14th April 2008	2008 No. 127 (C. 5)
Article 53	12 th October 2009	2009 No. 346 (C.24)
Article 54 fully	12 th October 2009	2009 No. 346 (C.24)
Article 55 partially	14th April 2008	2008 No. 127 (C. 5)
Article 55	13th March 2009	2009 No. 41 (C. 2)
Article 56(1) and (2) partially	29th May 2008	2008 No. 233 (C. 11)
Article 56	12 th October 2009	2009 No. 346 (C.24)
Article 57 partially	14th April 2008	2008 No. 127 (C. 5)
Article 57	13th March 2009	2009 No. 41 (C. 2)
Article 59 partially	14th March 2008	2008 No. 127 (C. 5)
Article 59	14th April 2008	2008 No. 127 (C. 5)
Article 60(1) partially	29th May 2008	2008 No. 233 (C. 11)
Article 60 partially	12th October 2009	2009 No. 304

		(C. 20)
Article 60 partially	12th October 2009	2009 No. 346 (C. 24)
Schedule 1		
Paragraphs 1(1), 2(1), 7(1), 8(1), 15(1) and (2), 18(3)(b) and (6), and 24(1), (2) and (9) partially	14th March 2008	2008 No. 127 (C. 5)
Paragraphs 6(1)(b), (2) and (3), 12(1)(b), (2) and (3), 16(5), 19(1)(b) and 21 partially	29th May 2008	2008 No. 233 (C. 11)
Paragraphs 1 to 3, 4(1) to (4) and (6), 5, 7 to 9, 10(1) to (4) and (6), 11, 14 to 20, 22, 23, 24(3) to (7) and 25	13th March 2009	2009 No. 41 (C. 2)
Paragraphs 4(5), 6, 10(5), 12, 13 and 21(a)	12th October 2009	2009 No. 346 (C. 24)
Schedule 2		
Schedule 2 partially	14th April 2008	2008 No. 127 (C. 5)
Paragraphs 2(1)(f), 6, 7(1)(f) and 9 partially	29th May 2008	2008 No. 233 (C. 11)
Schedule 2	13th March 2009	2009 No. 41 (C. 2)
Schedule 3		
Paragraphs 1(1), 2(1)(a), 3(1)(c) and (2), 4(1)(c) and (2), 5, 6(1)(c) and (2), 7(1)(c) and (2), 8, 9(1)(c) and (2), 10(1)(c) and (2) and 14 partially	29th May 2008	2008 No. 233 (C. 11)
Schedule 4		
Paragraph 2(1) and 5 partially	29th May 2008	2008 No. 233 (C. 11)
Schedule 5		
Paragraph 1 and 2 partially	29th May 2008	2008 No. 233 (C. 11)
Schedule 6		
Paragraphs 2 to 4 partially	14th March 2008	2008 No. 127 (C. 5)
Schedule 6	14th April 2008	2008 No. 127 (C. 5)
Schedule 7		
Paragraph 4 partially	29th May 2008	2008 No. 233 (C. 11)
Paragraph 3	12th October 2009	2009 No. 304 (C. 20)
Paragraphs 1 to 3 and 5	12 th October 2009	2009 No. 346 (C. 24)
Schedule 8		
Schedule 8 partially	12th October 2009	2009 No. 304 (C. 20)
Schedule 8 partially	12th October 2009	2009 No. 346 (C.24)

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SAFEGUARDING VULNERABLE GROUPS

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No.6 and Safeguarding Vulnerable Groups (2007 Order)
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(Amendment)) Order (Northern Ireland) 2010