

2007 No. 195

EDUCATION, ENGLAND AND WALES

The Education (Prohibition from Teaching or Working with Children) (Amendment) Regulations 2007

<i>Made</i>	- - - -	<i>29th January 2007</i>
<i>Laid before Parliament</i>		<i>7th February 2007</i>
<i>Coming into force</i>	- -	<i>28th February 2007</i>

The Secretary of State for Education and Skills makes the following Regulations in exercise of the powers conferred by sections 142, 144 and 210(7) of the Education Act 2002(a):

Citation and commencement

1. These Regulations may be cited as the Education (Prohibition from Teaching or Working with Children) (Amendment) Regulations 2007 and come into force on 28th February 2007.

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

2. The Education (Prohibition from Teaching or Working with Children) Regulations 2003(b) are amended as follows.

3.—(1) Renumber regulation 2 (interpretation) as paragraph (1) of that regulation.

(2) In regulation 2—

(a) in paragraph (1) as so renumbered—

(i) omit the definition of “certificate of conviction”;

(ii) after the definition of “child” insert—

““condition D” means any of conditions D1 to D4 set out in paragraphs 4 to 7 of Part 1 of Schedule 2;”;

(iii) for the definition of “disqualification order” substitute—

““disqualification order” has the same meaning as in section 30 of the Criminal Justice and Court Services Act 2000(c);”;

(iv) omit the definition of “relevant offence”;

(b) after paragraph (1) as so renumbered insert—

(a) 2002 c. 32.

(b) S.I. 2003/1184; amended by S.I. 2004/1493 (“the 2003 Regulations”).

(c) 2000 c. 43; section 30, as amended by paragraph 3 of Schedule 30 to the Criminal Justice Act 2003 (c. 44), provides that references to a disqualification order are to an order under section 28, 29 or 29A of that Act.

“(2) Any reference in these Regulations to condition A, B, C, D, E or F is to the condition (or conditions) set out in paragraphs 1 to 9 of Part 1 of Schedule 2 bearing the letter A, B, C, D, E or F, as appropriate.”.

4. For regulation 8 (automatic prohibition) substitute the following regulations—

“Automatic prohibition: direction

8.—(1) Subject to paragraph (3), this regulation applies if, in relation to a person—

- (a) any of conditions A to F is satisfied; and
- (b) (i) if any of conditions C to E is satisfied, paragraph 10 of Part 1 of Schedule 2 is also satisfied; and
- (ii) if condition C or D is satisfied, paragraph 11 of that Part is also satisfied.

(2) If the Secretary of State is satisfied that this regulation applies to a person he must direct under section 142(1)(a) of the 2002 Act(a) that the person may not carry out work to which that section applies and—

- (a) if the direction is given because condition A applies, the direction must be on the grounds that the person is included (otherwise than provisionally) in the list kept under section 1 of the Protection of Children Act 1999(b) (list of individuals considered unsuitable to work with children); or
- (b) if the direction is given because any of conditions B to F apply, the direction must be on the grounds that the person is unsuitable to work with children.

(3) This regulation does not apply if, in relation to an offence, the Secretary of State knows that the court, having considered whether to make a disqualification order, decided not to.

Automatic prohibition: right to make representations

8A.—(1) This regulation applies if, on or after 28th February 2007 the Secretary of State has given a direction to a person (“X”) by virtue of regulation 8 because condition D, E or F is satisfied.

(2) Subject to paragraph (5), the Secretary of State must afford X 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 X or, where he is satisfied that X 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.

(3) If it appears to the Secretary of State that X is not unsuitable to work with children, the Secretary of State must revoke the direction.

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

(5) Paragraph (2) does not apply where service cannot be effected by reason of the inability of the Secretary of State to ascertain X’s whereabouts.”.

5. In regulation 9 (review by the Secretary of State)—

- (a) in paragraph (1)(a) for “regulation 8(1)(b) or (c) applies” substitute “a direction was given because condition A or B is satisfied”;
- (b) in paragraph (3) for “regulation 8(1)(b) applies an earlier” substitute “a direction was given because condition A is satisfied the”;

(a) Regulation 2 of the 2003 Regulations provides that “the 2002 Act” means the Education Act 2002.
(b) 1999 c. 14; section 1 was amended by sections 95 to 98 of the Care Standards Act 2000 (c. 14).

- (c) in paragraph (4) for “regulation 8(1)(c) applies an earlier” substitute “a direction was given because condition B is satisfied the”.
- 6.** In regulation 10(1) (review by the Tribunal) for “regulation 11” substitute “regulation 10A or 11”.
- 7.** After regulation 10 insert—
- “10A.—**(1) Subject to paragraph (2), a person may make an application under regulation 10 if—
- (a) before 28th February 2007 he was—
- (i) given a direction under section 142 of the 2002 Act by virtue of regulation 8 of these Regulations; or
- (ii) given a direction under regulation 5 of the 2000 Regulations^(a) by virtue of the application of regulation 9 of those Regulations; and
- (b) he is not a person in relation to whom condition A, B or C is satisfied.
- (2) A person may only make an application under this regulation with the leave of the Tribunal.
- (3) The Tribunal must refuse to grant leave if it considers that the application has no reasonable prospect of success.”.
- 8.** In regulation 11—
- (a) in paragraph (1) at the beginning insert “Subject to regulation 10A,”;
- (b) in paragraph (3)—
- (i) in sub-paragraph (a)(i) for “regulation 8(1)(b) applies” substitute “a direction was given because condition A is satisfied”;
- (ii) in sub-paragraph (a)(ii) for “regulation 8(1)(c) applies” substitute “a direction was given because condition B is satisfied”;
- (c) in paragraph (4)—
- (i) in paragraph (a)(i) for “regulation 8(1)(b) applies” substitute “a direction was given because condition A is satisfied”;
- (ii) in paragraph (a)(ii) for “regulation 8(1)(c) applies” substitute “a direction was given because condition B is satisfied”.
- 9.** In regulation 12(1) (appeals)—
- (a) after sub-paragraph (a) insert—
- “(aa) where regulation 8A applies, against a refusal by the Secretary of State to revoke a direction given to him under section 142 of the 2002 Act following consideration of the representations or evidence referred to in regulation 8A; and”;
- (b) in sub-paragraph (b) omit “save where regulation 8(1)(b) or (c) applies,”.
- 10.** For Schedule 2 (list of criminal offences) substitute the following Schedule—

(a) Regulation 2 of the 2003 Regulations provides that “the 2000 Regulations” means the Education (Restriction of Employment) Regulations 2000 (S.I. 2000/2419).

Automatic prohibition: conditions and offences

PART 1

Conditions for automatic prohibition

1. Condition A (automatic bar: PoCA List) is that the person is included (otherwise than provisionally) in the list kept under section 1 of the Protection of Children Act 1999 (list of persons considered unsuitable to work with children).
2. Condition B (automatic bar: disqualification order) is that—
 - (a) on or after 1st June 2003 the person has been made subject to a disqualification order; and
 - (b) if the order was made before 28th February 2007, the person was carrying out work to which section 142 of the 2002 Act applies before he was convicted of the offence to which the disqualification order relates.
3. Condition C (automatic bar: Part 2 offence committed in previous 10 years against child under 16) is that—
 - (a) on or after the relevant specified date the person has been found to have committed an offence set out in Part 2 of this Schedule;
 - (b) the offence was committed against or involving a child under 16; and
 - (c) the offence was committed not more than 10 years before the date on which the Secretary of State gives the direction.
4. Condition D1 (automatic inclusion: Part 2 offence committed against person aged 16 or over or committed more than 10 years previously against child under 16, and related offences) is that—
 - (a) on or after the relevant specified date the person has been found to have committed—
 - (i) an offence set out in Part 2 of this Schedule; or
 - (ii) an offence that is related to such an offence;
 - (b) the offence was committed against or involving—
 - (i) a child under 16; or
 - (ii) if the finding is on or after 28th February 2007, a person aged 16 or over; and
 - (c) where both paragraphs (a)(i) and (b)(i) apply, the offence was committed more than 10 years before the date on which the Secretary of State gives the direction.
5. Condition D2 (automatic inclusion: Part 3 offence) is that—
 - (a) on or after the relevant specified date the person has been found to have committed an offence set out in Part 3 of this Schedule or an offence that is related to such an offence; and
 - (b) the offence was committed against or involving—
 - (i) a child under 16; or
 - (ii) if the finding is on or after 28th February 2007, a person aged 16 or over.
6. Condition D3 (automatic inclusion: Part 4 offence) is that—
 - (a) on or after the relevant specified date the person has been found to have committed an offence set out in Part 4 of this Schedule or an offence that is related to such an offence; and

- (b) the offence was committed against or involving—
 - (i) a child under 16; or
 - (ii) if the finding is on or after 28th February 2007, a child aged 16 or 17.

7. Condition D4 (automatic inclusion: Part 5 offence) is that—

- (a) on or after the relevant specified date the person has been found to have committed an offence set out in Part 5 of this Schedule or an offence that is related to such an offence; and
- (b) the offence was committed against or involving a child under 16.

8.—(1) Condition E (automatic inclusion: overseas offence) is that on or after 28th February 2007 the person has been found to have done an act which—

- (a) constituted an offence under the law in force in a country outside the United Kingdom; and
- (b) would constitute an offence mentioned in sub-paragraph (2) if it had been done in any part of the United Kingdom.

(2) Sub-paragraph (1)(b) applies in relation to—

- (a) any offence set out in Parts 2 and 3 of this Schedule;
- (b) any offence set out in Part 4 of this Schedule committed against or involving a child^(a);
- (c) any offence set out in Part 5 of this Schedule committed against or involving a child under 16; or
- (d) any offence that is related to an offence mentioned in paragraphs (a) to (c).

(3) In sub-paragraph (1) a person has been “found to have done an act which constituted an offence” if, under the law in force in a country outside the United Kingdom—

- (a) he has been convicted of an offence (whether or not he has been punished for it);
- (b) he has been cautioned in respect of an offence;
- (c) a court exercising jurisdiction under that law has made in respect of an offence a finding equivalent to a finding that he is not guilty by reason of insanity; or
- (d) such a court has made in respect of an offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of the offence.

(4) An act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law for the purposes of sub-paragraphs (1) and (3) however it is described in that law.

9. Condition F (automatic inclusion: risk of sexual harm orders) is that on or after 28th February 2007 the person has been made subject to a risk of sexual harm order within the meaning of section 123 of the Sexual Offences Act 2003^(b) or section 2 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005^(c).

10. Conditions C to E apply only if the person was aged 18 or over on the date the offence was committed.

11. If the person was convicted of the offence before 28th February 2007, conditions C and D only apply if the person was carrying out work to which section 142 of the 2002 Act applies before he was convicted.

12. In this Part a person has been “found to have committed” an offence if he has been—

(a) Section 142(9) of the 2002 Act provides that “child” means a person who has not attained the age of 18 years.
(b) 2003 c. 42; section 123 extends to Northern Ireland (*see* section 142(2)(c)).
(c) 2005 asp 9.

- (a) convicted of an offence;
- (b) cautioned by a police officer after he has admitted an offence;
- (c) found not guilty of an offence by reason of insanity; or
- (d) found to be under a disability and to have done the act charged against him in respect of such an offence.

13. In this Part an offence is “related to” an offence if it is an offence of—

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

14. In this Part “relevant specified date” means—

- (a) in relation to a person who has been convicted of an offence set out in Parts 2 to 5 of this Schedule or an offence of attempting to commit such an offence, the relevant date specified in relation to the substantive offence in Part 2, 3, 4 or 5;
- (b) in relation to a person who has been convicted of any other offence that is related to an offence set out in Parts 2 to 5, 28th February 2007;
- (c) in relation to a person who has been found to have committed an offence set out in Parts 2 to 5 or an offence that is related to such an offence other than by having been convicted the offence, 28th February 2007.

15. In relation to an offence which is committed over a period of time, the references in paragraphs 3(c), 4(c) and 10 to the date on which the offence is committed are to be read as references to the last day of that period.

PART 2

Offences for the purpose of conditions C and D1: offences against person of any age

Offences in England and Wales

<i>Offence</i>	<i>Relevant specified date</i>
An offence contrary to section 1 of the Sexual Offences Act 1956 (rape)(a)	1st November 1995
An offence contrary to section 5 of the Sexual Offences Act 1956 (intercourse with girl under 13)	1st November 1995
An offence contrary to section 1 of the Sexual Offences Act 2003 (rape)(b)	19th July 2004
An offence contrary to section 2 of the Sexual Offences Act 2003 (assault by penetration)	19th July 2004
An offence contrary to section 5 of the Sexual Offences Act 2003 (rape of a child under 13)	19th July 2004
An offence contrary to section 6 of the Sexual Offences Act 2003 (assault of a child under 13 by penetration)	19th July 2004
An offence contrary to section 7 of the	19th July 2004

(a) 1956 c. 69; section 1 was substituted by section 142 of the Criminal Justice and Public Order Act 1994 (c. 33) (“the 1994 Act”) and repealed by paragraph 11 of Schedule 6 to the Sexual Offences Act 2003 (c. 42) (“the 2003 Act”). Sections 4 to 7, 10 to 16, 22, 23, 25, 26, 28, 30 and 31 (referred to in this Part and in Part 3) were also repealed by this provision of the 2003 Act.

(b) 2003 c. 42.

Sexual Offences Act 2003 (sexual assault of a child under 13)

An offence contrary to section 8 of the Sexual Offences Act 2003 if subsection (2) of that section applies (causing or inciting a child under 13 to engage in sexual activity: penetration) 19th July 2004

Offences in Scotland

<i>Offence</i>	<i>Relevant specified date</i>
An offence of rape, contrary to the common law	1st November 1995
An offence contrary to section 3 of the Sexual Offences (Scotland) Act 1976 (intercourse with girl under 13)(a)	1st November 1995
An offence contrary to section 5(1) of the Criminal Law (Consolidation) (Scotland) Act 1995 (intercourse with girl under 13)(b)	1st November 1995

Offences in Northern Ireland

<i>Offence</i>	<i>Relevant specified date</i>
An offence of rape, contrary to the common law	1st November 1995
An offence contrary to section 4 of the Criminal Law Amendment Act 1885 (unlawful carnal knowledge of a girl under 14)(c)	1st November 1995

PART 3

Offences for the purpose of condition D2: offences against person of any age

Offences in England and Wales

<i>Offence</i>	<i>Relevant specified date</i>
An offence of murder, contrary to the common law	1st June 2003
An offence contrary to section 9 of the Theft Act 1968 (burglary) if the offence which the person intends to commit is rape(d)	28th February 2007

Offences in Scotland

<i>Offence</i>	<i>Relevant specified date</i>
An offence of murder, contrary to the common law	1st June 2003

Offences in Northern Ireland

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- (a) 1976 c. 67; the Sexual Offences (Scotland) Act 1976 was repealed by paragraph 6 of Schedule 1 to the Crime and Punishment (Scotland) Act 1997 (c. 48).
- (b) 1995 c. 39.
- (c) 1885 c. 69; section 4 was amended by section 13(2) of the Children and Young Persons Act (Northern Ireland) 1950 (c. 5) (N.I.).
- (d) 1968 c. 60; section 9, in relation to intent to commit rape, was repealed by paragraph 17 of Schedule 6 to the 2003 Act.

<i>Offence</i>	<i>Relevant specified date</i>
An offence of murder, contrary to the common law	1st June 2003
An offence contrary to section 9(1)(a) of the Theft Act (Northern Ireland) 1969 (burglary) if the offence which the person intends to commit is rape(a)	28th February 2007

PART 4

Offences for the purpose of condition D3: offences against or involving a child

Offences in England and Wales and, where relevant, Scotland or Northern Ireland

<i>Offence</i>	<i>Relevant specified date</i>
An offence contrary to section 1 of the Infanticide Act 1938 (infanticide)(b)	28th February 2007
An offence contrary to section 4 of the Sexual Offences Act 1956 (administering drugs to obtain or facilitate intercourse)	28th February 2007
An offence contrary to section 6 of the Sexual Offences Act 1956 (intercourse with girl under 16)(c)	1st November 1995
An offence contrary to section 7 of the Sexual Offences Act 1956 (intercourse with defective)	28th February 2007
An offence contrary to section 10 of the Sexual Offences Act 1956 (incest by a man)	1st November 1995
An offence contrary to section 11 of the Sexual Offences Act 1956 (incest by a woman)	1st November 1995
An offence contrary to section 12 of the Sexual Offences Act 1956 (buggery) except if the other party to the act of buggery was aged 16 or over and consented to the act(d)	1st November 1995
An offence contrary to section 13 of the Sexual Offences Act 1956 (indecent between men) except if the other party to the act of gross indecency was aged 16 or over and consented to the act(e)	1st November 1995
An offence contrary to section 14 of the Sexual Offences Act 1956 (indecent assault on a woman)	1st November 1995
An offence contrary to section 15 of the Sexual Offences Act 1956 (indecent assault on a man)	1st November 1995
An offence contrary to section 16 of the Sexual Offences Act 1956 (assault with	1st November 1995

(a) 1969 c. 16 (N.I.); section 9, in relation to intent to commit rape, was amended by the Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247) (N.I. 13).

(b) 1938 c. 36.

(c) Section 6 was repealed in part by Schedule 2 to the Criminal Law Act 1967 (c. 58) and in full by the 2003 Act.

(d) Section 12 was amended by section 143 of the 1994 Act and sections 1 and 2 of the Sexual Offences (Amendment) Act 2000 (c. 44) ("the 2000 Act") and repealed by the 2003 Act.

(e) Section 13 was amended by section 2 of the 2000 Act and repealed by the 2003 Act.

intent to commit buggery)	
An offence contrary to section 22 of the Sexual Offences Act 1956 (causing prostitution of women)	28th February 2007
An offence contrary to section 23 of the Sexual Offences Act 1956 (procurement of girl under 21)	28th February 2007
An offence contrary to section 25 of the Sexual Offences Act 1956 (permitting girl under 13 to use premises for intercourse)	28th February 2007
An offence contrary to section 26 of the Sexual Offences Act 1956 (permitting girl under 16 to use premises for intercourse)(a)	28th February 2007
An offence contrary to section 28 of the Sexual Offences Act 1956 (causing or encouraging prostitution of, intercourse with, or indecent assault on, girl under 16)	28th February 2007
An offence contrary to section 30 of the Sexual Offences Act 1956 (man living on earnings of prostitution)	28th February 2007
An offence contrary to section 31 of the Sexual Offences Act 1956 (woman exercising control over prostitution)	28th February 2007
An offence contrary to section 128 of the Mental Health Act 1959 (sexual intercourse with patients)(b)	28th February 2007
An offence contrary to section 1 of the Indecency with Children Act 1960 (indecent conduct towards young child)(c)	1st November 1995
An offence contrary to section 4 of the Sexual Offences Act 1967 (procuring others to commit homosexual acts)(d)	28th February 2007
An offence contrary to section 5 of the Sexual Offences Act 1967 (living on earnings of male prostitution)	28th February 2007
An offence contrary to section 4(3) of the Misuse of Drugs Act 1971 (supply of drugs)(e)	28th February 2007
An offence contrary to section 54 of the Criminal Law Act 1977 (inciting girl under 16 to have incestuous sexual intercourse)(f)	1st November 1995
An offence contrary to section 1(1)(a), (b) or (d) of the Protection of Children Act 1978 (indecent photographs of children)(g)	1st November 1995
An offence contrary to section 1(1)(c) of the Protection of Children Act 1978 (indecent photographs of children)	1st June 2003

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- (a) Section 26 was repealed in part by section 10 of, and Schedule 2 to, the Criminal Law Act 1967 (c. 58) and in full by the 2003 Act.
- (b) 1959 c. 72; section 128 was amended by section 1(4) of the Sexual Offences Act 1967 (c. 60) and by other provisions including paragraph 2 of Schedule 4 to the Care Standards Act 2000, and was repealed by the 2003 Act.
- (c) 1960 c. 33; section 1 was amended by section 39 of the Criminal Justice and Court Services Act 2000 (c. 43) and repealed by the 2003 Act.
- (d) 1967 c. 60; sections 4 and 5 were repealed by the 2003 Act.
- (e) 1971 c. 38; section 4 extends to Scotland and Northern Ireland (*see* section 40).
- (f) 1977 c. 45; section 54 was repealed by the 2003 Act.
- (g) 1978 c. 37; section 1 was amended by section 84 of the 1994 Act and paragraph 24 of Schedule 6 to the 2003 Act.

An offence contrary to section 170 of the Customs and Excise Management Act 1979 (penalty for fraudulent evasion of duty etc.)(a) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (indecent or obscene articles)(b)	28th February 2007
An offence contrary to section 160 of the Criminal Justice Act 1988 (possession of indecent photograph of a child)(c)	19th July 2004
An offence contrary to section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of position of trust)(d)	28th February 2007
An offence contrary to section 145 of the Nationality, Immigration and Asylum Act 2002 (traffic in prostitution)(e)	28th February 2007
An offence contrary to section 3 of the Sexual Offences Act 2003 (sexual assault)	19th July 2004
An offence contrary to section 4 of the Sexual Offences Act 2003 (causing a person to engage in sexual activity without consent)	19th July 2004
An offence contrary to section 8 of the Sexual Offences Act 2003 if subsection (2) of that section does not apply (causing or inciting a child under 13 to engage in sexual activity: not penetration)	19th July 2004
An offence contrary to section 9 of the Sexual Offences Act 2003 (sexual activity with a child)	19th July 2004
An offence contrary to section 10 of the Sexual Offences Act 2003 (causing or inciting a child to engage in sexual activity)	19th July 2004
An offence contrary to section 11 of the Sexual Offences Act 2003 (engaging in sexual activity in the presence of a child)	19th July 2004
An offence contrary to section 12 of the Sexual Offences Act 2003 (causing a child to watch a sexual act)	19th July 2004
An offence contrary to section 14 of the Sexual Offences Act 2003 (arranging or facilitating commission of a child sex offence)	19th July 2004
An offence contrary to section 15 of the Sexual Offences Act 2003 (meeting a child following sexual grooming etc.)(f)	19th July 2004
An offence contrary to section 16 of the Sexual Offences Act 2003 (abuse of position of trust: sexual activity with a child)	19th July 2004

(a) 1979 c. 2; section 170 extends to Scotland and Northern Ireland.

(b) 1876 c. 36.

(c) 1988 c. 33; section 160 was amended by section 84 of the 1994 Act and paragraph 29 of Schedule 6 to the 2003 Act.

(d) 2000 c. 44; section 3 extends to Scotland and Northern Ireland (*see* section 7(2) and (4)) but was repealed in relation to England and Wales and Northern Ireland by the 2003 Act.

(e) 2002 c. 41; section 145 extends to Northern Ireland (*see* section 163(2)) but was repealed by the 2003 Act.

(f) Sections 15 to 19 extend to Northern Ireland (*see* section 142(2)(a)).

An offence contrary to section 17 of the Sexual Offences Act 2003 (abuse of position of trust: causing or inciting a child to engage in sexual activity)	19th July 2004
An offence contrary to section 18 of the Sexual Offences Act 2003 (abuse of position of trust: sexual activity in the presence of a child)	19th July 2004
An offence contrary to section 19 of the Sexual Offences Act 2003 (abuse of position of trust: causing a child to watch a sexual act)	19th July 2004
An offence contrary to section 25 of the Sexual Offences Act 2003 (sexual activity with a child family member)	19th July 2004
An offence contrary to section 26 of the Sexual Offences Act 2003 (inciting a child family member to engage in sexual activity)	19th July 2004
An offence contrary to section 30 of the Sexual Offences Act 2003 (sexual activity with a person with a mental disorder impeding choice)	28th February 2007
An offence contrary to section 31 of the Sexual Offences Act 2003 (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity)	28th February 2007
An offence contrary to section 32 of the Sexual Offences Act 2003 (engaging in sexual activity in the presence of a person with a mental disorder)	28th February 2007
An offence contrary to section 33 of the Sexual Offences Act 2003 (causing a person, with a mental disorder impeding choice, to watch a sexual act)	28th February 2007
An offence contrary to section 34 of the Sexual Offences Act 2003 (inducement, threat or deception to procure sexual activity with a person with a mental disorder)	28th February 2007
An offence contrary to section 35 of the Sexual Offences Act 2003 (causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception)	28th February 2007
An offence contrary to section 36 of the Sexual Offences Act 2003 (engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder)	28th February 2007
An offence contrary to section 37 of the Sexual Offences Act 2003 (causing a person with a mental disorder to watch a sexual act by inducement, threat or deception)	28th February 2007
An offence contrary to section 38 of the Sexual Offences Act 2003 (care workers: sexual activity with a person with a mental	28th February 2007

disorder)	
An offence contrary to section 39 of the Sexual Offences Act 2003 (care workers: causing or inciting sexual activity)	28th February 2007
An offence contrary to section 40 of the Sexual Offences Act 2003 (care workers: sexual activity in the presence of a person with a mental disorder)	28th February 2007
An offence contrary to section 41 of the Sexual Offences Act 2003 (care workers: causing a person with a mental disorder to watch a sexual act)	28th February 2007
An offence contrary to section 47 of the Sexual Offences Act 2003 (paying for sexual services of a child)(a)	19th July 2004
An offence contrary to section 48 of the Sexual Offences Act 2003 (causing or inciting child prostitution or pornography)	19th July 2004
An offence contrary to section 49 of the Sexual Offences Act 2003 (controlling a child prostitute or a child involved in pornography)	19th July 2004
An offence contrary to section 50 of the Sexual Offences Act 2003 (arranging or facilitating child prostitution or pornography)	19th July 2004
An offence contrary to section 52 of the Sexual Offences Act 2003 (causing or inciting prostitution for gain)	28th February 2007
An offence contrary to section 53 of the Sexual Offences Act 2003 (controlling prostitution for gain)	28th February 2007
An offence contrary to section 57 of the Sexual Offences Act 2003 (trafficking into the UK for sexual exploitation)	19th July 2004
An offence contrary to section 58 of the Sexual Offences Act 2003 (trafficking within the UK for sexual exploitation)	19th July 2004
An offence contrary to section 59 of the Sexual Offences Act 2003 (trafficking out of the UK for sexual exploitation)	19th July 2004
An offence contrary to section 61 of the Sexual Offences Act 2003 (administering a substance with intent)	28th February 2007
An offence contrary to section 62 of the Sexual Offences Act 2003 (committing an offence with intent to commit a sexual offence) if the relevant sexual offence(b) which he has the intention of committing is an offence referred to in paragraph 8(2) of Part 1 of Schedule 2	28th February 2007
An offence contrary to section 63 of the Sexual Offences Act 2003 (trespass with	28th February 2007

(a) Sections 47 to 53 and 57 to 59 extend to Northern Ireland (*see* section 142(2)(a)).

(b) Section 62(2) provides the meaning of “relevant sexual offence”.

intent to commit a sexual offence) if the relevant sexual offence(a) which he has the intention of committing is an offence referred to in paragraph 8(2) of Part 1 of Schedule 2

An offence contrary to section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation)(b) 28th February 2007

Offences in Scotland

<i>Offence</i>	<i>Relevant specified date</i>
An offence of sodomy, contrary to the common law, unless every person involved in the offence was aged 16 or over and was a willing participant	1st November 1995
An offence of indecent assault, contrary to the common law	1st November 1995
An offence of clandestine injury to women, contrary to the common law	28th February 2007
An offence of abduction of woman or girl with intent to rape, contrary to the common law	28th February 2007
An offence of assault with intent to rape or ravish, contrary to the common law	28th February 2007
An offence contrary to section 2A of the Sexual Offences (Scotland) Act 1976 (incest)(c)	1st November 1995
An offence contrary to section 2B of the Sexual Offences (Scotland) Act 1976 (intercourse with step-child)	1st November 1995
An offence contrary to section 2C of the Sexual Offences (Scotland) Act 1976 (intercourse of person in position of trust with child under 16)	1st November 1995
An offence contrary to section 4 of the Sexual Offences (Scotland) Act 1976 (intercourse with girl between 13 and 16)	1st November 1995
An offence contrary to section 80(7) of the Criminal Justice (Scotland) Act 1980 (committing or procuring a homosexual act) unless every person involved (whether in the offence or the homosexual act) was 16 or over and was a willing participant(d)	1st November 1995
An offence contrary to section 52 of the Civic Government (Scotland) Act 1982 (indecent photographs of children)(e)	1st June 2003
An offence contrary to section 52A of the	28th February 2007

(a) Section 63(2) provides that “relevant sexual offence” has the same meaning as in section 62.

(b) 2004 c. 19; section 4 was amended by paragraph 7 of Schedule 6 to the Human Tissue Act 2004 (c. 30) and extends to Scotland and Northern Ireland (see section 49(1) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004).

(c) Sections 2A to 2C were inserted by section 1 of the Incest and Related Offences (Scotland) Act 1986 (c. 36) but repealed by the Crime and Punishment (Scotland) Act 1997 (c. 48).

(d) 1980 c. 62; section 80(7) was amended by section 145(2) of the 1994 Act and repealed by Schedule 5 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40).

(e) 1982 c. 45; section 52 was amended by section 84 of the 1994 Act and section 16 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9).

Civic Government (Scotland) Act 1982 (possession of indecent photographs of persons under 16)(a)	
An offence contrary to section 1 of the Criminal Law (Consolidation) (Scotland) Act 1995 (incest)	1st November 1995
An offence contrary to section 2 of the Criminal Law (Consolidation) (Scotland) Act 1995 (intercourse with step-child)	1st November 1995
An offence contrary to section 3 of the Criminal Law (Consolidation) (Scotland) Act 1995 (intercourse of person in position of trust with child under 16)	1st November 1995
An offence contrary to section 5(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (attempted intercourse with girl under 13)	1st November 1995
An offence contrary to section 5(3) of the Criminal Law (Consolidation) (Scotland) Act 1995 (intercourse or attempted intercourse with girl under 16)	1st November 1995
An offence contrary to section 6 of the Criminal Law (Consolidation) (Scotland) Act 1995 (indecent behaviour towards girl between 12 and 16)	1st November 1995
An offence contrary to section 7 of the Criminal Law (Consolidation) (Scotland) Act 1995 (procuring)	28th February 2007
An offence contrary to section 8 of the Criminal Law (Consolidation) (Scotland) Act 1995 (abduction and unlawful detention)	28th February 2007
An offence contrary to section 9 of the Criminal Law (Consolidation) (Scotland) Act 1995 (permitting girl to use premises for intercourse)	28th February 2007
An offence contrary to section 10 of the Criminal Law (Consolidation) (Scotland) Act 1995 (seduction, prostitution etc. of girl under 16)	28th February 2007
An offence contrary to section 11 of the Criminal Law (Consolidation) (Scotland) Act 1995 (trading in prostitution and brothel keeping)	28th February 2007
An offence contrary to section 13 of the Criminal Law (Consolidation) (Scotland) Act 1995 (homosexual offences) unless every person involved (whether in the offence or the homosexual act) was 16 or over and was a willing participant(b)	1st November 1995

(a) Section 52A was inserted by section 161 of the Criminal Justice Act 1988 (c. 33).

(b) Section 13 was amended by sections 1 and 2 of the 2000 Act, section 10 of the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7) and Schedule 5 to the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).

An offence contrary to section 22 of the Criminal Justice (Scotland) Act 2003 (traffic in prostitution etc.)(a)	28th February 2007
An offence contrary to section 311 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (non-consensual sexual acts)(b)	28th February 2007
An offence contrary to section 313 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (persons providing care services: sexual offences)(c)	28th February 2007
An offence contrary to section 1 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (meeting a child following certain preliminary contact)(d)	28th February 2007
An offence contrary to section 9 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (paying for sexual services of a child)	28th February 2007
An offence contrary to section 10 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (causing or inciting provision by child of sexual services or child pornography)	28th February 2007
An offence contrary to section 11 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (controlling a child providing sexual services or involved in pornography)	28th February 2007
An offence contrary to section 12 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (arranging or facilitating provision by child of sexual services or child pornography)	28th February 2007

Offences in Northern Ireland

<i>Offence</i>	<i>Relevant specified date</i>
An offence contrary to section 52 of the Offences against the Person Act 1861 (indecent assault on a woman)(e)	1st November 1995
An offence contrary to section 61 of the Offences against the Person Act 1861 (buggery) except not if the other party to the act of buggery was aged 17 or over and consented to the act(f)	1st November 1995
An offence contrary to section 62 of the Offences against the Person Act 1861	1st November 1995

a) 2003 asp 7.

b) 2003 asp 13.

c) Section 313 was amended by paragraph 70 of Schedule 28 to the Civil Partnership Act 2004 (c. 33).

d) 2005 asp 9.

e) 1861 c. 100.

f) Section 61 was repealed so far as relevant by paragraph 1 of Schedule 1 to The Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247) (N.I. 13) ("the 2003 Northern Ireland Order").

(attempt to commit buggery, assault with intent to commit buggery or indecent assault on a male)(a)	28th February 2007
An offence contrary to section 2 of the Criminal Law Amendment Act 1885 (procuration)(b)	28th February 2007
An offence contrary to section 3 of the Criminal Law Amendment Act 1885 (procuring defilement of woman by threats or fraud etc.)	1st November 1995
An offence contrary to section 5 of the Criminal Law Amendment Act 1885 (unlawful carnal knowledge of a girl under 17)(c)	28th February 2007
An offence contrary to section 6 of the Criminal Law Amendment Act 1885 (permitting unlawful carnal knowledge of a young girl)	28th February 2007
An offence contrary to section 7 of the Criminal Law Amendment Act 1885 (abduction of girl with intent to have carnal knowledge)(d)	28th February 2007
An offence contrary to section 8 of the Criminal Law Amendment Act 1885 (unlawful detention with intent to have carnal knowledge)	1st November 1995
An offence contrary to section 11 of the Criminal Law Amendment Act 1885 (gross indecency between men) except if the other party to the act of gross indecency was aged 17 or over and consented to the act(e)	1st November 1995
An offence contrary to section 1 of the Punishment of Incest Act 1908 (incest by a man)(f)	1st November 1995
An offence contrary to section 2 of the Punishment of Incest Act 1908 (incest by a woman)	28th February 2007
An offence contrary to section 1 of the Infanticide Act (Northern Ireland) 1939(g)	28th February 2007
An offence contrary to section 21 of the Children and Young Persons Act (Northern Ireland) 1968 (causing or encouraging seduction etc. of a girl under 17)(h)	1st November 1995
An offence contrary to section 22 of the Children and Young Persons Act (Northern Ireland) 1968 (indecenty with or towards a child)(i)	

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- (a) Section 62 was amended by the Schedule to The Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (S.I. 1983/1120) (N.I. 13) and repealed so far as relevant by paragraph 2 of Schedule 1 to the 2003 Northern Ireland Order.
- (b) Section 2 was repealed in part by Schedule 6 to the 2003 Act.
- (c) Sections 5 and 6 of the Criminal Law Amendment Act 1885 (c. 69) were amended by subsections (2) and (3) of section 13 of the Children and Young Persons Act (Northern Ireland) 1950 (c. 5) (N.I.).
- (d) Section 7 was amended by Schedule 9 to the Children (Northern Ireland) Order 1995 (S.I. 1995/755) (N.I. 2).
- (e) Section 11 was repealed by paragraph 5 of Schedule 6 to the 2003 Act.
- (f) 1908 c. 45.
- (g) 1939 c. 5 (N.I.).
- (h) 1968 c. 34 (N.I.); section 21 was amended by paragraph 18(2) of Schedule 6 to the 2003 Act.
- (i) Section 22 was amended by section 40 of the Criminal Justice and Court Services Act 2000 (c. 43).

An offence contrary to Article 3 of the Protection of Children (Northern Ireland) Order 1978 (indecent photographs of children)(a)	1st June 2003
An offence contrary to Article 9 of the Criminal Justice (Northern Ireland) Order 1980 (inciting a girl under 16 to have incestuous sexual intercourse)(b)	1st November 1995
An offence contrary to Article 122 of The Mental Health (Northern Ireland) Order 1986 (offences against women suffering from severe mental handicap)(c)	28th February 2007
An offence contrary to Article 123 of The Mental Health (Northern Ireland) Order 1986 (offences against patients)	28th February 2007
An offence contrary to Article 15 of the Criminal Justice (Evidence etc.) (Northern Ireland) Order 1988 (possession of indecent photograph of child)(d)	28th February 2007
An offence contrary to Article 19 of The Criminal Justice (Northern Ireland) Order 2003 (buggery)(e)	28th February 2007
An offence contrary to Article 20 of The Criminal Justice (Northern Ireland) Order 2003 (assault with intent to commit buggery)	28th February 2007
An offence contrary to Article 21 of The Criminal Justice (Northern Ireland) Order 2003 (indecent assault on a male)	28th February 2007

PART 5

Offences for the purpose of condition D4: offences against or involving a child under 16

Offences in England and Wales

<i>Offence</i>	<i>Relevant specified date</i>
An offence contrary to section 66 of the Sexual Offences Act 2003 (exposure)(f)	28th February 2007
An offence contrary to section 67 of the Sexual Offences Act 2003 (voyeurism)	28th February 2007

Offences in Scotland

<i>Offence</i>	<i>Relevant specified date</i>
An offence involving lewd, indecent or libidinous behaviour or practices, contrary	28th February 2007"

(a) S.I. 1978/1047 (N.I. 17); Article 3 was amended by section 84 of the 1994 Act.
(b) S.I. 1980/704 (N.I. 6).
(c) S.I. 1986/595 (N.I. 4).
(d) S.I. 1988/1847 (N.I. 17); Article 15 was amended by section 84 of the 1994 Act.
(e) S.I. 2003/1247 (N.I. 13); Article 19 was amended by paragraph 52 of Schedule 6 to the 2003 Act.
(f) Sections 66 and 67 extend to Northern Ireland.

to the common law

29th January 2007

Parmjit Dhanda
Parliamentary Under Secretary of State
Department for Education and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Education (Prohibition from Teaching or Working with Children) Regulations 2003 (S.I. 2003/1184) as amended by S.I. 2004/1493 (“the 2003 Regulations”).

Regulation 4 of these Regulations substitutes a new regulation 8, extending the circumstances in which the Secretary of State must give a direction under section 142(1)(a) of the Education Act 2002 (c. 32). A person who is the subject of a direction under section 142(1)(a) is prohibited from carrying out any work with children to which section 142 applies. Regulation 10 of these Regulations substitutes new Schedule 2 which sets out the detailed conditions relating to regulation 8.

These Regulations extend the circumstances in which the Secretary of State must give a direction in the following ways:

- (a) They add new offences - any offence in Parts 2 to 5 of Schedule 2 for which the relevant specified date is 28th February 2007.
- (b) They extend the scope of existing offences to cover offences committed against or involving children aged 16 or 17 (instead of only children aged under 16); and, in relation to a limited number of offences, they extend the scope to victims of all ages (*see* subparagraph (ii) of paragraphs 4(b), 5(b) and 6(b) of Part 1 of Schedule 2).
- (c) In addition to convictions for an offence, they add cautions and other findings that a person has committed an offence (paragraph 12 of Part 1 of Schedule 2 provides the meaning of “found to have committed” an offence for the purpose of conditions C and D in paragraphs 3 to 7 of that Part).
- (d) In addition to offences which are a completed offence or an attempt to commit an offence, they add offences of conspiracy or incitement to commit an offence and where a person is a secondary party to the offence (paragraph 13 of Part 1 of Schedule 2 provides the meaning of an offence that is “related to” an offence for the purpose of conditions D and E in paragraphs 4 to 8 of that Part).
- (e) For convictions after 28th February 2007, they lift the requirement that a person must have been in work to which section 142 applies before he was convicted of the offence (*see* paragraph 11 of Part 1 of Schedule 2); and they lift the similar requirement in relation to persons who are made subject to a direction because they are subject to a “disqualification order” (*see* paragraph 2(b) of Part 1 of Schedule 2).
- (f) They add comparable overseas offences (*see* condition E, paragraph 8 of Part 1 of Schedule 2).
- (g) They add “risk of sexual harm orders” (*see* condition F, paragraph 9 of Part 1 of Schedule 2).

So far as these Regulations extend the circumstances in which the Secretary of State must give a direction, they do so only in relation to convictions etc. after the date on which these Regulations come into force.

These Regulations narrow the circumstances in which the Secretary of State must give a direction in one way, relating to offences where the court has decided not to give a disqualification order (*see* substituted regulation 8(3)).

In some circumstances where the Secretary of State is required to give a direction these Regulations create a new right for the individual to make representations to the Secretary of State (*see* new regulation 8A inserted by regulation 4 of these Regulations). If, after consideration of the representations, it appears to the Secretary of State that the person is not unsuitable to work with children, he must revoke the direction. This right to make representations and the consequent function of the Secretary of State in relation to revoking the direction only apply where a person is subject to a direction by virtue of condition D, E or F – namely:

- (a) Where the offence is a “Part 2 offence” that is:
 - (i) an offence that is “related to” an offence set out in Part 2 of Schedule 2 (*see* paragraph 13 of Part 1 of Schedule 2 for the meaning of “related to”);
 - (ii) committed against a child aged under 16 but more than 10 years before the direction;
or
 - (iii) committed against a person aged 16 or over (condition D1).
- (b) Where the offence is an offence in, or related to, Part 3, 4 or 5 (conditions D2, D3 and D4).
- (c) Where the person has been found to have done an act which constituted a comparable overseas offence (condition E).
- (d) Where the person is subject to a “risk of sexual harm order” (condition F).

If, following this consideration of a person’s representations under the new regulation 8A, the Secretary of State refuses to revoke a direction, the person may appeal to the Tribunal established under section 9 of the Protection of Children Act 1999 (c. 14) (“the Care Standards Tribunal”) (*see* sub-paragraph (aa) of regulation 12(1) of the 2003 Regulations inserted by regulation 9(a) of these Regulations).

These Regulations create a new right to apply to the Care Standards Tribunal for a review (*see* new regulation 10A inserted by regulation 7 of these Regulations) where a person was given a direction under regulation 8 of the 2003 Regulations (or the similar provision in earlier Regulations) prior to these Regulations coming into force. There are exceptions to this right of review where a person satisfies any of conditions A to C - namely:

- (a) the person is on the “PoCA List” (condition A);
- (b) the person is subject to a “disqualification order” (condition B); or
- (c) the person has committed an offence against a child under 16 that is an offence set out in Part 2 of Schedule 2 that was committed not more than 10 years before the direction (condition C).

The Tribunal may, on hearing the review, revoke a direction if it satisfied that the person is no longer unsuitable to work with children (*see* regulation 10 of the 2003 Regulations, as amended by regulation 6 of these Regulations).

Regulations 3, 5, 8 and 9(b) of these Regulations make amendments consequential on the changes made by the new regulations 8 and 10A inserted by these Regulations.

£3.50

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Stationery Office and Queen’s Printer of Acts of Parliament.

E0096 2/2007 170096T 19585

