

2010 No. 346

CHILDREN AND YOUNG PERSONS

PROTECTION OF VULNERABLE ADULTS

**The Protection of Vulnerable Groups (Scotland) Act 2007
(Corresponding Disqualifications) Order 2010**

Made - - - - *28th September 2010*

Laid before the Scottish Parliament *30th September 2010*

Coming into force in accordance with article 1

The Scottish Ministers make the following Order in exercise of the powers conferred by section 98(1)(b) of the Protection of Vulnerable Groups (Scotland) Act 2007(a) and of all other powers enabling them to do so.

Citation and commencement

1. This Order may be cited as the Protection of Vulnerable Groups (Scotland) Act 2007 (Corresponding Disqualifications) Order 2010 and comes into force on the same day as section 92 of the Protection of Vulnerable Groups (Scotland) Act 2007.

Modification of the Protection of Vulnerable Groups (Scotland) Act 2007

2. For transitory purposes, section 92 (individuals barred from regulated work) of the Protection of Vulnerable Groups (Scotland) Act 2007 has effect as if it had been modified by inserting—

- (a) after subsection (1)(a)—
 - “(aa) included in the list (otherwise than provisionally) kept under section 1 of the Protection of Children Act 1999 (c.14)(b),
 - (ab) subject to a direction under subsection (1)(a) of section 142 (prohibition from teaching etc.) of the Education Act 2002 (c.32), given on the grounds mentioned in subsection (4)(b) of that section, not to carry on work to which that section applies(c),
 - (ac) subject to a disqualification order within the meaning of Part II (protection of children) of the Criminal Justice and Court Services Act 2000 (c.43)(d),”;

(a) 2007 asp 14.
(b) Section 1 of the Protection of Children Act 1999 has been partially repealed by S.I. 2009/2611, but article 5 makes savings provisions in relation to the list kept under section 1.
(c) Section 142 of the Education Act 2002 has been partially repealed by S.I. 2009/2611, but article 7 makes savings provisions in relation to directions made under section 142.
(d) Part II of the Criminal Justice and Court Services Act has been partially repealed by S.I. 2009/2611, but article 5 makes savings provisions in relation to individuals subject to disqualification orders.

(b) after subsection (1)(b)—

“(ba) included in the list kept for the purposes of regulations under article 70(1) and (2)(e) or 88A(1) and (2)(b) of the Education and Libraries (Northern Ireland) Order 1986(a) on the grounds mentioned in head (iii) of either article 70(2)(e) or 88A(2)(b).”;

(c) after subsection (1)(c)—

“(ca) subject to a disqualification order within the meaning of Chapter II (disqualification from working with children) of Part II of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003(b),

(cb) included in the children’s barred list maintained under Article 6(1)(a) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007(c).”;

(d) after subsection (2)(a)—

“(aa) included (otherwise than provisionally) in the list kept under section 81 of the Care Standards Act 2000 (c. 14)(d).”;

(e) after subsection 2(c)—

“(ca) included in the adults’ barred list maintained under Article 6(1)(b) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.”.

Revocation

3. The following Orders are revoked—

- (a) the Protection of Children (Scotland) Act 2003 (The Meaning of Disqualified from Working with Children: Corresponding Disqualifications in Northern Ireland) Order 2009(e); and
- (b) the Protection of Children (Scotland) Act 2003 (The Meaning of Disqualified from Working with Children: Corresponding Disqualifications in Northern Ireland) (No. 2) Order 2009(f).

ADAM INGRAM

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
28th September 2010

(a) S.I. 1986/594 (N.I. 3). The Education (Prohibition from Teaching or Working with Children) Regulations (Northern Ireland) 2007 (made under the Education and Libraries (Northern Ireland) Order 1986) were partially repealed by S.R. 2009/346, but article 7 makes savings provisions in relation to individuals included in this list.

(b) S.I. 2003/417 (N.I. 4).

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

(d) Section 81 of the Care Standards Act 2000 has been partially repealed by S.I. 2009/2611, but article 6 makes savings provisions in relation to the list kept under section 81.

(e) S.S.I. 2009/39.

(f) S.S.I. 2009/316.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 98(1)(b) of the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”). Its purpose is to make transitory provisions to give full effect to the provisions in section 92 of the 2007 Act to ensure that certain disqualifications in England and Wales and Northern Ireland mean that a person is also barred from doing regulated work with children and adults in Scotland. Section 92 already makes some provision for the recognition of equivalent disqualifications in other jurisdictions, but it only makes specific references to disqualifications under the Safeguarding Vulnerable Groups Act 2006 (c.47) (“the 2006 Act”) and the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (S.I. 2003/417) (“the 2003 Order”).

Under section 2 (barred lists) of the 2006 Act the Independent Safeguarding Authority (established under section 1 of the 2006 Act) is required to establish and maintain lists of those barred from working in regulated activity with children or adults in England and Wales. These lists will replace, in England and Wales, the existing lists under section 1 of the Protection of Children Act 1999 and section 81 of the Care Standards Act 2002, as well as the list of persons who are subject to a direction under section 142(1)(a) of the Education Act 2002 (c.32). They will also replace disqualification orders (within the meaning of Part II (protection of children) of the Criminal Justice and Court Services Act 2000. The legislation underpinning these existing lists in England and Wales has been partially repealed by the Safeguarding Vulnerable Groups Act 2006 (Commencement No. 6, Transitional Provisions and Savings) Order 2009 (S.I. 2009/2611), but articles 5, 6 and 7 of that order make transitional provisions and savings in relation to individuals who are still subject to the old barring regimes. During the transitional period those subject to the existing barring regime in England and Wales will be transferred to the new lists under the 2006 Act.

Under Article 6 (barred lists) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (“the 2007 Order”) the Independent Safeguarding Authority (established under Article 5 of the 2007 Order) is required to establish and maintain lists of those barred from working in regulated activity with children or adults in Northern Ireland. These lists will replace, in Northern Ireland, the existing lists under article 3 or 35 of the 2003 Order and any list kept for the purposes of regulations under article 70(2)(e) or 88A(2)(b) of the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594) as well as disqualification orders under Chapter II of Part II of the 2003 Order. The legislation underpinning these existing lists in Northern Ireland has been partially repealed by the Safeguarding Vulnerable Groups (2007 Order) (Commencement No. 5, Transitional Provisions and Savings) Order 2009 (S.R. 2009/346), but articles 5, 6 and 7 of that Order make transitional provisions and savings in relation to individuals who are still subject to the old barring regimes. During a transitional period those subject to the existing barring regime in Northern Ireland will be transferred from those lists onto the new lists under the 2007 Order.

Article 2(a), (b) and (c) of this Order provide that, for transitory purposes, section 92(1) of the 2007 Act is to have effect as if it had been modified to include references to the various existing lists and disqualifications which are not already covered by section 92(1), namely:

- the list kept under section 1 of the Protection of Children Act 1999 (c.14)
- the list of persons subject to a direction under section 142(1)(a) (prohibition from teaching etc.) of the Education Act 2002 (c.32), given on the grounds mentioned in subsection (4)(b) of that section, not to carry on work to which section 142 applies
- a disqualification order within the meaning of Part II (protection of children) of the Criminal Justice and Court Services Act 2000 (c.43)
- a list of persons kept for the purposes of regulations under article 70(1) and (2)(e) or 88A(1) and (2)(b) of the Education and Libraries (Northern Ireland) Order 1986 (NI 3) on the grounds mentioned in head (iii) of either article 70(2)(e) or 88A(2b)

- a disqualification order within the meaning of Chapter II of Part II (disqualification from working with children) of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003
- the children's barred list maintained under the 2007 Order.

Article 2(d) and (e) of this Order provide that, for transitory purposes, section 92(2) of the 2007 Act is to have effect as if it had been modified to include references to the various existing lists and disqualifications which are not already covered by section 92(2), namely:

- the list kept under section 81 of the Care Standards Act 2000 (c.14)
- the adults' list maintained under Article 6(1)(b) of the 2007 Order.

In relation to England and Wales, this will mean that during the transitional period a person will be barred from doing regulated work with children in Scotland if, in England and Wales, they are on the children's barred list under section 2(1)(a) of the 2006 Act, on the list under section 1 of the Protection of Children Act 1999, on the list of persons who are subject to a direction under section 142(1)(a) of the Education Act 2002 or if they are subject to a disqualification order (within the meaning of Part II (protection of children) of the Criminal Justice and Court Services Act 2000). A person will be barred from doing regulated work with adults in Scotland if, in England and Wales, they are on the adults' barred list under section 2(1)(b) of the 2006 Act or the list under section 35 of the 2003 Order.

In relation to Northern Ireland, this will mean that during the transitional period a person will be barred from doing regulated work with children in Scotland if, in Northern Ireland, they are on the children's barred list under Article 6(1)(a) the 2007 Order, the list under article 3 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003, on the list kept for the purposes of regulations under article 70(2)(e) or 88A(2)(b) of the Education and Libraries (Northern Ireland) Order 1986 or subject to a disqualification order within the meaning of Chapter II (disqualification from working with children) of Part II of the 2003 Order. A person will be barred from doing regulated work with adults in Scotland if, in Northern Ireland, they are on the adults' barred list under Article 6(1)(b) the 2007 Order or the list under section 35 of 2003 Order.

Article 3 of this Order revokes the Protection of Children (Scotland) Act 2003 (The Meaning of Disqualified from Working with Children: Corresponding Disqualifications in Northern Ireland) Order 2009 (S.S.I. 2009/39) which provided that disqualification from working with children under article 30(4)(a), (b) or (c) (persons disqualified from working with children: offences) of the 2003 Order were disqualifications from working with children which corresponded to disqualification from working with children by virtue of section 17(1)(a) or (d) of the Protection of Children (Scotland) Act 2003. The Order also revokes the Protection of Children (Scotland) Act 2003 (The Meaning of Disqualified from Working with Children: Corresponding Disqualifications in Northern Ireland) (No. 2) Order 2009 (S.S.I. 2009/316) which provided that being barred from regulated activity relating to children under article 7(2)(a) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 was a disqualification from working with children which corresponded to disqualification from working with children by virtue of section 17(1)(a) of the Protection of Children (Scotland) Act 2003. These disqualifications from working with children now correspond with being listed in the children's list under the 2007 Act by virtue of section 92(1)(c) of the 2007 Act and article 2(b) and (c) of this Order.

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