

[...] No. [...]

EDUCATION, ENGLAND AND WALES

The Education (Prohibition from Teaching or Working with Children) (Amendment) Regulations [...]

Made - - - - [...]
Laid before Parliament [...]
Coming into force - - [...]

The Secretary of State for Education and Skills makes the following Regulations in exercise of the powers conferred by sections 142, 144, 210 and 214 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 [...] and come into force on [.....].

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. In regulation 2—

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

i“condition D” means any of conditions D1 to D5;î;

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

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

4. For regulation 8 substitute the following regulations—

Automatic prohibition: direction

18.—(1) Subject to paragraph (18), this regulation applies if, in relation to a person—

(a) any of conditions A to F are satisfied; and

(b) if any of conditions C to E are satisfied, the requirements of paragraphs (13) and (14) are also satisfied.

(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) If the Secretary of State is satisfied that this regulation applies to a person the Secretary of State 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) (c. 14) (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) 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).

(4) 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 [date of commencement], 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.

(5) Condition C (automatic bar: Schedule 2 offences committed in previous 10 years against under 16s) is that—

- (a) on or after the relevant date specified in Schedule 2 the person has been found to have committed an offence under a provision set out in Schedule 2;
- (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 proposes to give the direction.

(6) Condition D1 (automatic inclusion: Schedule 2 offences committed against 16 and 17 year olds or committed more than 10 years previously against under 16s) is that—

- (a) on or after the relevant date specified in Schedule 2 the person has been found to have committed an offence or related offence under a provision set out in Schedule 2;
- (b) the offence was committed against or involving—
 - (i) a child under 16; or
 - (ii) if the finding is on or after [date of commencement], a child under 18; and
- (c) if the offence (not including a related offence) was committed against a child under 16, the offence was committed more than 10 years before the date on which the Secretary of State proposes to give the direction.

(7) Condition D2 (automatic inclusion: Part 1 of Schedule 2 offences committed against adults) is that—

- (a) on or after [date of commencement] the person has been found to have committed an offence or related offence under a provision set out in Part 1 of Schedule 2;
- (b) the offence was committed against or involving a person aged 18 or over.

(8) Condition D3 (automatic inclusion: Part 1 of Schedule 3 offences) is that—

- (a) on or after the relevant date specified in Part 1 of Schedule 3 the person has been found to have committed an offence or related offence under a provision set out in Part 1 of Schedule 3;
- (b) the offence was committed against or involving—

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).

- (i) a child under 16; or
 - (ii) if the finding is on or after [*date of commencement*], any person.
- (9) Condition D4 (automatic inclusion: Part 2 of Schedule 3 offences) is that—
 - (a) on or after the relevant date specified in Part 2 of Schedule 3 the person has been found to have committed an offence or related offence under a provision set out in Part 2 of Schedule 3;
 - (b) the offence was committed against or involving—
 - (i) a child under 16; or
 - (ii) if the finding is on or after [*date of commencement*], a child under 18.
- (10) Condition D5 (automatic inclusion: Part 3 of Schedule 3 offences) is that—
 - (a) on or after the relevant date specified in Part 3 of Schedule 3 the person has been found to have committed an offence or related offence under a provision set out in Part 3 of Schedule 3;
 - (b) the offence was committed against or involving a child under 16.
- (11) Condition E (automatic inclusion: overseas offences) is that—
 - (a) on or after [*date of commencement*] the person has been found to have committed an offence outside the United Kingdom which, if committed in England and Wales, would be an offence satisfying the requirements of condition C or D; and
 - (b) the person is resident in England and Wales.
- (12) Condition F (automatic inclusion: risk of sexual harm orders) is that on or after [*date of commencement*] 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^(a) or section 2 of the Protection of Children and Prevention of Sexual Offences (Scotland Act) 2005^(b).
- (13) Conditions C to E apply only if the person was aged 18 or over at the time the offence was committed.
- (14) If the person was convicted of the offence (including a related offence) before [*date of commencement*], conditions C to E only apply if the person was carrying out work to which section 142 of the 2002 Act applies before he was convicted.
- (15) In this regulation a person has been “found to have committed an offence” if—
 - (a) he has been convicted of an offence; or
 - (b) on or after [*date of commencement*] he has been—
 - (i) cautioned by a police officer after he has admitted an offence;
 - (ii) found not guilty of an offence by reason of insanity; or
 - (iii) found to be under a disability and to have done the act charges against him in respect of such an offence.
- (16) In this regulation “a related offence” means an offence of—
 - (a) attempting to commit an offence; or
 - (b) on or after [*date of commencement*]—
 - (i) conspiring or incitement to commit an offence; or
 - (ii) aiding, abetting, counselling or procuring the commission of an offence.
- (17) In relation to an offence which is committed over a period of time, the references in paragraphs (5)(c), (6)(c) and (13) to the date on which the offence is committed are to be read as references to the last day of that period.

(a) 2003 c. 42.
(b) 2005 asp 9.

(18) 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.

(19) In these Regulations, any reference to a direction given under regulation 8 includes a direction given under regulation 8 before *[date of commencement]*.

Automatic prohibition: right to make representations

8A.—(1) This regulation applies if, on or after *[date of commencement]* the Secretary of State has given a direction to a person (“X”) under regulation 8 because condition D, E or F is satisfied.

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

(4) 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) If this regulation applies and it appears to the Secretary of State that X is not unsuitable to work with children, the Secretary of State must revoke the direction.ⁱ

5. In regulation 9—

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

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

(3) in paragraph (4) for “regulation 8(1)(c) applies an earlier” substitute “a direction was given under regulation 8 because condition B is satisfied the”.

6. In regulation 10(1), for “regulation 11” substitute “regulations 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 *[date of commencement]* 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 whose direction was given because 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) Regulation 2 of the 2003 Regulations provides that “the 2000 Regulations” means the Education (Restriction of Employment) Regulations 2000 (S.I. 2000/2419).

- (1) in paragraph (1) at the beginning insert “Subject to regulation 10A,”;
- (2) in paragraph (3)—
- (a) in sub-paragraph (a)(i) for “regulation 8(1)(b) applies” substitute “a direction was given under regulation 8 because condition A was satisfied”;
- (b) in sub-paragraph (a)(ii) for “regulation 8(1)(c) applies” substitute “a direction was given under regulation 8 because condition B was satisfied”;
- (3) in paragraph (4)—
- (a) in paragraph (a)(i) for “regulation 8(1)(b) applies” substitute “a direction was given under regulation 8 because condition A was satisfied”;
- (b) in paragraph (a)(ii) for “regulation 8(1)(c) applies” substitute “a direction was given under regulation 8 because condition B was satisfied”.¹
- 9.** In regulation 12(1)—
- (1) after sub-paragraph (a) insert—
- i(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; and¹;
- (2) in sub-paragraph (b) omit “save where regulation 8(1)(b) or (c) applies.”.
- 10.** For Schedule 2 substitute—

SCHEDULE 2

Regulation 8

Conditions C, D1 and D2

PART 1

Offences against all persons

Offences in England and Wales

<i>Offence</i>	<i>Relevant specified date</i>
Section 1 of the Sexual Offences Act 1956 (rape)(a)	1 st November 1995
Section 1 of the Sexual Offences Act 2003 (rape)(b)	19 th July 2004
Section 2 of the Sexual Offences Act 2003 (assault by penetration)	19 th July 2004

Offences in Scotland

<i>Offence</i>	<i>Relevant specified date</i>
[...]	[...]

Offences in Northern Ireland

<i>Offence</i>	<i>Relevant specified date</i>
[...]	[...]

(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 section 139 of, and Schedule 6 to, the Sexual Offences Act 2003 (c. 42) (“the 2003 Act”).

(b) 2003 c. 42.

PART 2

Offences against children

Offences in England and Wales

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

Offences in Scotland

<i>Offence</i>	<i>Relevant specified date</i>
[...]	[...]

Offences in Northern Ireland

<i>Offence</i>	<i>Relevant specified date</i>
[...]	[...]

SCHEDULE 3

Regulation 8

Conditions D3, D4 and D5

PART 1

Offences against all persons

Offences in England and Wales

<i>Offence</i>	<i>Relevant specified date</i>
Murder contrary to the common law	1 st June 2003
Section 9 of the Theft Act 1968 (burglary) if the offence which the person intends to commit is rape(b)	[date of commencement]

Offences in Scotland

<i>Offence</i>	<i>Relevant specified date</i>
[...]	[...]

Offences in Northern Ireland

<i>Offence</i>	<i>Relevant specified date</i>
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(a) Repealed by the 2003 Act.

(b) 1968 c. 60; section 9, in relation to intent to commit rape, repealed by paragraph 17 of Schedule 6 to the 2003 Act.

[...]

[...]

PART 2

Offences against or involving children under 18

Offences in England

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<i>Offence</i>	<i>Relevant specified date</i>
Section 1 of the Infanticide Act 1938 (infanticide)(a)	[date of commencement]
Section 4 of the Sexual Offences Act 1956 (administering drugs to obtain or facilitate intercourse)(b)	[date of commencement]
Section 6 of the Sexual Offences Act 1956 (intercourse with girl under 16)(c)	1 st November 1995
Section 7 of the Sexual Offences Act 1956 (intercourse with defective)	[date of commencement]
Section 10 of the Sexual Offences Act 1956 (incest by a man)(d)	1 st November 1995
Section 11 of the Sexual Offences Act 1956 (incest by a woman)(e)	1 st November 1995
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(f)	1 st November 1995
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(g)	1 st November 1995
Section 14 of the Sexual Offences Act 1956 (indecent assault on a woman)(h)	1 st November 1995
Section 15 of the Sexual Offences Act 1956 (indecent assault on a man)(i)	1 st November 1995
Section 16 of the Sexual Offences Act 1956 (assault with intent to commit buggery)(j)	1 st November 1995
Section 22 of the Sexual Offences Act 1956 (causing prostitution of women)(k)	[date of commencement]
Section 23 of the Sexual Offences Act 1956 (procurement of girl under 21)(l)	[date of commencement]
Section 25 of the Sexual Offences Act 1956 (permitting girl under 13 to use premises for intercourse)	[date of commencement]

(a) 1938 c. 36.

(b) Repealed by the 2003 Act.

(c) 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.

(d) Repealed by the 2003 Act.

(e) Repealed by the 2003 Act.

(f) 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.

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

(h) Repealed by the 2003 Act.

(i) Repealed by the 2003 Act.

(j) Repealed by the 2003 Act.

(k) Repealed by the 2003 Act.

(l) Repealed by the 2003 Act.

Section 26 of the Sexual Offences Act 1956 (permitting girl under 16 to use premises for intercourse)(a)	[date of commencement]
Section 28 of the Sexual Offences Act 1956 (causing or encouraging prostitution of, intercourse with, or indecent assault on, girl under 16)(b)	[date of commencement]
Section 30 of the Sexual Offences Act 1956 (man living on earnings of prostitution)(c)	[date of commencement]
Section 31 of the Sexual Offences Act 1956 (woman exercising control over prostitution)(d)	[date of commencement]
Section 128 of the Mental Health Act 1959 (sexual intercourse with patients)(e)	[date of commencement]
Section 1 of the Indecency with Children Act 1960 (indecent conduct towards young child)(f)	1 st November 1995
Section 4 of the Sexual Offences Act 1967 (procuring others to commit homosexual acts)(g)	[date of commencement]
Section 5 of the Sexual Offences Act 1967 (living on earnings of males prostitution)(h)	[date of commencement]
Section 4(3) of the Misuse of Drugs Act 1971 (supply of drugs)(i)	[date of commencement]
Section 54 of the Criminal Law Act 1977 (inciting girl under 16 to have incestuous sexual intercourse)(j)	[date of commencement]
Section 1(1)(a), (b) and (d) of the Protection of Children Act 1978 (indecent photographs of children)(k)	1 st November 2005
Section 1(1)(c) of the Protection of Children Act 1978 (indecent photographs of children)(l)	1 st June 2003
Section 170 of the Customs and Excise Management Act 1979 (penalty for fraudulent evasion of duty etc)(m) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (indecent or obscene articles)(n)	[date of commencement]

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- (a) 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) Repealed by the 2003 Act.
- (c) Repealed by the 2003 Act.
- (d) Repealed by the 2003 Act.
- (e) 1959 c. 72; section 128 was amended by section 1(4) of the Sexual Offences Act 1967 (c. 60) and by other provisions such as paragraph 2 of Schedule 4 to the Care Standards Act 2000.
- (f) 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.
- (g) Repealed by the 2003 Act.
- (h) Repealed by the 2003 Act.
- (i) 1971 c. 38.
- (j) 1977 c. 45; section 54 was repealed by the 2003 Act.
- (k) 1978 c. 37; section 1 was amended by section 84 of the 1994 Act and paragraph 24 of Schedule 6 to the 2003 Act.
- (l) Section 1 was amended by section 84 of the 1994 Act and paragraph 24 of Schedule 6 to the 2003 Act.
- (m) 1979 c. 2.
- (n) 1876 c. 36.

Section 160 of the Criminal Justice Act 1988 (possession of indecent photograph of a child)(a)	19 th July 2004
Section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of position of trust)(b)	[<i>date of commencement</i>]
Section 145 of the Nationality, Immigration and Asylum Act 2002 (traffic in prostitution)(c)	[<i>date of commencement</i>]
Section 3 of the Sexual Offences Act 2003 (sexual assault)(d)	19 th July 2004
Section 4 of the Sexual Offences Act 2003 (causing a person to engage in sexual activity without consent)	19 th July 2004
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)	19 th July 2004
Section 9 of the Sexual Offences Act 2003 (sexual activity with a child)	19 th July 2004
Section 10 of the Sexual Offences Act 2003 (causing or inciting a child to engage in sexual activity)	19 th July 2004
Section 11 of the Sexual Offences Act 2003 (engaging in sexual activity in the presence of a child)	19 th July 2004
Section 12 of the Sexual Offences Act 2003 (causing a child to watch a sexual act)	19 th July 2004
Section 14 of the Sexual Offences Act 2003 (arranging or facilitating commission of a child sex offence)	19 th July 2004
Section 15 of the Sexual Offences Act 2003 (meeting a child following sexual grooming etc)	19 th July 2004
Section 16 of the Sexual Offences Act 2003 (abuse of position of trust: sexual activity with a child)	19 th July 2004
Section 17 of the Sexual Offences Act 2003 (abuse of position of trust: causing or inciting a child to engage in sexual activity)	19 th July 2004
Section 18 of the Sexual Offences Act 2003 (abuse of position of trust: sexual activity in the presence of a child)	19 th July 2004
Section 19 of the Sexual Offences Act 2003 (abuse of position of trust: causing a child to watch a sexual act)	19 th July 2004
Section 25 of the Sexual Offences Act 2003 (sexual activity with a child family member)	19 th July 2004
Section 26 of the Sexual Offences Act 2003 (inciting a child family member to engage in sexual activity)	19 th July 2004

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- (a) 1988 c. 33; section 160 was amended by section 84 of the 1994 Act and paragraph 29 of Schedule 6 to the 2003 Act.
(b) 2000 c. 44; section 3 was repealed in relation to England and Wales by the 2003 Act.
(c) 2002 c. 41; section 145 was repealed by the 2003 Act.
(d) 2003 c. 42.

Section 30 of the Sexual Offences Act 2003 (sexual activity with a person with a mental disorder impeding choice)	[date of commencement]
Section 31 of the Sexual Offences Act 2003 (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity)	[date of commencement]
Section 32 of the Sexual Offences Act 2003 (engaging in sexual activity in the presence of a person with a mental disorder)	[date of commencement]
Section 33 of the Sexual Offences Act 2003 (causing a person, with a mental disorder impeding choice, to watch a sexual act)	[date of commencement]
Section 34 of the Sexual Offences Act 2003 (inducement, threat or deception to procure sexual activity with a person with a mental disorder)	[date of commencement]
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)	[date of commencement]
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)	[date of commencement]
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)	[date of commencement]
Section 38 of the Sexual Offences Act 2003 (care workers: sexual activity with a person with a mental disorder)	[date of commencement]
Section 39 of the Sexual Offences Act 2003 (care workers: causing or inciting sexual activity)	[date of commencement]
Section 40 of the Sexual Offences Act 2003 (care workers: sexual activity in the presence of a person with a mental disorder)	[date of commencement]
Section 41 of the Sexual Offences Act 2003 (care workers: causing a person with a mental disorder to watch a sexual act)	[date of commencement]
Section 47 of the Sexual Offences Act 2003 (paying for sexual services of a child)	19 th July 2004
Section 48 of the Sexual Offences Act 2003 (causing or inciting child prostitution or pornography)	19 th July 2004
Section 49 of the Sexual Offences Act 2003 (controlling a child prostitute or a child involved in pornography)	19 th July 2004
Section 50 of the Sexual Offences Act 2003 (arranging or facilitating child prostitution or pornography)	19 th July 2004
Section 52 of the Sexual Offences Act 2003 (causing or inciting prostitution for gain)	[date of commencement]
Section 53 of the Sexual Offences Act 2003	[date of commencement]

(controlling prostitution for gain)	
Section 57 of the Sexual Offences Act 2003 (trafficking into the UK for sexual exploitation)	19 th July 2004
Section 58 of the Sexual Offences Act 2003 (trafficking within the UK for sexual exploitation)	19 th July 2004
Section 59 of the Sexual Offences Act 2003 (trafficking out of the UK for sexual exploitation)	19 th July 2004
Section 61 of the Sexual Offences Act 2003 (administering a substance with intent)	[date of commencement]
Section 62 of the Sexual Offences Act 2003 (committing an offence with intent to commit a sexual offence) if the relevant sexual offence which he has the intention of committing is an offence which satisfies the requirements of condition C or D	[date of commencement]
Section 63 of the Sexual Offences Act 2003 (trespass with intent to commit a sexual offence) if the relevant sexual offence which he has the intention of committing is an offence which satisfies the requirements of condition C or D	[date of commencement]
Section 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004(a)	[date of commencement]

Offences in Scotland

<i>Offence</i>	<i>Relevant specified date</i>
[...]	[...]

Offences in Northern Ireland

<i>Offence</i>	<i>Relevant specified date</i>
[...]	[...]

PART 3

Offences against or involving children under 16

Offences in England and Wales

<i>Offence</i>	<i>Relevant specified date</i>
Section 66 of the Sexual Offences Act 2003 (exposure)	[date of commencement]
Section 67 of the Sexual Offences Act 2003 (voyeurism)	[date of commencement]

Offences in Scotland

<i>Offence</i>	<i>Relevant specified date</i>
[...]	[...]

(a) 2004 c. 19; section 4 was amended by paragraph 7 of Schedule 6 to the Human Tissue Act 2004 (c. 30).

Offences in Northern Ireland

<i>Offence</i>	<i>Relevant specified date</i>
[...]	[...]

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[signature date] Minister 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. The existing regulation 8 of the 2003 Regulations (automatic prohibition) prescribes circumstances in which the Secretary of State must give a direction under section 142(1)(a) of the Education Act 2002 (c. 32) (“the 2002 Act”). A person who is the subject of a section 142 direction (or its predecessor provisions) is commonly said to be included in “List 99”. Inclusion in List 99 under subsection (1)(a) of section 142 prohibits a person from carrying out any “section 142 work” - principally, the provision of education and the carrying out of work with regular contact with children in schools and further education institutions.

The circumstances prescribed in regulation 8 of the 2003 Regulations, subject to specified conditions, are that a person has been:

- included (otherwise than provisionally) in the “PoCA List” (under section 1 of the Protection of Children Act 1999 (c. 14)) (paragraph (1)(b) of regulation 8 of the 2003 Regulations, re-enacted by these Regulations as condition A);
- made subject to a “disqualification order” (under Part 2 of the Criminal Justice and Court Services Act 2000 (c. 43) (“the 2000 Act”) (paragraph (1)(c) of regulation 8 of the 2003 Regulations, re-enacted by these Regulations as condition B); or
- convicted of an offence, or an attempt to commit an offence, listed in Schedule 2 to the 2003 Regulations (paragraph (1)(a) of regulation 8 of the 2003 Regulations, re-enacted by these Regulations, with modifications, as conditions C and D).

Except where a person has been included in List 99 because he is included in the PoCA List, regulation 8 provides that a person subject to automatic prohibition is to be included in List 99 on the grounds that he is unsuitable to work with children. An effect of inclusion in List 99 on grounds of unsuitability is that a person is also subject to the disqualification from working with children in a “regulated position” (defined in section 36 of the 2000 Act) by section 35(4)(b) of the 2000 Act (as amended by the 2002 Act). A person included in the PoCA List (otherwise than provisionally) or a person subject to a disqualification order is also subject to this disqualification from working with children (section 35(4)(a) and (d) of the 2000 Act respectively).

The specified conditions in relation to a person against whom a disqualification order has been made include that he was in section 142 work before he was convicted of the offence to which the disqualification order relates. These Regulations do not carry forward that requirement for disqualification orders made after [*date of commencement*] (substituted regulation 8(4)(b) inserted by regulation 4 of these Regulations).

The specified conditions in relation to a person who was convicted of an offence include that:

- he was aged 18 or over when he committed the offence;
- he was in section 142 work before he was convicted of the offence; and
- the offence was committed against or involving a child under 16.

Regulation 8(1)(a) of the 2003 Regulations only applies in relation to convictions for offences after specified dates, being the date on which each offence became an automatic prohibition criterion. The offences which are criteria for automatic prohibition in the 2003 Regulations, and the dates on which they became such criteria, can be identified in the substituted Schedules 2 and 3 (inserted by regulation 10 of these Regulations). They are the offences which have a “relevant specified date” that is not [*date of commencement*].

As respect persons who have been convicted of an offence before these Regulations come into force, these Regulations do not extend the scope of the criteria for automatic prohibition. This is reflected in the various distinctions that are drawn by reference to [*date of commencement*] - for example, in paragraphs (4)(b), (6)(b)(ii), (14) and (16)(b) of the regulation 8 substituted by regulation 4 of these Regulations.

These Regulations supplement the criteria for automatic prohibition in the following ways:

- They add entirely new offences - any offence in the substituted Schedule 2 or 3 for which the relevant specified date is [*date of commencement*].
- In addition to offences against or involving under 16s, they add a number of offences against or involving 16 and 17 year olds and some offences against adults.
- In addition to convictions for an offence, they add cautions and other findings that a person has committed an offence (substituted regulation 8(15)(b) provides the meaning of “found to have committed an offence” for conditions C and D and E) in substituted regulation 8(5) to (11).
- 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 or where a person is a secondary party to an offence (substituted regulation 8(16) provides the meaning of “related offence” for conditions C and D).
- For convictions after [*date of commencement*], they lift the requirement that a person must have been in section 142 work before he was convicted of the offence (substituted regulation 8(14)).
- They add comparable overseas offences (condition E).
- They add risk of sexual harm orders, being orders of the court prohibiting a person from doing anything the court considers necessary to protect a child or children generally, made where the court is satisfied that a person has, on at least 2 occasions, done sexually-related acts involving a child under 16 (condition F).

These Regulations introduce an exception from the offence-based criteria for automatic prohibition where, in relation to an offence, the court has considered whether to make a disqualification order and decided not to (substituted regulation 8(18)).

In some circumstances, where a person is automatically included in List 99 after these Regulations come into force, these Regulations create a new right to make representations to the Secretary of State (new regulation 8A inserted by regulation 4 of these Regulations). After consideration of the representations the Secretary of State can remove a person from List 99 (by revoking the section 142 direction) but only if he is satisfied that the person is not unsuitable to work with children. This right to make representations, and the consequent power of the Secretary of State to remove a person from List 99, only applies where a person is subject to automatic prohibition by virtue of condition D, E or F – namely:

- Where the offence is a Schedule 2 offence that is:
 - a “related offence” rather than a fully-completed offence under Schedule 2 (attempt, conspiracy etc.);
 - committed against a person under 16 but more than 10 years ago; or
 - committed against a person aged 16 or over (conditions D1 and D2).
- Where the offence is a Schedule 3 offence (conditions D3, D4 and D5).

- Where the person has committed an offence outside the UK (condition E).
- Where the person is subject to a risk of sexual harm order (condition F).

Where a person was automatically included in List 99 for any of those reasons prior to these Regulations coming into force, these Regulations create a new right to apply to the Care Standards Tribunal for a review (new regulation 10A inserted by regulation 7 of these Regulations). The Tribunal may, on hearing the review, remove a person from List 99 if it considers that the person is no longer unsuitable to work with children (regulation 10 of the 2003 Regulations, as amended by regulation 6 of these Regulations).

If, following this consideration of a person's representations under the new regulation 10A, the Secretary of State refuses to remove a person from List 99, the person may appeal to the Care Standards Tribunal (paragraph (aa) of regulation 12(1) of the 2003 Regulations inserted by regulation 9(1) of these Regulations).

Regulations 5, 8(2) and (3) and 9(2) of these Regulations update cross-references in the 2003 Regulations. They reflect drafting changes to regulation 8 of the 2003 Regulations in the provisions governing the Secretary of State's power to review directions (regulation 9 of the 2003 Regulations), the leave requirements for an application for a review by the Care Standards Tribunal (regulation 11 of the 2003 Regulations) and the provision for an appeal to the Tribunal (regulation 12 of the 2003 Regulations).

FOR CONSULTATION