Draft Regulations laid before Parliament under section 61(3) of the Safeguarding Vulnerable Groups Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2012 No.

CHILDREN AND YOUNG PERSONS, ENGLAND AND WALES

PROTECTION OF VULNERABLE ADULTS, ENGLAND AND WALES

The Safeguarding Vulnerable Groups Act 2006 (Controlled Activity and Prescribed Criteria) Regulations 2012

Made - - - - ***

Coming into force in accordance with regulation 1

The Secretary of State, in the exercise of the powers conferred by sections 23(1), 61(5) and 64(1)(a) and (3) of, and paragraphs 1(1), 2(1), 7(1), 8(1) and 24(1) and (2) of Schedule 3 to, the Safeguarding Vulnerable Groups Act 2006(**a**), makes the following Regulations.

In accordance with section 56(3)(q) of that Act the Secretary of State has consulted the Welsh Ministers.

A draft of these Regulations was laid before Parliament in accordance with section 61(3) of that Act and approved by resolution of each House of Parliament.

Citation and commencement

1.—(1) These Regulations may be cited as the Safeguarding Vulnerable Groups Act 2006 (Controlled Activity and Prescribed Criteria) Regulations 2012 and subject to paragraphs (2) and (3) shall come into force the day after the day on which they are made.

(2) Regulation 2 shall come into force 14 days after the day on which these Regulations are made.

(3) Regulation 3 shall come into force 21 days after the day on which these Regulations are made.

Amendment of the Safeguarding Vulnerable Groups Act 2006 (Controlled Activity and Miscellaneous Provisions) Regulations 2010

(**a**) 2006 c. 47.

2. Regulations 2 to 8 of the Safeguarding Vulnerable Groups Act 2006 (Controlled Activity and Miscellaneous Provisions) Regulations 2010(**a**) are revoked.

Amendment of the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009

3.—(1) The Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009(**b**) are amended as follows.

(2) In Part 1 of the table in paragraph 1 of the Schedule (prescribed criteria – automatic inclusion in the children's barred list) insert the following entries at the appropriate place—

"Sexual Offences (Scotland) Act 2009(**c**), section 1	The offence was committed against a child"
"Sexual Offences (Scotland) Act 2009, section 2	The offence was committed against a child".

(3) In Part 2 of the table in paragraph 1 of the Schedule (prescribed criteria – automatic inclusion in the children's barred list) insert the following entries at the appropriate place—

"Sexual Offences (Scotland) Act 2009, section 18"

"Sexual Offences (Scotland) Act 2009, section 19"

"Sexual Offences (Scotland) Act 2009, section 20(1), (2)(a) and (3)".

(4) In Part 1 of the table in paragraph 2 of the Schedule (prescribed criteria – automatic inclusion in the children's barred list with the right to make representations)—

(a) remove the entry relating to the Offences Against the Person Act 1861, section 52";

(b) insert the following entries at the appropriate place—

"Female Genital Mutilation Act 2003(**d**), section 1	The offence was committed against a child"
"Female Genital Mutilation Act 2003, section 2	The offence was committed against a child"
"Female Genital Mutilation Act 2003, section 3	The offence was committed against a child"
"Sexual Offences Act 2003(**e**), section 72	The offence committed corresponds to an offence which would lead to automatic inclusion in the children's barred list with the right to make representations"
"Sexual Offences (Scotland) Act 2009, section 5	The offence was committed against a child under the age of 16"
"Sexual Offences (Scotland) Act 2009, section 6	The offence was committed against a child under the age of 16"
"Sexual Offences (Scotland) Act 2009, section 8	The offence was committed against a child under the age of 16"
"Sexual Offences (Scotland) Act 2009, section 9	The offence was committed against a child under the age of 16";

(**a**) S.I. 2010/ 1146.
(**b**) S.I. 2009/37 as amended by S.I. 2009/2610.
(**c**) 2009 asp. 9.
(**d**) 2003 c. 31.
(**e**) 2003 c. 42.

(c) in the entries relating to the Offences Against the Person Act 1861(**a**), section 61 and the Offences Against the Person Act 1861, section 62 for the circumstances of the offence substitute "The person with whom the offence was committed was under the age of 16 or did not consent to the act";

(d) in the entry relating to the Criminal Law Amendment Act 1885(**b**), section 11 for the circumstances of the offence substitute "The person with whom the offence was committed was under the age of 16 or did not consent to the act and the conviction or caution is not a disregarded conviction or caution within the meaning of Chapter 4 of Part 5 of the Protection of Freedoms Act 2012(**c**)";

(e) in the entries relating to the Sexual Offences Act 1956(**d**), section 12 and the Sexual Offences Act 1956, section 13 in the circumstances of the offence after "the act" insert "and the conviction or caution is not a disregarded conviction or caution within the meaning of Chapter 4 of Part 5 of the Protection of Freedoms Act 2012";

(f) in the entry relating to the Theft Act 1968(**e**), section 9(1)(a), after "intent to commit rape" insert "before section 9(1)(a) was amended by the Sexual Offences Act 2003";

(g) in the entry relating to the Theft Act (Northern Ireland) 1969(**f**), section 9, after "intent to commit rape" insert "before section 9 was amended by the Sexual Offences (Northern Ireland) Order 2008".

(5) In Part 2 of the table in paragraph 2 of the Schedule (prescribed criteria – automatic inclusion in the children's barred list with the right to make representations)—

(a) remove the entries relating to the Mental Health Act 1983(**g**), sections 126, 128 and 129;

(b) insert the following entries at the appropriate place—

"Offences Against the Person Act 1861, section 52"

"Sexual Offences (Northern Ireland) Order 1978(**h**), Article 3"

"Mental Health (Scotland) Act 1984(**i**), section 106"

"Mental Health (Scotland) Act 1984, section 107"

"Sexual Offences Act 2003, section 4(1)(a)"

"Sexual Offences Act 2003, section 59A(**j**)"

"Criminal Justice and Immigration Act 2008(**k**), section 63"

"Coroners and Justice Act 2009(**l**), section 62"

"Sexual Offences (Scotland) Act 2009, section 3"

"Sexual Offences (Scotland) Act 2009, section 4"

"Sexual Offences (Scotland) Act 2009, section 11"

"Sexual Offences (Scotland) Act 2009, section 20(1) and (2)(b) to (e)"

"Sexual Offences (Scotland) Act 2009, section 21"

"Sexual Offences (Scotland) Act 2009, section 22"

"Sexual Offences (Scotland) Act 2009, section 23"

"Sexual Offences (Scotland) Act 2009, section 24"

(**a**) 1861 c. 100.
(**b**) 1885. 48 & 49 Vict. C. 69.
(**c**) 2012 c. 9.
(**d**) 1956 c. 69.
(**e**) 1968 c. 60.
(**f**) 1969 c. 16.
(**g**) 1983 c. 20.
(**h**) S.I. 1978/460 (N.I. 5).
(**i**) 1984 c. 36.
(**j**) Section 59A was inserted by section 109 of the Protection of Freedoms Act 2012 (c. 9).
(**k**) 2008 c. 4.
(**l**) 2009 c. 25.

"Sexual Offences (Scotland) Act 2009, section 25"

"Sexual Offences (Scotland) Act 2009, section 26"

"Sexual Offences (Scotland) Act 2009, section 28"

"Sexual Offences (Scotland) Act 2009, section 29"

"Sexual Offences (Scotland) Act 2009, section 30"

"Sexual Offences (Scotland) Act 2009, section 31"

"Sexual Offences (Scotland) Act 2009, section 32"

"Sexual Offences (Scotland) Act 2009, section 33"

"Sexual Offences (Scotland) Act 2009, section 34"

"Sexual Offences (Scotland) Act 2009, section 35"

"Sexual Offences (Scotland) Act 2009, section 36"

"Sexual Offences (Scotland) Act 2009, section 42"

"Sexual Offences (Scotland) Act 2009, section 46";

(c) for "Asylum and Immigration Act 2004(**a**), section 4" substitute "Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, section 4".

(6) In the table in paragraph 3 of the Schedule (prescribed criteria – automatic inclusion in the adults' barred list) insert the following entry at the appropriate place—

"Sexual Offences (Scotland) Act 2009, section 46".

(7) In Part 1 of the table in paragraph 4 of the Schedule (prescribed criteria – automatic inclusion in the adults' barred list with the right to make representations)—

(a) insert the following entries at the appropriate place—

"Female Genital Mutilation Act 2003, section 1	The offence was committed against a child"
"Female Genital Mutilation Act 2003, section 2	The offence was committed against a child"
"Female Genital Mutilation Act 2003, section 3	The offence was committed against a child"
"Sexual Offences Act 2003, section 72	The offence committed corresponds to an offence leading to automatic inclusion in the adults' barred list with the right to make representations"
"Sexual Offences (Scotland) Act 2009, section 5	The offence was committed against a child under the age of 16"
"Sexual Offences (Scotland) Act 2009, section 6	The offence was committed against a child under the age of 16";

(b) in the entry relating to the Offences Against the Person Act 1861, section 61 for the circumstances of the offence substitute "The person with whom the offence was committed was under the age of 16 or did not consent to the act";

(c) in the entry relating to the Criminal Law Amendment Act 1885, section 11 for the circumstances of the offence substitute "The person with whom the offence was committed was under the age of 16 or did not consent to the act and the conviction or caution is not a disregarded conviction or caution within the meaning of Chapter 4 of Part 5 of the Protection of Freedoms Act 2012";

(d) in the entries relating to the Sexual Offences Act 1956, section 12 and the Sexual Offences Act 1956, section 13 in the circumstances of the offence after "the act" insert

(**a**) 2004 c. 19.

"and the conviction or caution is not a disregarded conviction or caution within the meaning of Chapter 4 of Part 5 of the Protection of Freedoms Act 2012";

(e) in the entry relating to the Theft Act 1968, section 9(1)(a), after "intent to commit rape" insert "before section 9(1)(a) was amended by the Sexual Offences Act 2003";

(f) in the entry relating to the Theft Act (Northern Ireland) 1969, section 9, after "intent to commit rape" insert "before section 9 was amended by the Sexual Offences (Northern Ireland) Order 2008".

(8) In Part 2 of the table in paragraph 4 of the Schedule (prescribed criteria – automatic inclusion in the adults' barred list with the right to make representations)—

(a) remove the entries relating to the Mental Health Act 1983, sections 126, 128 and 129;

(b) insert the following entries at the appropriate place—

"Sexual Offences (Northern Ireland) Order 1978, Article 3"

"Mental Health (Scotland) Act 1984, section 106"

"Mental Health (Scotland) Act 1984, section 107"

"Criminal Justice (Scotland) Act 2003(**a**), section 22"

"Sexual Offences Act 2003, section 4(1)(a)"

"Sexual Offences Act 2003, section 59A"

"Criminal Justice and Immigration Act 2008, section 63"

"Coroners and Justice Act 2009, section 62"

"Sexual Offences (Scotland) Act 2009, section 1"

"Sexual Offences (Scotland) Act 2009, section 2"

"Sexual Offences (Scotland) Act 2009, section 3"

"Sexual Offences (Scotland) Act 2009, section 4"

"Sexual Offences (Scotland) Act 2009, section 11"

"Sexual Offences (Scotland) Act 2009, section 18"

"Sexual Offences (Scotland) Act 2009, section 19"

"Sexual Offences (Scotland) Act 2009, section 20";

(c) for "Asylum and Immigration Act 2004, section 4" substitute "Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, section 4".

Home Office
Date

Name
Parliamentary Under-Secretary of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke regulations 2 and 3 of the Safeguarding Vulnerable Groups Act 2006 (Controlled Activity and Miscellaneous Provisions) Regulations 2010 ("the 2010 Regulations") which made provision as to when a responsible person (as defined in section 23(3) of the Safeguarding Vulnerable Groups Act 2006 ("the 2006 Act")) must not permit another person to engage in a controlled activity in England relating to children or to vulnerable adults (as defined in sections 21 and 22 of the 2006 Act).

(**a**) 2003 asp. 7.

Regulation 2 also revokes regulations 4 to 8 of the 2010 Regulations which made modifications to sections 113A and 113B of the Police Act 1997 ("the 1997 Act") which provided that the Secretary of State must issue a notification (rather than a criminal record certificate under section 113A or an enhanced criminal record certificate under section 113B of the 1997 Act) in respect of a person seeking to engage in a controlled activity where that person was not barred from engaging in a regulated activity.

These Regulations also amend the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 which prescribe the criteria which determine whether a person should be included automatically in the children's barred list or the adults' barred list maintained by the Independent Safeguarding Authority under section 2 of the 2006 Act.

Regulation 3(2) and (3) amends the criteria on the basis of which a person will be included automatically in the children's barred list without having the right to make representations. Regulation 3(4) and (5) amends the criteria on the basis of which a person will be included automatically in the children's barred list with the right to make representations.

Regulation 3(6) amends the criteria on the basis of which a person will be included automatically in the adults' barred list without having the right to make representations. Regulation 3(7) and (8) amends the criteria on the basis of which a person will be included automatically in the adults' barred list with the right to make representations.

In particular these amendments update the criteria for automatic inclusion on the children's and adults' barred lists in light of the Sexual Offences (Scotland) Act 2009 (asp. 9) and the provisions in Chapter 4 of Part 5 of the Protection of Freedoms Act 2012 (c. 9) in relation to disregarded convictions and cautions.

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