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STATUTORY INSTRUMENTS

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**2003 No. 417**

The Protection of Children and Vulnerable  
Adults (Northern Ireland) Order 2003

PART II

PROTECTION OF CHILDREN

CHAPTER I

PERSONS UNSUITABLE TO WORK WITH CHILDREN

*List of persons unsuitable to work with children*

**Duty of Department to keep list**

3.—(1) The Department shall keep a list of individuals who are considered unsuitable to work with children.

(2) An individual shall not be included in the list except in accordance with this Chapter.

(3) The Department may at any time remove an individual from the list if it is satisfied that the individual should not have been included in it.

*Inclusion in list under Article 3*

**Inclusion in list on reference following disciplinary action, etc.**

4.—(1) A child care organisation shall, and any other organisation may, refer to the Department an individual who is or has been employed in a child care position if there is fulfilled—

- (a) any of the conditions mentioned in paragraph (2); or
- (b) the condition mentioned in paragraph (3).

(2) The conditions referred to in paragraph (1)(a) are—

- (a) that the organisation has dismissed the individual on the grounds of misconduct (whether or not in the course of his employment) which harmed a child or placed a child at risk of harm;
- (b) that the individual has resigned, retired or been made redundant in circumstances such that the organisation would have dismissed him, or would have considered dismissing him, on such grounds if he had not resigned, retired or been made redundant;
- (c) that the organisation has, on such grounds, transferred the individual to a position within the organisation which is not a child care position;
- (d) that the organisation has, on such grounds, suspended the individual or provisionally transferred him to such a position as is mentioned in sub-paragraph (c), but has not yet decided whether to dismiss him or to confirm the transfer.

- (3) The condition referred to in paragraph (1)(b) is that—
- (a) in circumstances not falling within paragraph (2), the organisation has dismissed the individual, he has resigned, retired or been made redundant or the organisation has transferred him to a position within the organisation which is not a child care position;
  - (b) information not available to the organisation at the time of the dismissal, resignation, retirement, redundancy or transfer has since become available; and
  - (c) the organisation has formed the opinion that, if that information had been available at that time and if (where applicable) the individual had not resigned, retired or been made redundant, the organisation would have dismissed him, or would have considered dismissing him, on such grounds as are mentioned in paragraph (2)(a).
- (4) If it appears from the information submitted with a reference under paragraph (1) that it may be appropriate for the individual to be included in the list kept under Article 3, the Department shall—
- (a) determine the reference in accordance with paragraphs (5) to (7); and
  - (b) pending that determination, provisionally include the individual in the list.
- (5) The Department shall—
- (a) invite observations from the individual on the information submitted with the reference and, if it thinks fit, on any observations submitted under sub-paragraph (b); and
  - (b) invite observations from the organisation on any observations on the information submitted with the reference and, if it thinks fit, on any other observations under sub-paragraph (a).
- (6) Where—
- (a) the Department has considered the information submitted with the reference, any observations submitted to it and any other information which it considers relevant; and
  - (b) in the case of a reference under paragraph (2)(d), the organisation has dismissed the individual or, as the case may be, has confirmed his transfer on such grounds as are there mentioned,
- the Department shall confirm the individual's inclusion in the list if paragraph (7) applies; otherwise it shall remove him from the list.
- (7) This paragraph applies if the Department is of the opinion—
- (a) that the organisation reasonably considered the individual to be guilty of misconduct (whether or not in the course of his employment) which harmed a child or placed a child at risk of harm; and
  - (b) that the individual is unsuitable to work with children.
- (8) The reference in paragraph (6)(b) to the organisation dismissing the individual on such grounds as are mentioned in paragraph (2)(d) includes—
- (a) a reference to his resigning, retiring or being made redundant in circumstances such that the organisation would have dismissed him, or would have considered dismissing him, on such grounds if he had not resigned, retired or been made redundant; and
  - (b) a reference to the organisation transferring him, on such grounds, to a position within the organisation which is not a child care position.
- (9) This Article does not apply where—
- (a) the organisation carries on an employment agency, nursing agency or employment business; and
  - (b) the individual in question is a supply worker in relation to it.

### **Employment agencies, nursing agencies and employment businesses: duty to refer**

5.—(1) An organisation which carries on an employment agency or a nursing agency shall refer a supply worker to the Department if—

- (a) the organisation has decided not to do any further business with the worker on the grounds of misconduct (whether or not in the course of his employment) which harmed a child or placed a child at risk of harm; or
- (b) the organisation has decided on such grounds not to find the worker further employment, or supply him for further employment, in a child care position.

(2) An organisation which carries on an employment business shall refer a supply worker to the Department if—

- (a) the organisation has dismissed the worker on the grounds of misconduct (whether or not in the course of his employment) which harmed a child or placed a child at risk of harm;
- (b) the worker has resigned, retired or been made redundant in circumstances such that the organisation would have dismissed him, or would have considered dismissing him, on such grounds if he had not resigned, retired or been made redundant; or
- (c) the organisation has, on such grounds, decided not to supply the worker for further employment in a child care position.

(3) If it appears from the information submitted with a reference under paragraph (1) or (2) that it may be appropriate for the worker to be included in the list kept under Article 3, the Department shall—

- (a) determine the reference in accordance with paragraphs (4) to (6); and
- (b) pending that determination, provisionally include the worker in the list.

(4) The Department shall—

- (a) invite observations from the worker on the information submitted with the reference and, if it thinks fit, on any observations submitted under sub-paragraph (b); and
- (b) invite observations from the organisation on any observations on the information submitted with the reference and, if the Department thinks fit, on any other observations under sub-paragraph (a).

(5) Where the Department has considered the information submitted with the reference, any observations submitted to it and any other information which it considers relevant, the Department shall confirm the worker's inclusion in the list if paragraph (6) applies; otherwise it shall remove him from the list.

(6) This paragraph applies if the Department is of the opinion—

- (a) that the organisation reasonably considered the worker to be guilty of misconduct (whether or not in the course of his employment) which harmed a child or placed a child at risk of harm; and
- (b) that the worker is unsuitable to work with children.

### **Power of other authorities to refer**

6.—(1) A person to whom this Article applies may refer to the Department an individual who is or has been employed in a child care position if—

- (a) on the basis of evidence obtained by him in the exercise of relevant functions, the person considers that the individual has been guilty of misconduct (whether or not in the course of his employment) which harmed a child or placed a child at risk of harm; and

- (b) the individual has not been referred to the Department under Article 4 or 5 in respect of the misconduct.
- (2) The persons to whom this Article applies are—
- (a) an authority;
  - (b) the Nursing and Midwifery Council;
  - (c) the Northern Ireland Social Care Council;
  - [<sup>F1</sup>(cc) the Regulation and Improvement Authority;]
  - (d) any other person designated for the purposes of this Article by an order made by the Department subject to negative resolution.
- (3) In paragraph (1) “relevant functions” means—
- (a) in relation to an authority, functions under Parts VII to IX and XI<sup>F2</sup>. . . of the Children Order;
  - (b) in relation to the Nursing and Midwifery Council, functions under Parts III and V of the Nursing and Midwifery Order 2001 (SI 2002/253) (registration and fitness to practise);
  - (c) in relation to the Northern Ireland Social Care Council, functions under sections 3 to 8 of the Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3) (registration of social workers and social care workers);
  - [<sup>F1</sup>(cc) in relation to the Regulation and Improvement Authority, any of its functions;]
  - (d) in relation to a person designated by an order under paragraph (2)(d), such functions as are specified for the purposes of this Article by the order.
- (4) Article 4(4) to (7) shall apply in relation to a reference made by a person under paragraph (1) as it applies in relation to a reference made by an organisation under Article 4(1).

**F1** 2003 NI 9

**F2** 2003 NI 9

### **Individuals named in the findings of certain inquiries**

- 7.—(1) Paragraph (2) applies where—
- (a) a relevant inquiry has been held;
  - (b) the report of the person who held the inquiry names an individual who is or has been employed in a child care position; and
  - (c) it appears to the Department from the report—
    - (i) that the person who held the inquiry found that the individual was guilty of relevant misconduct; and
    - (ii) that the individual is unsuitable to work with children.
- (2) The Department—
- (a) may provisionally include the individual in the list kept under Article 3; and
  - (b) if it does so, shall determine in accordance with paragraphs (3) to (5) whether the individual's inclusion in the list should be confirmed.
- (3) The Department shall—
- (a) invite observations from the individual on the report, so far as relating to him, and, if the Department thinks fit, on any observations submitted under sub-paragraph (b); and

- (b) invite observations from the relevant employer on any observations on the report and, if the Department thinks fit, on any other observations under sub-paragraph (a).
- (4) Where the Department has considered the report, any observations submitted to it and any other information which it considers relevant, it shall confirm that individual's inclusion in the list if paragraph (5) applies; otherwise it shall remove him from the list.
- (5) This paragraph applies if the Department is of the opinion—
- (a) that the person who held the inquiry reasonably considered the individual to be guilty of relevant misconduct; and
  - (b) that the individual is unsuitable to work with children.
- (6) In this Article—
- “relevant employer” means the person who, at the time mentioned in the definition of “relevant misconduct” below, employed the individual in a child care position;
- “relevant misconduct” means misconduct which harmed a child or placed a child at risk of harm and was committed (whether or not in the course of his employment) at a time when the individual was employed in a child care position.
- (7) In this Article “relevant inquiry” means any of the following—
- (a) an inquiry held<sup>F3</sup> under the Inquiries Act 2005 or] under—
    - (i) Article 54 of the Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14);
    - (ii) Article 108 of the Education and Libraries (Northern Ireland) Order 1986 (NI 3);
    - (iii) Article 69 of the Adoption (Northern Ireland) Order 1987 (NI 22);
    - (iv) Article 152 of the Children Order;
  - (b) an inquiry to which the Tribunals of Inquiry (Evidence) Act 1921 (c. 7) applies;
  - (c) any other inquiry or hearing designated for the purposes of this Article by an order made by the Department subject to negative resolution.

**F3** 2005 c. 12

**Modifications etc. (not altering text)**

**C1** Art. 7 excluded (13.3.2009) by [Safeguarding Vulnerable Groups \(Transitory Provisions\) Order \(Northern Ireland\) 2009 \(S.R. 2009/38\)](#), **art. 4(6)**

**Inclusion in list on reference under Part III**

**8.**—(1) Article 36(4) to (7) shall, in the case of any reference under paragraph (1) of that Article or Article 38, apply in relation to the list kept under Article 3 as it applies in relation to the list kept under Article 35, but as if the reference in paragraph (7)(b) to vulnerable adults were a reference to children.

(2) Article 37(3) to (6) shall, in the case of any reference under paragraph (1) or (2) of that Article, apply in relation to the list kept under Article 3 as it applies in relation to the list kept under Article 35, but as if the reference in paragraph (6)(b) to vulnerable adults were a reference to children.

(3) Article 39 shall apply in relation to the list kept under Article 3 as it applies in relation to the list kept under Article 35, but as if the references in paragraphs (1)(c)(ii) and (5)(b) to vulnerable adults were references to children.

(4) But the Department may not by virtue of this Article provisionally include an individual in the list kept under Article 3, or confirm his inclusion in that list, unless it provisionally includes him in the list kept under Article 35 or, as the case requires, confirms his inclusion in that list.

(5) Where an individual has by virtue of this Article been included in the list kept under Article 3, Article 11 shall apply to him as if the references in paragraphs (3)(a) and (4) to a child were references to a vulnerable adult.

### **Reference by authority making direct payments in respect of services**

9.—(1) An authority may refer a relevant individual to the Department where, as a result of enquiries made, or caused to be made, by it under Article 66 of the Children Order, the authority considers that the individual has been guilty of misconduct (whether or not in the course of his employment) which harmed a child or placed a child at risk of harm.

(2) Article 4(4) to (7) shall apply in relation to a reference made by an authority under paragraph (1) as it applies in relation to a reference made by an organisation under Article 4(1).

(3) In this Article—

“funded care” means care in respect of a person's securing the provision of which the authority has made a payment under Article 18C of the Children Order (direct payments);

“relevant individual” means an individual who is or has been employed to provide funded care to a child.

### **Inclusion in list on transfer from Pre-Employment Consultancy Service Register**

10.—(1) Paragraphs (2) and (3) apply where—

- (a) an individual is included in the Pre-Employment Consultancy Service Register (otherwise than provisionally) immediately before the commencement of Article 3;
- (b) he was so included on a reference made to the Department by an organisation; and
- (c) any of the conditions mentioned in Article 4(2)(a) to (c), or the condition mentioned in Article 4(3), was fulfilled in relation to that reference.

(2) If it appears from the information submitted with the reference that it may be appropriate for the individual to be included in the list kept by the Department under Article 3, the Department shall—

- (a) invite observations from the individual on the information submitted with the reference and, if it thinks fit, on any observations submitted under sub-paragraph (b); and
- (b) invite observations from the organisation on any observations on the information submitted with the reference and, if the Department thinks fit, on any other observations under sub-paragraph (a).

(3) The Department shall include the individual in the list kept by it under Article 3 if, after it has considered the information submitted with the reference, any observations submitted to it and any other information which it considers relevant, it is of the opinion—

- (a) that the organisation reasonably considered the individual to be guilty of misconduct (whether or not in the course of his employment) which harmed a child or placed a child at risk of harm; and
- (b) that the individual is unsuitable to work with children.

(4) Paragraphs (5) and (6) apply where—

- (a) a relevant inquiry has been held;

- (b) the report of the person who held the inquiry names an individual who is or has been employed in a child care position;
  - (c) it appears to the Department from the report—
    - (i) that the person who held the inquiry found that the individual was guilty of relevant misconduct; and
    - (ii) that the individual is unsuitable to work with children; and
  - (d) the individual is included in the Pre-Employment Consultancy Service Register (otherwise than provisionally) immediately before the commencement of Article 3.
- (5) The Department shall—
- (a) invite observations from the individual on the report, so far as relating to him, and, if the Department thinks fit, on any observations submitted under sub-paragraph (b); and
  - (b) invite observations from the relevant employer on any observations on the report and, if the Department thinks fit, on any other observations under sub-paragraph (a).
- (6) The Department shall include the individual in the list kept by it under Article 3 if, after it has considered the report, any observations submitted to it and any other information which it considers relevant, it is of the opinion—
- (a) that the person who held the inquiry reasonably considered the individual to be guilty of relevant misconduct; and
  - (b) that the individual is unsuitable to work with children.
- (7) In this Article—
- “relevant employer”, in relation to an individual named in the report of a relevant inquiry, means the person who, at the time mentioned in the definition of “relevant misconduct” below, employed the individual in a child care position;
- “relevant inquiry” has the same meaning as in Article 7;
- “relevant misconduct” means misconduct which harmed a child or placed a child at risk of harm and was committed (whether or not in the course of his employment) at a time when the individual was employed in a child care position.

#### *Appeals and applications to Social Care Tribunal*

#### **Appeals against inclusion in list**

- 11.**—(1) An individual who is included (otherwise than provisionally) in the list kept by the Department under Article 3 may appeal to<sup>F4</sup> the] Care Tribunal against—
- (a) the decision to include him in the list; or
  - (b) with the leave of the Tribunal, any decision of the Department not to remove him from the list under Article 3(3).
- (2) Subject to paragraph (5), an individual who has been provisionally included for a period of more than nine months in the list kept by the Department under Article 3 may, with the leave of<sup>F4</sup> the] Care Tribunal, have the issue of his inclusion in the list determined by the Tribunal instead of by the Department.
- (3) If on an appeal or determination under this Article<sup>F4</sup> the] Care Tribunal is not satisfied of either of the following, namely—
- (a) that the individual was guilty of misconduct (whether or not in the course of his employment) which harmed a child or placed a child at risk of harm; and

(b) that the individual is unsuitable to work with children, the Tribunal shall allow the appeal or determine the issue in the individual's favour and (in either case) direct his removal from the list; otherwise it shall dismiss the appeal or direct the individual's inclusion in the list.

(4) Where an individual has been convicted of an offence involving misconduct (whether or not in the course of his employment) which harmed a child or placed a child at risk of harm, no finding of fact on which the conviction must be taken to have been based shall be challenged on an appeal or determination under this Article.

(5) Where the misconduct of which the individual is alleged to have been guilty is the subject of any civil or criminal proceedings, an application for leave under paragraph (2) may not be made before the end of the period of six months immediately following the final determination of the proceedings.

(6) For the purposes of paragraph (5), proceedings are finally determined when—

- (a) the proceedings are terminated without a decision being made;
- (b) a decision is made against which no appeal lies;
- (c) in a case where an appeal lies with leave against a decision, the time limited for applications for leave expires without leave being granted; or
- (d) in a case where leave to appeal against a decision is granted or is not required, the time limited for appeal expires without an appeal being brought.

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### **Application for removal from list**

**12.**—(1) Subject to Article 13, an individual who is included in the list kept by the Department under Article 3 may make an application to<sup>F5</sup> the] Care Tribunal under this Article.

(2) On an application under this Article the Tribunal shall determine whether or not the individual should continue to be included in the list.

(3) If the Tribunal is satisfied that the individual is no longer unsuitable to work with children it shall direct his removal from the list; otherwise it shall dismiss the application.

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### **Conditions for application under Article 12**

**13.**—(1) An individual may only make an application under Article 12 with the leave of<sup>F6</sup> the] Care Tribunal.

(2) An application for leave under this Article may not be made unless the appropriate conditions are satisfied in the individual's case.

(3) In the case of an individual who was a child when he was included (otherwise than provisionally) in the list, the appropriate conditions are satisfied if—

- (a) he has been so included for a continuous period of at least five years; and
- (b) in the period of five years ending with the time when he makes the application under this Article, he has made no other such application.

(4) In the case of any other individual, the appropriate conditions are satisfied if—



- (a) he has been included (otherwise than provisionally) in the list for a continuous period of at least ten years; and
  - (b) in the period of ten years ending with the time when he makes the application under this Article, he has made no other such application.
- (5) The Tribunal shall not grant an application under this Article unless it considers—
- (a) that the individual's circumstances have changed since he was included (otherwise than provisionally) in the list, or, as the case may be, since he last made an application under this Article; and
  - (b) that the change is such that leave should be granted.

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### Restoration to list

14.—(1) If it appears to the Chief Constable or a director of social services that the conditions set out in paragraph (2) are satisfied in the case of an individual, the Chief Constable or (as the case may be) the director may apply to the High Court for an order under this Article to be made in respect of the individual.

(2) The conditions are that—

- (a) the individual is no longer included in the list kept by the Department under Article 3, and
- (b) the individual has acted in such a way (whether before or after he ceased to be included in the list) as to give reasonable cause to believe that an order under this Article is necessary to protect children in general, or any children in particular, from serious harm from him.

(3) An application under this Article may be made at any time after the individual ceased to be included in the list.

(4) If the High Court is satisfied that the conditions set out in paragraph (2) are satisfied, it must order the restoration of the individual's inclusion in the list; otherwise it must dismiss the application.

(5) Where an order is made under this Article, Article 13 has effect with the following modifications—

- (a) in paragraph (3), the reference to the individual being a child when he was included in the list is to be read as a reference to his being a child when the order under this Article was made,
- (b) paragraphs (3)(a) and (4)(a) are to have effect as if after “years” there were inserted “beginning with the making of the order under Article 14”,
- (c) in paragraph (5)(a), the reference to the individual's circumstances changing since he was included in the list is to be read as a reference to his circumstances changing since the order under this Article was made.

(6) For the purposes of this Article an individual is no longer included in the list if a direction under Article 12(3) has been given in respect of him and his inclusion in the list is not restored by virtue of an order under this Article.

*List in connection with prohibiting or restricting employment in schools, etc.*

### List in connection with prohibiting or restricting employment in schools, etc.

15.—(1) The Education and Libraries (Northern Ireland) Order 1986 (NI 3) shall have effect subject to the following provisions of this Article.

(2) In Article 70(2)(e) (regulations for prohibiting or restricting the employment or further employment of teachers) for the words from “on medical grounds” to the end there shall be substituted

- “(i) on medical grounds;
- (ii) on the grounds of misconduct;
- (iii) on the grounds that the persons concerned are unsuitable to work with children;
- (iv) on the grounds that the persons concerned are included (other than provisionally) in the list kept by the Department of Health, Social Services and Public Safety under Article 3 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003; or
- (v) on educational grounds” .

(3) In Article 88A(2)(b) (regulations for prohibiting or restricting the employment or further employment of non-teaching staff) for the words from “on medical grounds” to the end there shall be substituted

- “(i) on medical grounds;
- (ii) on the grounds of misconduct;
- (iii) on the grounds that the persons concerned are unsuitable to work with children; or
- (iv) on the grounds that the persons concerned are included (other than provisionally) in the list kept by the Department of Health, Social Services and Public Safety under Article 3 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003” .

(4) The power to make regulations under Article 70 or Article 88A includes power to provide that a person may appeal to<sup>F7</sup> the] Care Tribunal against—

- (a) a decision to prohibit or restrict the person's employment or further employment on the grounds mentioned in Article 70 (2)(e)(iii) or (iv) or (as the case may be) Article 88A(2) (b)(iii) or (iv); or
- (b) a decision not to revoke or vary such a decision as is mentioned in sub-paragraph (a).

(5) Those regulations may—

- (a) make provision as to the circumstances in which<sup>F7</sup> the] Care Tribunal shall allow an appeal under the regulations and as to the powers available to it on allowing such an appeal;
- (b) provide that, where a person has been convicted of an offence involving misconduct, no finding of fact on which the conviction must be taken to have been based shall be challenged on an appeal under the regulations.

(6) The power to make regulations under Article 70 or Article 88A also includes power to make provision for a person who has been subject, for a prescribed period, to a prohibition or restriction imposed on the grounds mentioned in Article 70(2)(e)(iv) or 88A(2)(b)(iv) to apply, with the leave of<sup>F7</sup> the] Care Tribunal, for a review of the prohibition or restriction.

(7) Those regulations may make provision as to —

- (a) the circumstances in which an application for leave, or a review, under the regulations shall be determined in the person's favour;
- (b) the powers available to the Tribunal on determining a review in the person's favour.

*Effect of inclusion in either list*

**Effect of inclusion in either list**

**16.**—(1) Where a child care organisation proposes to offer an individual employment in a child care position, the organisation—

- (a) shall ascertain whether the individual is included in—
  - (i) the list kept under Article 3; or
  - (ii) the list kept for the purposes of regulations made under Article 70(2)(e) or 88A(2)(b) of the Education and Libraries (Northern Ireland) Order 1986 (NI 3); and
- (b) if he is included in either of those lists, shall not offer him employment in such a position.

(2) Where a child care organisation discovers that an individual employed by it in a child care position is included in either of the lists mentioned in paragraph (1), it shall cease to employ him in a child care position; and for the purposes of this paragraph an individual is not employed in a child care position if he has been suspended or provisionally transferred to a position which is not a child care position.

(3) Where—

- (a) a person (“the recipient”) employs, or proposes to employ, an individual to provide care for a child; and
- (b) an authority proposes to make a payment to the recipient under Article 18C of the Children Order (direct payments) in respect of his securing the provision of the care,

the authority shall, if the recipient asks it to do so, ascertain whether the individual is included in either of the lists mentioned in paragraph (1).

(4) Where a child care organisation proposes to offer employment in a child care position to an individual who has been supplied by an organisation which carries on an employment agency, nursing agency or employment business, there is a sufficient compliance with paragraph (1) if the child care organisation—

- (a) satisfies itself that, on a date within the last 12 months, the other organisation ascertained whether the individual was included in either of the lists mentioned in paragraph (1);
- (b) obtains written confirmation of the facts as ascertained by that organisation; and
- (c) if the individual was included in either of those lists on that date, does not offer him employment in a child care position.

(5) Where an authority is required under paragraph (3) to ascertain whether an individual who has been supplied as mentioned in paragraph (4) is included in either of the lists mentioned in paragraph (1), there is sufficient compliance with paragraph (3) if the authority—

- (a) satisfies itself that, on a date within the last 12 months, the organisation which supplied the individual ascertained whether he was included in any of those lists; and
- (b) obtains written confirmation of the facts as ascertained by the organisation.

(6) It is immaterial for the purposes of paragraph (1) or (4) whether the individual is already employed by the child care organisation.

(7) In this Article and Article 17(1) any reference to inclusion in the list kept for the purposes of regulations made under Article 70(2)(e) or 88A(2)(b) of the Education and Libraries (Northern Ireland) Order 1986 (NI 3), is a reference to inclusion in that list on the grounds mentioned in head (iii) of Article 70(2)(e) or (as the case may be) on the grounds mentioned in head (iii) of Article 88A(2)(b).

**Access to the lists**

17.—(1) In relation to any time before the commencement of paragraphs (4) and (5), any person seeking to ascertain whether a relevant individual is included in—

- (a) the list kept under Article 3;
- (b) the list kept for the purposes of regulations under Article 70(2)(e) or Article 88A(2)(b) of the Education and Libraries (Northern Ireland) Order 1986,

shall be entitled to that information on making application for the purpose to the Department and on paying any fee that is payable in relation to the application under regulations.

(2) For the purposes of paragraph (1) a relevant individual is—

- (a) an individual to whom the person proposes to offer employment in a child care position;
- (b) an individual for whom the person proposes to find employment, or whom he proposes to supply for employment, in a child care position; or
- (c) an individual of a prescribed description who does not fall within sub-paragraph (a) or (b).

(3) Sub-paragraph (b) of paragraph (1) does not prejudice any right conferred otherwise than by virtue of that sub-paragraph.

<sup>F8</sup>(4) In section 113 of the Police Act 1997 (c. 50) after subsection (3E) there shall be inserted—

“(3EA) If an application under this section is accompanied by a statement by the registered person that the certificate is required for the purpose of considering the applicant's suitability to be employed, supplied with work, found work or given work in a position (whether paid or unpaid) within subsection (3EB) the criminal record certificate shall also state—

- (a) whether the applicant is included in—
  - (i) the list kept under Article 3 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003;
  - (ii) the list kept for the purposes of regulations made under Article 70(2)(e) or 88A(2)(b) of the Education and Libraries (Northern Ireland) Order 1986; and
- (b) if he is included in either of those lists, such details of his inclusion as may be prescribed, including (in the case of the latter list) the grounds on which he is so included.

(3EB) A position is within this subsection if it is—

- (a) a child care position within the meaning of Chapter I of Part II of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003;
- (b) a position employment or further employment in which may be prohibited or restricted by regulations under Article 70(2)(e) or 88A(2)(b) of the Education and Libraries (Northern Ireland) Order 1986; or
- (c) a position of such other description as may be prescribed.” .

<sup>F8</sup>(5) In section 115 of that Act after subsection (6E) there shall be inserted —

“(6EA) If an application under this section is accompanied by a statement by the registered person that the certificate is required for the purpose of considering the applicant's suitability to be employed, supplied with work, found work or given work in a position (whether paid or unpaid) within subsection (3EB) of section 113, the enhanced criminal record certificate shall also state—

- (a) whether the applicant is included in—

- (i) the list kept under Article 3 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003; or
  - (ii) the list kept for the purposes of regulations made under Article 70 (2)(e) or 88A(2)(b) of the Education and Libraries (Northern Ireland) Order 1986; and
- (b) if he is included in either of those lists, such details of his inclusion as may be prescribed, including (in the case of the latter list) the grounds on which he is so included.”

<sup>F8</sup>(6) In sections 119(1A) and 120A(3)(b) of that Act after “(3C)” there shall be inserted “ or (3EA) ”.

F8 prosp. rep. by 2005 c. 15

### Supplementary

#### Accredited organisations

**18.**—(1) For the purposes of this Chapter, the Department may by regulations provide for the accreditation by or on behalf of the Department of any organisation which is not a child care organisation.

(2) Regulations under paragraph (1) may—

- (a) provide for the making of applications for accreditation by organisations and for the information to be provided with such applications;
- (b) provide for such applications to be accompanied by such other documents as are prescribed;
- (c) prescribe the conditions under which organisations may become or remain accredited;
- (d) provide for fees to be payable by organisations in connection with becoming or remaining accredited;
- (e) provide for the inspection of accredited organisations (including the power to enter premises);
- (f) provide for accreditation to be refused or withdrawn on such grounds as may be prescribed;
- (g) provide for organisations to appeal to<sup>F9</sup> the Care Tribunal against a decision of the Department to refuse or withdraw accreditation.

(3) Subject to such modifications as may be prescribed, this Chapter shall apply to organisations for the time being accredited under this Article as if they were child care organisations.

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#### Whistle-blowing by employee or member of child care organisation

**19.**—(1) This Article applies where a person to whom paragraph (2) applies reports to the Department that a child care organisation (“the organisation concerned”) has failed to comply with Article 4(1) or 16(1)(a) in relation to an individual named in the report.

(2) This paragraph applies to a person who—

- (a) is an employee of a child care organisation (whether the organisation concerned or another organisation); or

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*Status: Point in time view as at 01/01/2006.*

*Changes to legislation: There are currently no known outstanding effects for the The Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003, PART II. (See end of Document for details)*

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(b) is—

- (i) a director of such an organisation, in the case of a company; or
- (ii) in any other case, a member of the governing body of such an organisation (by whatever name that body is known).

(3) On receipt of such a report the Department shall invite observations from the organisation concerned on the information submitted with the report.

(4) Where after considering—

- (a) the information submitted with the report;
- (b) any observations submitted by the organisation concerned; and
- (c) any other information which the Department considers relevant,

the Department is of the opinion that the organisation concerned has failed to comply with Article 4(1) or 16(1)(a) in relation to an individual, the Department shall—

- (i) where the Department is the responsible authority, take such action in relation to that organisation as is required by paragraph (6); or
- (ii) where the Department is not the responsible authority, refer that failure to the responsible authority.

(5) Where a failure is referred to a responsible authority under paragraph (4)(ii) it shall be the duty of that authority to take such action in relation to the organisation concerned as is required by paragraph (6).

(6) The responsible authority shall take such action in relation to the organisation concerned (including in particular action with respect to the inspection or registration of that organisation) as appears to the responsible authority to be appropriate in the circumstances.

(7) For the purposes of this Article “the responsible authority”, in relation to a child care organisation, is the person or body which in the opinion of the Department is responsible for the enforcement of the statutory provisions by or by virtue of which the organisation is regulated.

### **Interpretation of this Chapter**

**20.**—(1) In this Chapter—

“authority” has the same meaning as in the Children Order;

“child care organisation” means an organisation—

- (a) which is concerned with the provision of accommodation, health services or personal social services to children or the supervision of children;
- (b) whose activities are regulated by or by virtue of any prescribed statutory provision; and
- (c) which fulfils such other conditions as may be prescribed;

“child care position” means a position which—

- (a) is a regulated position for the purposes of Chapter II; but
- (b) is not a position employment or further employment in which may be prohibited or restricted by regulations made under Article 70(2)(e) or 88A(2)(b) of the Education and Libraries (Northern Ireland) Order 1986;

“harm” has the same meaning as in Article 2(2) of the Children Order;

“health services” and “personal social services” have the same meanings as in the Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14);

“supply worker”

- (a) in relation to an employment agency or nursing agency, means an individual supplied by the agency for employment in a child care position or for whom the agency has found employment in a child care position;
- (b) in relation to an employment business, means an individual supplied by the business for employment in a child care position.

(2) Where part of an organisation fulfils the condition in paragraph (b) of the above definition of “child care organisation” and part of it does not, this Chapter shall have effect as if the two parts were separate organisations.

### **Transitional provisions**

**21.**—(1) Where—

- (a) an individual who is or has been employed in a child care position has been referred by an organisation to the Department for inclusion in the Pre-Employment Consultancy Service Register;
- (b) the reference has not been determined at the commencement of Article 4; and
- (c) any of the conditions mentioned in paragraph (2), or the condition mentioned in paragraph (3), of that Article was fulfilled in relation to the reference,

that Article shall apply as if the reference had been a reference made by the organisation under paragraph (1) of that Article.

(2) For the purposes of paragraph (1), a reference of an individual for inclusion in that Register is determined only when, following the reference—

- (a) the individual is included (otherwise than provisionally) in the Register; or
- (b) the Department determines that he should not be included in it.

(3) Nothing in Article 4 shall require a child care organisation to refer an individual to the Department in any case where the dismissal, resignation, retirement, redundancy, transfer or suspension mentioned in that Article took place or, as the case may be, the opinion so mentioned was formed before the commencement of that Article.

(4) Nothing in Article 5 shall require an organisation which carries on an employment agency, nursing agency or employment business to refer a supply worker to the Department in any case where the dismissal, resignation, retirement or redundancy mentioned in that Article took place or, as the case may be, the decision so mentioned was made before the commencement of that Article.

(5) Articles 6, 7 and 9 do not apply to misconduct which occurred before the commencement of those Articles.

## **CHAPTER II**

### **DISQUALIFICATION FROM WORKING WITH CHILDREN**

#### *Disqualification orders*

#### **Meaning of “offence against a child”**

**22.**—(1) For the purposes of this Chapter, an individual commits an offence against a child if—

- (a) he commits any offence mentioned in paragraph 1 of the Schedule,
- (b) he commits against a child any offence mentioned in paragraph 2 of the Schedule, or
- (c) he falls within paragraph 3 of the Schedule,

and references to being convicted of, or charged with, an offence against a child are to be read accordingly.

(2) The Department may by order amend the Schedule so as to add, modify or omit any entry.

(3) No order shall be made under paragraph (2) unless a draft of the order has been laid before and approved by resolution of the Assembly.

### **Disqualification of adults from working with children**

**23.**—(1) This Article applies where either of the conditions set out below is satisfied in the case of an individual.

(2) The first condition is that—

(a) the individual is convicted on indictment of an offence against a child committed when he was aged 18 or over, and

(b) a qualifying sentence is imposed by the court in respect of the conviction.

(3) The second condition is that—

(a) the individual is charged on indictment with an offence against a child committed when he was aged 18 or over, and

(b) a relevant order is made by the court in respect of the act or omission charged against him as the offence.

(4) Subject to paragraph (5), the court must order the individual to be disqualified from working with children.

(5) An order shall not be made under this Article if the court is satisfied, having regard to all the circumstances, that it is unlikely that the individual will commit any further offence against a child.

(6) If the court does not make an order under this Article, it must state its reasons for not doing so and cause those reasons to be included in the record of the proceedings.

### **Disqualification of juveniles from working with children**

**24.**—(1) This Article applies where either of the conditions set out below is satisfied in the case of an individual.

(2) The first condition is that—

(a) the individual is convicted on indictment of an offence against a child committed at a time when the individual was under the age of 18, and

(b) a qualifying sentence is imposed by the court in respect of the conviction.

(3) The second condition is that—

(a) the individual is charged on indictment with an offence against a child committed at a time when the individual was under the age of 18, and

(b) a relevant order is made by the court in respect of the act or omission charged against him as the offence.

(4) If the court is satisfied, having regard to all the circumstances, that it is likely that the individual will commit a further offence against a child, it must order the individual to be disqualified from working with children.

(5) If the court makes an order under this Article, it must state its reasons for doing so and cause those reasons to be included in the record of the proceedings.



## Articles 23 and 24: supplementary

25.—(1) In Articles 23 and 24—

“qualifying sentence” means—

- (a) a sentence of imprisonment for a term of 12 months or more,
- (b) an order for detention in a young offenders centre for a term of 12 months or more,
- (c) a sentence of detention during the pleasure of the Secretary of State under Article 45 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9),
- (d) a hospital order within the meaning of the Mental Health (Northern Ireland) Order 1986 (NI 4), or
- (e) a guardianship order within the meaning of that Order;

“relevant order” means—

- (a) an order that the individual in question be admitted to hospital, or
- (b) a guardianship order within the meaning of the Mental Health (Northern Ireland) Order 1986.

(2) In this Chapter references to a sentence of imprisonment or order for detention include references to a suspended sentence or order.

(3) If, for the purposes of making an order under Article 23 or 24 the court determines, after considering any available evidence, that an individual was, or was not, under the age of 18 at the time when the offence in question was committed, his age at that time shall be taken, for the purposes of that Article (and in particular for the purpose of determining any question as to the validity of the order), to be that which the court determined it to be.

(4) Below in this Chapter—

- (a) references to a disqualification order are to an order under Article 23 or 24,
- (b) in relation to an individual on whom a sentence has been passed, or in relation to whom an order has been made, as mentioned in paragraph (2) or (3) of Article 23 or 24, references to his sentence are to that sentence or order.

## Appeals

26. An individual may appeal against a disqualification order—

- (a) where the first condition mentioned in Article 23 or 24 is satisfied in his case, as if the order were a sentence passed on him for the offence of which he has been convicted,
- (b) where the second condition mentioned in Article 23 or 24 is satisfied in his case, as if he had been convicted of an offence on indictment and the order were a sentence passed on him for the offence.

## Review of disqualification

27.—(1) Subject to Article 28, an individual who is subject to a disqualification order may make an application to<sup>F10</sup> the] Care Tribunal under this Article.

(2) On an application under this Article the Tribunal must determine whether or not the individual is to continue to be subject to the order.

(3) If the Tribunal is satisfied that the individual is suitable to work with children, it must direct that the order is to cease to have effect; otherwise it must dismiss the application.

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**Conditions for applications under Article 27**

**28.**—(1) An individual may only make an application under Article 27 with the leave of the Tribunal.

(2) An application for leave under this Article may not be made unless the appropriate conditions are satisfied in the individual's case.

(3) In the case of an individual who was under the age of 18 when he committed the offence against a child, the appropriate conditions are satisfied if—

- (a) at least five years have elapsed since the relevant date, and
- (b) in the period of five years ending with the time when he makes the application under this Article, he has made no other such application.

(4) In the case of any other individual, the appropriate conditions are satisfied if—

- (a) at least ten years have elapsed since the relevant date, and
- (b) in the period of ten years ending with the time when he makes the application under this Article, he has made no other such application.

(5) The Tribunal may not grant an application under this Article unless it considers—

- (a) that the individual's circumstances have changed since the order was made or, as the case may be, since he last made an application under this Article, and
- (b) that the change is such that leave should be granted.

(6) In this Article, “the relevant date” means—

- (a) in relation to an individual whose sentence is an actual term of custody, the day on which he is released or, if later, the day on which the disqualification order is made,
- (b) in relation to an individual whose sentence is suspended and does not take effect, the day on which the disqualification order is made,
- (c) in relation to an individual whose sentence is an order for admission to hospital—
  - (i) if he is detained in a hospital pursuant to the order, the day on which he ceases to be liable to be detained there, or
  - (ii) if he is not so detained, the day on which the disqualification order is made,
- (d) in relation to an individual whose sentence is a guardianship order within the meaning of the Mental Health (Northern Ireland) Order 1986 (NI 4), the day on which the disqualification order is made.

(7) In this Article—

“actual term of custody” means a term of imprisonment or detention which is not suspended, or is suspended but takes effect,

“order for admission to hospital” means—

- (a) an order that the individual be admitted to hospital, or
- (b) a hospital order within the meaning of the Mental Health (Northern Ireland) Order 1986.

(8) In paragraph (7) “detention” means detention under any sentence or order mentioned in paragraph (b) or (c) of the definition of “qualifying sentence” in Article 25(1).

**Restoration of disqualification order**

**29.**—(1) If it appears to the Chief Constable or a director of social services that the conditions set out in paragraph (2) are satisfied in the case of an individual, the Chief Constable or (as the case may be) the director may apply to the High Court for an order under this Article to be made in respect of the individual.

- (2) The conditions are that—
  - (a) a disqualification order made in respect of the individual is no longer in force, and
  - (b) the individual has acted in such a way (whether before or after the order ceased to be in force) as to give reasonable cause to believe that an order under this Article is necessary to protect children in general, or any children in particular, from serious harm from him.
- (3) An application under this Article may be made at any time after the disqualification order ceased to be in force.
- (4) If the High Court is satisfied that the conditions set out in paragraph (2) are satisfied, it must order that the disqualification order is to be restored; otherwise it must dismiss the application.
- (5) Where an order is made under this Article, Article 28 has effect with the following modifications—
  - (a) in paragraph (3), the reference to the individual being under the age of 18 when he committed the offence against a child is to be read as a reference to his being under that age when the order under this Article was made,
  - (b) in paragraphs (3)(a) and (4)(a), references to the relevant date are to be read as references to the date on which the order under this Article was made,
  - (c) in paragraph (5)(a), the reference to the individual's circumstances changing since the disqualification order was made is to be read as a reference to his circumstances changing since the order under this Article was made.
- (6) For the purposes of this Article a disqualification order is no longer in force if a direction under Article 27(3) has been given in respect of it and it is not restored by virtue of an order under this Article.

#### *Effect of disqualification from working with children*

#### **Persons disqualified from working with children: offences**

- 30.**—(1) An individual who is disqualified from working with children is guilty of an offence if he knowingly applies for, offers to do, accepts or does any work in a regulated position.
- (2) An individual is guilty of an offence if he knowingly—
    - (a) offers work in a regulated position to, or procures work in a regulated position for, an individual who is disqualified from working with children, or
    - (b) fails to remove such an individual from such work.
  - (3) It is a defence for an individual charged with an offence under paragraph (1) to prove that he did not know, and could not reasonably be expected to know, that he was disqualified from working with children.
  - (4) An individual is disqualified from working with children for the purposes of this Chapter if—
    - (a) he is included (otherwise than provisionally) in the list kept under Article 3;
    - (b) he is included in the list kept for the purposes of regulations under sub-paragraph (e) of Article 70(2) or sub-paragraph (b) of Article 88A(2) of the Education and Libraries (Northern Ireland) Order 1986 (NI 3) on the grounds mentioned in head (iii) of the sub-paragraph in question; or
    - (c) he is subject to a disqualification order.
  - (5) An individual who is guilty of an offence under this Article is liable—
    - (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both,

- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both.

### **Meaning of “regulated position”**

- 31.—**(1) The regulated positions for the purposes of this Chapter are—
- (a) a position whose normal duties include work in an establishment mentioned in paragraph (2),
  - (b) a position whose normal duties include work on day care premises,
  - (c) a position whose normal duties include caring for, training, advising, counselling, supervising or being in sole charge of children,
  - (d) a position whose normal duties involve unsupervised contact with children under arrangements made by a responsible person,
  - (e) a position whose normal duties include caring for children under the age of 16 in the course of the children's employment,
  - (f) a position a substantial part of whose normal duties includes supervising or training children under the age of 16 in the course of the children's employment,
  - (g) a position mentioned in paragraph (6),
  - (h) a position whose normal duties include supervising or managing an individual in his work in a regulated position.
- (2) The establishments referred to in paragraph (1)(a) are—
- (a) an institution which is exclusively or mainly for the detention of children by virtue of an order of a court or under any statutory provision,
  - (b) a hospital which is exclusively or mainly for the reception and treatment of children,
  - (c) a residential care home or nursing home which is exclusively or mainly for children,
  - (d) an educational institution,
  - (e) a children's home.
- (3) For the purposes of this Article, work done on any premises is treated as not being done on day care premises to the extent that—
- (a) it is done in a part of the premises in which children are not looked after, or
  - (b) it is done at times when children are not looked after there.
- (4) The duties referred to in paragraph (1)(c) and (d) do not include (respectively)—
- (a) caring for, training, advising, counselling, supervising or being in sole charge of children in the course of the children's employment, or
  - (b) duties involving contact with children in the course of the children's employment.
- (5) The reference in paragraph (1)(d) to unsupervised contact is to contact in the absence of any responsible person or carer; and in this paragraph, “carer” means a person who holds a position such as is mentioned in paragraph (1)(c).
- (6) The positions mentioned in paragraph (1)(g) are—
- (a) member of a Health and Social Services Board or a Health and Social Services trust,
  - (b) director of social services,
  - (c) member, or chief education officer, of an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986 (NI 3).
  - (d) member of the governing body of an educational institution,

- (e) trustee of a children's charity,
  - (f) Commissioner for Children and Young People for Northern Ireland.
- (7) For the purposes of paragraph (1)(h), the holder of a position—
- (a) only supervises an individual if he supervises the day-to-day performance of the individual's duties, and
  - (b) only manages an individual if the individual is directly responsible to him for the performance of his duties or he has authority to dismiss the individual.
- (8) For the purposes of this Article, a charity is a children's charity if the individuals who are workers for the charity normally include individuals working in regulated positions.
- (9) For the purposes of this Article, an individual is a worker for a charity if he does work under arrangements made by the charity; but the arrangements referred to in this paragraph do not include any arrangements made for purposes which are merely incidental to the purposes for which the charity is established.
- (10) For the purposes of this Article, the following are responsible persons in relation to a child—
- (a) the child's parent or guardian and any adult with whom the child lives,
  - (b) the person in charge of any establishment mentioned in paragraph (2) in which the child is accommodated, is a patient or receives education, and any person acting on behalf of such a person,
  - (c) a person registered under Part XI of the Children Order for providing day care on premises on which the child is cared for, and
  - (d) any person holding a position mentioned in paragraph (6).
- (11) For the purposes of this Article “employment” means paid employment, whether under a contract of service or apprenticeship or under a contract for services.
- (12) For the purpose of amending the definition of “regulated position”, the Department may by order make any amendment of this Article (apart from this paragraph) which it thinks appropriate.
- (13) No order shall be made under paragraph (12) unless a draft of the order has been laid before and approved by resolution of the Assembly.

### **Disqualification in other jurisdictions**

**32.**—(1) The Department may by order provide that Article 30 shall apply in relation to an individual falling within paragraph (2) as it applies in relation to an individual who is disqualified from working with children.

(2) An individual falls within this paragraph if, under the law of any other jurisdiction (except England and Wales), he is subject to a prohibition or disqualification which, in the opinion of the Department, corresponds to disqualification (by any of the means mentioned in Article 30(4)) from working with children.

### **Rehabilitation of offenders**

**33.**—(1) Where a disqualification order is made in respect of an individual's conviction of an offence, the rehabilitation period which, in accordance with Article 8 of the Rehabilitation of Offenders (Northern Ireland) Order 1978 (NI 27) is applicable to the conviction is to be determined as if that order had not been made; and a disqualification order is not a sentence for the purposes of that Order.

(2) In this Article, “conviction” has the same meaning as in that Order.

*Interpretation of Chapter II***Interpretation of this Chapter**

**34.**—(1) In this Chapter—

“children's home” has the<sup>F11</sup> same meaning as in the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003],

“day care premises” means premises—

- (a) in respect of which a person is registered under Part XI of the Children Order for providing day care, or
- (b) in which an authority provides day care under Article 19 of that Order,

“disqualification order” has the meaning given by Article 25,

“educational institution” means an institution which is exclusively or mainly for the provision of full-time education to children,

“hospital” has the meaning given by Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14),

“work” includes—

- (a) work of any kind, whether paid or unpaid and whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract, and
- (b) an office established by or by virtue of a statutory provision,

and “working” is to be read accordingly.

(2) In this Chapter references, in relation to a suspended sentence, to taking effect are to taking effect by virtue of an order under section 19 of the Treatment of Offenders Act (Northern Ireland) 1968 (c.29).

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**Status:**

Point in time view as at 01/01/2006.

**Changes to legislation:**

There are currently no known outstanding effects for the The Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003, PART II.