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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 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 a Social 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.

## **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 meaning which would be given by Article 90(1) of the Children Order if, in Article 91(2) of that Order, sub-paragraphs (a), (f) and (g) and the words after sub-paragraph (h) were omitted,

“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).