
STATUTORY INSTRUMENTS

2003 No. 417

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

PART III

PROTECTION OF VULNERABLE ADULTS

List of persons unsuitable to work with vulnerable adults

Duty of Department to keep list

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

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

(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 35

Persons who provide care for vulnerable adults: duty to refer

36.—(1) A person who provides care for vulnerable adults (“the provider”) shall refer a care worker to the Department 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 provider has dismissed the worker on the grounds of misconduct (whether or not in the course of his employment) which harmed or placed at risk of harm a vulnerable adult;
- (b) that the worker has resigned, retired or been made redundant in circumstances such that the provider 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 provider has, on such grounds, transferred the worker to a position which is not a care position;
- (d) that the provider has, on such grounds, suspended the worker or provisionally transferred him to such a position which is not a care position, 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 provider has dismissed the worker, he has resigned, retired or been made redundant or the provider has transferred him to a position which is not a care position;
 - (b) information not available to the provider at the time of the dismissal, resignation, retirement, redundancy or transfer has since become available; and
 - (c) the provider has formed the opinion that, if that information had been available at that time and if (where applicable) the worker had not resigned, retired or been made redundant, the provider 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 worker to be included in the list kept under Article 35, the Department shall—
- (a) determine the reference in accordance with paragraphs (5) to (7); and
 - (b) pending that determination, provisionally include the worker in the list.
- (5) 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 provider 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 provider has dismissed the worker or, as the case may be, has confirmed his transfer on such grounds as are there mentioned,
- the Department shall confirm the worker’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 provider reasonably considered the worker to be guilty of misconduct (whether or not in the course of his employment) which harmed or placed at risk of harm a vulnerable adult; and
 - (b) that the worker is unsuitable to work with vulnerable adults.
- (8) The reference in paragraph (6)(b) to the provider dismissing the worker 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 provider 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 provider transferring him, on such grounds, to a position which is not a care position.
- (9) This Article does not apply where—
- (a) the provider carries on an employment agency, nursing agency or employment business; and
 - (b) the worker in question is a supply worker in relation to him.

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

37.—(1) A person who carries on an employment agency or a nursing agency (“the provider”) shall refer a supply worker to the Department if—

- (a) the provider 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 or placed at risk of harm a vulnerable adult; or
 - (b) the provider has decided on such grounds not to find the worker further employment, or supply him for further employment, in a care position.
- (2) A person who carries on an employment business (“the provider”) shall refer a supply worker to the Department if—
- (a) the provider has dismissed the worker on the grounds of misconduct (whether or not in the course of his employment) which harmed or placed at risk of harm a vulnerable adult;
 - (b) the worker has resigned, retired or been made redundant in circumstances such that the provider 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 provider has, on such grounds, decided not to supply the worker for further employment in a 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 35, 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 provider on any observations on the information submitted with the reference and, if it 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 provider reasonably considered the worker to be guilty of misconduct (whether or not in the course of his employment) which harmed or placed at risk of harm a vulnerable adult; and
 - (b) that the worker is unsuitable to work with vulnerable adults.

Power of other authorities to refer

- 38.**—(1) A person to whom this Article applies may refer a care worker to the Department 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 vulnerable adult or placed a vulnerable adult at risk of harm; and
 - (b) the worker has not been referred to the Department under Article 36 or 37 in respect of the misconduct.
- (2) The persons to whom this Article applies are—
- (a) a person authorised for the purposes of Article 29 of the [Registered Homes \(Northern Ireland\) Order 1992 \(NI 20\)](#);

- (b) the Nursing and Midwifery Council;
 - (c) the Northern Ireland Social Care Council;
 - (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 a person authorised for the purposes of Article 29 of the Registered Homes (Northern Ireland) Order 1992, functions under that Article;
 - (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);
 - (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 36(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 a person under Article 36(1).

Individuals named in the findings of certain inquiries

- 39.**—(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 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 vulnerable adults.
- (2) The Department—
- (a) may provisionally include the individual in the list kept under Article 35; 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 vulnerable adults.
- (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 care position;

“relevant misconduct” means misconduct which harmed or placed at risk of harm a vulnerable adult and was committed (whether or not in the course of his employment) at a time when the individual was employed in a care position.

(7) In this Article “relevant inquiry” means any of the following—

- (a) an inquiry held 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.

Inclusion in list on reference under Part II

40.—(1) Article 4(4) to (7) shall, in the case of any reference under Article 4, 6 or 9, apply in relation to the list kept under Article 35 as it applies in relation to the list kept under Article 3, but as if the reference in paragraph (7)(b) to children were a reference to vulnerable adults.

(2) Article 5(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 35 as it applies in relation to the list kept under Article 3, but as if the reference in paragraph (6)(b) to children were a reference to vulnerable adults.

(3) Article 7 shall apply in relation to the list kept under Article 35 as it applies in relation to the list kept under Article 3, but as if the references in paragraphs (1)(c)(ii) and (5)(b) to children were references to vulnerable adults.

(4) But the Department may not by virtue of this Article provisionally include an individual in the list kept under Article 35, or confirm his inclusion in that list, unless it provisionally includes him in the list kept under Article 3 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 35, Article 42 shall apply to him as if the references in paragraphs (3)(a) and (4) to a vulnerable adult were references to a child.

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

41.—(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 35;
- (b) he was so included on a reference made to the Department by an organisation; and
- (c) any of the conditions mentioned in Article 36(2)(a) to (c), or the condition mentioned in Article 36(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 35, 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 35 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 vulnerable adult or placed a vulnerable adult at risk of harm; and
- (b) that the individual is unsuitable to work with vulnerable adults.
- (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 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 vulnerable adults; and
- (d) the individual is included in the Pre-Employment Consultancy Service Register (otherwise than provisionally) immediately before the commencement of Article 35.
- (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 35 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 vulnerable adults.
- (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 care position;
- “relevant inquiry” has the same meaning as in Article 39;
- “relevant misconduct” means misconduct which harmed a vulnerable adult or placed a vulnerable adult 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 care position.

Appeals and applications to Social Care Tribunal

Appeals against inclusion in list

42.—(1) An individual who is included (otherwise than provisionally) in the list kept by the Department under Article 35 may appeal to a Social 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 35(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 35 may, with the leave of a Social 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 the 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 or placed at risk of harm a vulnerable adult; and
- (b) that the individual is unsuitable to work with vulnerable adults,

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 or placed at risk of harm a vulnerable adult, 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.

Application for removal from list

43.—(1) Subject to Article 44, an individual who is included in the list kept by the Department under Article 35 may make an application to a Social 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 vulnerable adults it shall direct his removal from the list; otherwise it shall dismiss the application.

Conditions for application under Article 43

44.—(1) An individual may only make an application under Article 43 with the leave of a Social 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.

Restoration to list

45.—(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 35, 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 vulnerable adults in general, or any vulnerable adults 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 44 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 45”,
- (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 43(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.

Effect of inclusion in list

Effect of inclusion in list

46.—(1) Where a person who provides care to vulnerable adults proposes to offer an individual employment in a care position, that person—

- (a) shall ascertain whether the individual is included in the list kept under Article 35; and
- (b) if he is included in that list, shall not offer him employment in such a position.

(2) Where a person who provides care to vulnerable adults discovers that an individual employed by him in a care position is included in that list, he shall cease to employ him in a care position; and for the purposes of this paragraph an individual is not employed in a care position if he has been suspended or provisionally transferred to a position which is not a care position.

(3) Where a person who provides care to vulnerable adults (“the provider”) proposes to offer employment in a care position to an individual who has been supplied by a person who carries on an employment agency, nursing agency or employment business, there is a sufficient compliance with paragraph (1) if the provider—

- (a) satisfies himself that, on a date within the last 12 months, the other person ascertained whether the individual was included in the list kept under Article 35;
- (b) obtains written confirmation of the facts as ascertained by that person; and
- (c) if the individual was included in the list on that date, does not offer him employment in a care position.

(4) It is immaterial for the purposes of paragraph (1) or (3) whether the individual is already employed by the provider.

(5) An individual who is included (otherwise than provisionally) in the list kept by the Department under Article 35 shall be guilty of an offence if he knowingly applies for, offers to do, accepts or does any work in a care position.

(6) An individual is guilty of an offence if he knowingly—

- (a) offers work in a care position to, or procures work in a care position for, an individual who is included (otherwise than provisionally) in the list kept by the Department under Article 35, or
- (b) fails to remove such an individual from such work.

(7) It is a defence for an individual charged with an offence under paragraph (5) to prove that he did not know, and could not reasonably be expected to know, that he was so included in that list.

(8) An individual who is guilty of an offence under paragraph (5) or (6) shall be 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.

Access to list

47.—(1) In relation to any time before the commencement of paragraphs (3) and (4), any person seeking to ascertain whether a relevant individual is included in the list kept under Article 35 shall be entitled to that information on making application for the purpose to the Department and paying any fee that is payable in connection with 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 care position;

- (b) an individual for whom the person proposes to find employment, or whom he proposes to supply for employment, in a care position; or
 - (c) an individual of a prescribed description who does not fall within sub-paragraph (a) or (b).
- (3) In section 113 of the Police Act 1997 after subsection (3EB) there shall be inserted—
- “(3EC) 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 to work, found work or given work in a position (whether paid or unpaid) within subsection (3ED) the criminal record certificate shall also state—
- (a) whether the applicant is included in the list kept under Article 35 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003; and
 - (b) if he is included in that list, such details of his inclusion as may be prescribed.
- (3ED) A position is within this subsection if it is—
- (a) a care position within the meaning of Part III of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003; or
 - (b) a position of such other description as may be prescribed.”
- (4) In section 115 of that Act after subsection (6EA) there shall be inserted—
- “(6EB) 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 to work, found work or given work in a position (whether paid or unpaid) within subsection (3ED) of section 113, the enhanced criminal record certificate shall also state—
- (a) whether the applicant is included in the list kept under Article 35 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003; and
 - (b) if he is included in that list, such details of his inclusion as may be prescribed.”
- (5) In sections 119(1A) and 120A (3)(b) after “(3EA)” there shall be inserted “or (3EC)”.

Supplementary

Interpretation of this Part

- 48.**—(1) In this Part “care worker” means—
- (a) an individual who is or has been employed in a position which is such as to enable him to have regular contact in the course of his duties with adults to whom accommodation is provided at a residential care home or nursing home;
 - (b) an individual who is or has been employed in a position which is such as to enable him to have regular contact in the course of his duties with adults to whom prescribed services are provided by a health services body or at a private hospital;
 - (c) an individual who is or has been employed in a position which is concerned with the provision of any prescribed service in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.
- (2) In this Part “care position”, in relation to an individual, means a position such as is mentioned in paragraph (1)(a), (b) or (c).
- (3) In this Part “harm”—

- (a) in relation to an adult who is not mentally handicapped (within the meaning of the [Mental Health \(Northern Ireland\) Order 1986 \(NI 4\)](#)), means ill-treatment or the impairment of health;
 - (b) in relation to an adult who is mentally handicapped, means ill-treatment or impairment of health or development.
- (4) In this Part “health services body” means a Health and Social Services Board, a Health and Social Services trust or a special health and social services agency.
- (5) In this Part “supply worker”—
- (a) in relation to an employment agency or nursing agency, means an individual supplied by the agency for employment in a care position or for whom the agency has found employment in a care position;
 - (b) in relation to an employment business, means an individual supplied by the business for employment in a care position.
- (6) In this Part “vulnerable adult” means—
- (a) an adult to whom accommodation and nursing or personal care are provided in a residential care home or nursing home;
 - (b) an adult to whom any prescribed service is provided in his own home under arrangements made by a domiciliary care agency or a prescribed person; or
 - (c) an adult to whom prescribed services are provided by a health services body or at a private hospital.
- (7) For the purposes of this Part the persons who provide care for vulnerable adults are—
- (a) any person who carries on a residential care home or nursing home;
 - (b) any person who carries on a domiciliary care agency or is prescribed under paragraph (6) (b);
 - (c) any person who carries on a private hospital which provides prescribed services; and
 - (d) a health services body which provides prescribed services.
- (8) The Department may by regulations—
- (a) add to the list in paragraph (7) any prescribed persons to whom paragraph (9) applies;
 - (b) amend the definitions of “care worker”, “care position” and “vulnerable adults” accordingly.
- (9) This paragraph applies to—
- (a) authorities providing services to adults in the exercise of their personal social services functions;
 - (b) persons who provide to adults services which are similar to services which may or must be provided by health services bodies.
- (10) In its application by virtue of paragraph (8), this Part shall have effect—
- (a) if the regulations so provide, as if “may” were substituted for “shall” in Articles 36(1) and 37(1) and;
 - (b) with such other modifications as may be specified in the regulations.
- (11) In this Part—
- “domiciliary care agency” has the same meaning as in Part I of the Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3);
- “personal care” has the same meaning as in the [Registered Homes \(Northern Ireland\) Order 1992 \(NI 20\)](#).

Transitional provisions

49.—(1) Where—

- (a) an individual who is or has been employed in a care position has been referred by a provider to the Department for inclusion in the Pre-Employment Consultancy Service Register;
- (b) the reference has not been determined at the commencement of Article 36; 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 provider 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 36 shall require a person who provides care for vulnerable adults to refer a care worker 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 37 shall require a person who 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 38 and 39 do not apply to misconduct which occurred before the commencement of those Articles.