



Criminal Justice and Courts Services Act 2000

2000 CHAPTER 43

PART II

PROTECTION OF CHILDREN

Disqualification orders

26 Meaning of “offence against a child”

- (1) For the purposes of this Part, an individual commits an offence against a child if—
- (a) he commits any offence mentioned in paragraph 1 of Schedule 4,
 - (b) he commits against a child any offence mentioned in paragraph 2 of that Schedule, or
 - (c) he falls within paragraph 3 of that Schedule,
- and references to being convicted of, or charged with, an offence against a child are to be read accordingly.
- (2) The Secretary of State may by order amend Schedule 4 so as to add, modify or omit any entry.

27 Equivalent armed forces offences

- (1) For the purposes of this Part, an individual is treated as being convicted of or (as the case may be) charged with an offence against a child if he is convicted of or charged with an equivalent armed forces offence.
- (2) In subsection (1), “equivalent armed forces offence” means an armed forces offence constituted by an act or omission which—
- (a) is an offence against a child, or
 - (b) would, if committed in England or Wales, be an offence against a child.

- (3) In that subsection, “equivalent armed forces offence” also includes a civil offence of attempting to commit—
 - (a) an offence against a child, or
 - (b) an act that would, if committed in England or Wales, be an offence against a child.
- (4) For the purpose of determining whether an offence is an equivalent armed forces offence, Schedule 4 shall have effect as if the words “or attempting” were omitted from paragraph 3(t).
- (5) In this section, “civil offence” has the same meaning as in the Army Act 1955.

28 Disqualification from working with children: adults

- (1) This section 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 of an offence against a child committed when he was aged 18 or over, and
 - (b) a qualifying sentence is imposed by a senior court in respect of the conviction.
- (3) The second condition is that—
 - (a) the individual is charged with an offence against a child committed when he was aged 18 or over, and
 - (b) a relevant order is made by a senior court in respect of the act or omission charged against him as the offence.
- (4) Subject to subsection (5), the court must order the individual to be disqualified from working with children.
- (5) An order shall not be made under this section 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 section, it must state its reasons for not doing so and cause those reasons to be included in the record of the proceedings.

29 Disqualification from working with children: juveniles

- (1) This section 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 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 a senior court in respect of the conviction.
- (3) The second condition is that—
 - (a) the individual is charged 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 a senior 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 section, it must state its reasons for doing so and cause those reasons to be included in the record of the proceedings.

30 Sections 28 and 29: supplemental

- (1) In sections 28 and 29 and this section—
 - “guardianship order” means a guardianship order within the meaning of the Army Act 1955, the Air Force Act 1955, the Naval Discipline Act 1957 or the Mental Health Act 1983,
 - “qualifying sentence” means—
 - (a) a sentence of imprisonment for a term of 12 months or more,
 - (b) a sentence of detention in a young offender institution for a term of 12 months or more,
 - (c) a sentence of detention during Her Majesty’s pleasure,
 - (d) a sentence of detention for a period of 12 months or more under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (offenders under 18 convicted of certain serious offences),
 - (e) a detention and training order for a term of 12 months or more,
 - (f) a sentence of detention for a term of 12 months or more imposed by a court-martial or the Courts-Martial Appeal Court,
 - (g) a hospital order within the meaning of the Mental Health Act 1983, or
 - (h) a guardianship order,
 - “relevant order” means—
 - (a) an order made by the Crown Court, the Court of Appeal, a court-martial or the Courts-Martial Appeal Court that the individual in question be admitted to hospital, or
 - (b) a guardianship order,
 - “senior court” means the Crown Court, the Court of Appeal, a court-martial or the Courts-Martial Appeal Court.
- (2) The reference to detention in paragraph (f) of the above definition of “qualifying sentence” includes a reference to detention by virtue of a custodial order under—
 - (a) section 71AA of, or paragraph 10 of Schedule 5A to, the Army Act 1955,
 - (b) section 71AA of, or paragraph 10 of Schedule 5A to, the Air Force Act 1955,
 - (c) section 43AA of, or paragraph 10 of Schedule 4A to, the Naval Discipline Act 1957.
- (3) In this Part, references to a sentence of imprisonment, or to a sentence of detention imposed by a court-martial or the Courts-Martial Appeal Court, include references to a suspended sentence.
- (4) If, for the purpose of making an order under section 28 or 29, 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 sections (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.

(5) Below in this Part—

- (a) references to a disqualification order are to an order under section 28 or 29,
- (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 subsection (2) or (3) of section 28 or 29, references to his sentence are to that sentence or order.

31 Appeals

(1) An individual may appeal against a disqualification order—

- (a) where the first condition mentioned in section 28 or 29 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 section 28 or 29 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.

(2) In relation to a disqualification order made by a court-martial, subsection (1)(b) has effect as if the reference to conviction on indictment were a reference to conviction by a court-martial.

32 Review of disqualification

- (1) Subject to section 33, an individual who is subject to a disqualification order may make an application to the Tribunal under this section.
- (2) On an application under this section 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.

33 Conditions for application under section 32

- (1) An individual may only make an application under section 32 with the leave of the Tribunal.
- (2) An application for leave under this section 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 section, 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 section, he has made no other such application.
- (5) The Tribunal may not grant an application under this section 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 section, and
 - (b) that the change is such that leave should be granted.
- (6) In this section, “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, the day on which the disqualification order is made.
- (7) In this section—
- “actual term of custody” means a term of imprisonment or detention which is not suspended, or is suspended but takes effect,
 - “guardianship order” has the same meaning as in section 30,
 - “order for admission to hospital” means—
 - (a) an order made by the Crown Court, the Court of Appeal, a court-martial or the Courts-Martial Appeal Court that the individual be admitted to hospital, or
 - (b) a hospital order within the meaning of the Mental Health Act 1983.
- (8) In subsection (7) “detention” means detention (or detention and training) under any sentence or order mentioned in paragraphs (b) to (f) of the definition of “qualifying sentence” in section 30(1).

34 Restoration of disqualification order

- (1) If it appears to a chief officer of police or a director of social services of a local authority that the conditions set out in subsection (2) are satisfied in the case of an individual, the chief officer or (as the case may be) the director may apply to the High Court for an order under this section 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 section is necessary to protect children in general, or any children in particular, from serious harm from him.
- (3) An application under this section 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 subsection (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 section, section 33 has effect with the following modifications—
 - (a) in subsection (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 section was made,
 - (b) in subsections (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 section was made,
 - (c) in subsection (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 section was made.
- (6) For the purposes of this section a disqualification order is no longer in force if a direction under section 32(3) has been given in respect of it and it is not restored by virtue of an order under this section.

Effect of disqualification from working with children

35 Persons disqualified from working with children: offences

- (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 subsection (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 Part if—
 - (a) he is included (otherwise than provisionally) in the list kept under section 1 of the Protection of Children Act 1999 (individuals considered unsuitable to work with children),
 - (b) he is included, on the grounds of not being a fit person, in the list kept for the purposes of regulations under section 218(6) of the Education Reform Act 1988 (prohibition or restriction on employment as teacher etc.),
 - (c) he is included, on the grounds that he is unsuitable to work with children, in any list kept by the Secretary of State or the National Assembly for Wales of persons disqualified under section 470 or 471 of the Education Act 1996, or
 - (d) he is subject to a disqualification order.
- (5) In subsection (4)(b) “grounds of not being a fit person” means the grounds mentioned in section 218(6ZA)(c) of the Education Reform Act 1988.
- (6) An individual who is guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six 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 five years, or to a fine, or to both.

36 Meaning of “regulated position”

- (1) The regulated positions for the purposes of this Part are—
 - (a) a position whose normal duties include work in an establishment mentioned in subsection (2),
 - (b) a position whose normal duties include work on day care premises,
 - (c) a position whose normal duties include caring for, training, 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 subsection (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 subsection (1)(a) are—
 - (a) an institution which is exclusively or mainly for the detention of children,
 - (b) a hospital which is exclusively or mainly for the reception and treatment of children,
 - (c) a care home, residential care home, nursing home or private hospital which is exclusively or mainly for children,
 - (d) an educational institution,
 - (e) a children’s home or voluntary home,
 - (f) a home provided under section 82(5) of the Children Act 1989.
- (3) For the purposes of this section, 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 subsection (1)(c) and (d) do not include (respectively)—
 - (a) caring for, training, 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 subsection (1)(d) to unsupervised contact is to contact in the absence of any responsible person or carer; and in this subsection, “carer” means a person who holds a position such as is mentioned in subsection (1)(c).
- (6) The positions mentioned in subsection (1)(g) are—
 - (a) member of the governing body of an educational institution,

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- (b) member of a relevant local government body,
 - (c) director of social services of a local authority,
 - (d) chief education officer of a local education authority,
 - (e) charity trustee of a children's charity,
 - (f) member of the Youth Justice Board for England and Wales,
 - (g) Children's Commissioner for Wales or deputy Children's Commissioner for Wales,
 - (h) member, or chief executive, of the Children and Family Court Advisory and Support Service.
- (7) For the purposes of subsection (6), a person is a member of a relevant local government body if—
- (a) he is a member of, or of an executive of, a local authority and discharges any education functions, or social services functions, of a local authority,
 - (b) he is a member of an executive of a local authority which discharges any such functions,
 - (c) he is a member of—
 - (i) a committee of an executive of a local authority, or
 - (ii) an area committee, or any other committee, of a local authority, which discharges any such functions.
- (8) In its application to Northern Ireland, subsection (6) is to be read as mentioning also the following positions—
- (a) member, or director of social services, of a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972,
 - (b) member, or executive director of social work, of a Health and Social Services trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991,
 - (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.
- (9) Any reference in subsection (7) to a committee includes a reference to any sub-committee which discharges any functions of that committee.
- (10) For the purposes of subsection (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.
- (11) For the purposes of this section, a charity is a children's charity if the individuals who are workers for the charity normally include individuals working in regulated positions.
- (12) For the purposes of this section, 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 subsection do not include any arrangements made for purposes which are merely incidental to the purposes for which the charity is established.

(13) For the purposes of this section, 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 subsection (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 XA of the Children Act 1989 for providing day care on premises on which the child is cared for, and
- (d) any person holding a position mentioned in subsection (6).

(14) In this section—

“area committee” has the same meaning as in section 18 of the Local Government Act 2000,

“detention” means detention by virtue of an order of a court or under an enactment,

“education functions”, in relation to a local authority, means any functions with respect to education which are conferred on the authority in its capacity as a local education authority,

“executive”, in relation to a local authority, has the same meaning as in Part II of the Local Government Act 2000,

“social services functions”, in relation to a local authority, has the same meaning as in the Local Authority Social Services Act 1970.

(15) For the purpose of amending the definition of “regulated position”, the Secretary of State may by order make any amendment of this section (apart from this subsection) which he thinks appropriate.

37 Disqualification in Scotland or Northern Ireland

- (1) The Secretary of State may by order provide that section 35 shall apply in relation to an individual falling within subsection (2) as it applies in relation to an individual who is disqualified from working with children.
- (2) An individual falls within this subsection if, under the law of Scotland or Northern Ireland, he is subject to a prohibition or disqualification which, in the opinion of the Secretary of State, corresponds to disqualification (by any of the means mentioned in section 35(4)) from working with children.

38 Rehabilitation of offenders

- (1) Where a disqualification order is made in respect of an individual's conviction of an offence, the rehabilitation period which, in accordance with section 6 of the Rehabilitation of Offenders Act 1974, 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 Act.
- (2) In this section, “conviction” has the same meaning as in that Act.

*Indecent conduct towards children***39 Extension of offence: conduct towards 14 and 15 year olds**

In section 1(1) of the Indecency with Children Act 1960 (indecent conduct towards young child), for “fourteen” there is substituted “sixteen”.

40 Extension of corresponding Northern Ireland offence: conduct towards 14 to 16 year olds

(1) The Children and Young Persons Act (Northern Ireland) 1968 is amended as follows.

(2) At the end of section 22 (indecent conduct towards child) there is inserted—

“(2) In this section, “child” means a person under the age of seventeen.”

(3) In section 180(1) (interpretation), in the definition of “child”—

- (a) after ““child”” there is inserted “, except when used in section 22,” and
- (b) at the end there is inserted “and, when used in section 22, has the meaning assigned to it by that section”.

*Indecent photographs of children: increase of maximum penalties***41 Indecent photographs of children: increase of maximum penalties**

(1) In section 6(2) of the Protection of Children Act 1978 (punishments), for “three” there is substituted “ten”.

(2) In Article 3(4)(a) of the Protection of Children (Northern Ireland) Order 1978 (indecent photographs of children), for “three” there is substituted “ten”.

(3) In section 160 of the Criminal Justice Act 1988 (summary offence of possession of indecent photograph of child)—

(a) after subsection (2) there is inserted—

“(2A) A person shall be liable on conviction on indictment of an offence under this section to imprisonment for a term not exceeding five years or a fine, or both.”,

(b) for the sidenote there is substituted “Possession of indecent photograph of child”.

(4) In Article 15 of the Criminal Justice (Evidence, etc.) (Northern Ireland) Order 1988 (summary offence of possession of indecent photograph of child)—

(a) after paragraph (2) there is inserted—

“(2A) A person shall be liable on conviction on indictment of an offence under paragraph (1) to imprisonment for a term not exceeding five years or a fine, or both.”,

(b) for the heading there is substituted “Possession of indecent photograph of child”.

*General***42 Interpretation of Part II**

(1) In this Part—

“armed forces offence” means an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957,

“care home” has the same meaning as in the Care Standards Act 2000,

“charity” and “charity trustee” have the same meanings as in the Charities Act 1993,

“child” means a person under the age of 18,

“children’s home” has—

(a) in relation to England and Wales, the same meaning as in the Care Standards Act 2000,

(b) in relation to Northern Ireland, the meaning which would be given by Article 90(1) of the Children (Northern Ireland) Order 1995 if, in Article 91(2) of that Order, sub-paragraphs (a), (f) and (g) and the words after sub-paragraph (h) were omitted,

“Class A drug” has the same meaning as in the Misuse of Drugs Act 1971,

“day care premises” means premises in respect of which a person is registered under Part XA of the Children Act 1989 for providing day care,

“disqualification order” has the meaning given by section 30,

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

“employment” means paid employment, whether under a contract of service or apprenticeship or under a contract for services,

“hospital” has—

(a) in relation to England and Wales, the meaning given by section 128(1) of the National Health Service Act 1977,

(b) in relation to Northern Ireland, the meaning given by Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972,

“local authority” has the same meaning as in the Education Act 1996,

“nursing home” has the meaning given by Article 16 of the Registered Homes (Northern Ireland) Order 1992,

“private hospital” has the meaning given by Article 90(2) of the Mental Health (Northern Ireland) Order 1986,

“residential care home” has the meaning given by Article 3 of the Registered Homes (Northern Ireland) Order 1992,

“the Tribunal” means the tribunal established by section 9 of the Protection of Children Act 1999,

“voluntary home” has the meaning given by Article 74(1) of the Children (Northern Ireland) Order 1995,

“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 an enactment,

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and “working” is to be read accordingly.

- (2) In this Part references, in relation to a suspended sentence, to taking effect are to taking effect by virtue of—
- (a) an order or direction under section 91 of the Naval Discipline Act 1957 or section 119 of the Powers of Criminal Courts (Sentencing) Act 2000, or
 - (b) the determination of the suspension under section 120 of the Army Act 1955 or section 120 of the Air Force Act 1955.