
STATUTORY INSTRUMENTS

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

Effect of inclusion in either list

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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.

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