
STATUTORY INSTRUMENTS

2003 No. 417

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

PART III

PROTECTION OF VULNERABLE ADULTS

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

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- (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—
- [^{F1}(a) the Regulation and Improvement Authority;]
 - (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—
- [^{F1}(a) in relation to the Regulation and Improvement Authority, any of its functions;]
 - (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);

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(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).

F1 2003 NI 9

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^{F2} 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.

F2 2005 c. 12

Modifications etc. (not altering text)

C1 Art. 39 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 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).

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(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.

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