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STATUTORY INSTRUMENTS

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**1995 No. 755**

**The Children (Northern Ireland) Order 1995**

**PART XI**

**CHILD MINDING AND DAY CARE FOR YOUNG CHILDREN**

**Registration**

**118.**—(1) Every authority shall keep a register of—

- (a) persons who act as child minders on domestic premises within the authority's area; and
- (b) persons (other than the authority) who provide day care for children under the age of twelve on premises (other than domestic premises) within that area.

(2) In this Part—

“domestic premises” means any premises which are wholly or mainly used as a private dwelling;

“premises” includes a vehicle.

(3) Any register kept under this Article—

- (a) shall be open to inspection by members of the public at all reasonable times; and
- (b) may be kept by means of a computer.

**Persons who act as child minders**

**119.**—(1) For the purposes of this Part a person acts as a child minder if—

- (a) he looks after one or more children under the age of twelve for reward; and
- (b) the period, or the total of the periods, which he spends so looking after children in any day exceeds two hours.

(2) A person who—

- (a) is the parent, or a relative, of a child;
- (b) has parental responsibility for a child; or
- (c) is a foster parent of a child,

does not act as a child minder for the purposes of this Part in relation to that child when looking after him.

(3) For the purposes of this Article, a person fosters a child if—

- (a) he is an authority foster parent in relation to the child;
- (b) he is a foster parent with whom the child has been placed by a voluntary organisation; or
- (c) he fosters the child privately.

(4) A person who is employed as a nanny for a child does not act as a child minder when looking after that child wholly or mainly in the home of the person who employs the nanny.

(5) A person who is so employed by two different employers does not act as a child minder when looking after any of the children concerned wholly or mainly in the home of either of the employers.

(6) For the purposes of this Part a person acts as a nanny for a child when employed to look after the child by—

- (a) a parent of the child;
- (b) a person who is not a parent of the child but who has parental responsibility for him; or
- (c) a person who is a relative of the child and who has assumed responsibility for his care.

### **Persons who provide day care for children under the age of twelve**

**120.**—(1) For the purposes of this Part a person does not provide day care for children unless the period, or the total of the periods, during which children are looked after exceeds two hours in any day.

(2) Where a person provides day care for children under the age of twelve on different premises situated within the area of the same authority, that person shall be separately registered with respect to each of those premises.

### **Exemptions**

**121.**—(1) Articles 118 to 120 shall not apply in relation to any child while he is looked after in any school which he is attending for the purposes of full-time education.

(2) Article 118(1)(b) shall not apply in relation to any child looked after in—

- (a) a home provided under Part VII;
- (b) a voluntary home or a registered children's home;
- (c) a nursing home or a residential care home;
- (d) a hospital administered by a Board or Health and Social Services trust;
- (e) a home or other institution not falling within sub-paragraphs (a) to (d) but provided by the Secretary of State, a government department or a prescribed public body.

(3) The exemption provided by paragraph (1) or (2) shall apply only where the child concerned is being looked after in accordance with provision for day care made by—

- (a) the Board, trust, department or other person carrying on the establishment in question as part of the establishment's activities; or
- (b) a person employed to work at that establishment and authorised to make that provision as part of the establishment's activities.

(4) Where day care for children under the age of twelve is provided in particular premises on less than six days in any year, that provision shall be disregarded for the purposes of Articles 118 to 120 if the person making it has notified the authority in writing before the first occasion on which the premises concerned are so used in that year.

(5) In paragraph (4) "year" means the year beginning with the day on which the day care in question is (after the commencement of that paragraph) first provided in the premises concerned and any subsequent year.

(6) Article 118(1)(b) shall not apply in relation to such supervised activity (within the meaning of Article 19) as may be prescribed.

### **Disqualified persons**

**122.**—(1) A person shall not be registered under Article 118 if—

- (a) he is disqualified by regulations made by the Department for the purposes of this Article; and
  - (b) he has not disclosed that fact to the authority and obtained its written consent.
- (2) The regulations may, in particular, provide for a person to be disqualified where—
- (a) an order of a prescribed kind has been made at any time with respect to him;
  - (b) an order of a prescribed kind has been made at any time with respect to any child who has been in his care;
  - (c) a requirement of a prescribed kind has been imposed at any time with respect to such a child under any statutory provision;
  - (d) he has at any time been refused registration under this Part or any other prescribed statutory provision or had any such registration cancelled;
  - (e) he has been convicted of any offence of a prescribed kind, or has been placed on probation or discharged absolutely or conditionally for any such offence;
  - (f) he has at any time been disqualified from fostering a child privately;
  - (g) a prohibition has been imposed on him at any time under Article 110 or any other prescribed statutory provision; or
  - (h) his rights and powers with respect to a child have at any time been vested in a prescribed body under a prescribed statutory provision.
- (3) A person who lives—
- (a) in the same household as a person who is himself disqualified by the regulations; or
  - (b) in a household at which any such person is employed,
- shall be disqualified unless he has disclosed the fact to the authority and obtained its written consent.
- (4) A person who is disqualified shall not provide day care, or be concerned in the management of, or have any financial interest in, any provision of day care unless he has—
- (a) disclosed the fact to the authority; and
  - (b) obtained its written consent.
- (5) No person shall employ, in connection with the provision of day care, a person who is disqualified, unless he has—
- (a) disclosed to the authority the fact that that person is so disqualified; and
  - (b) obtained its written consent.
- (6) In this Article “statutory provision” includes any statutory provision having effect at any time in any part of the United Kingdom.

### **Application for registration**

**123.**—(1) On receipt of an application for registration under this Part from any person who is acting, or proposes to act, in any way which requires him to be registered under this Part, an authority shall register him if—

- (a) the application is properly made; and
  - (b) the authority is not otherwise entitled to refuse to register him.
- (2) An application for registration under this Part shall be of no effect unless it contains—
- (a) a statement with respect to the applicant which complies with the requirements of regulations made for the purposes of this Article by the Department; and

- (b) a statement with respect to any person assisting or likely to be assisting in looking after children on the premises in question, or living or likely to be living there, which complies with the requirements of such regulations.

(3) Where a person provides, or proposes to provide, day care for children under the age of twelve on different premises situated within the area of the same authority, he shall make a separate application with respect to each of those premises.

### **Refusal of registration**

**124.**—(1) An authority may refuse to register an applicant for registration under Article 118(1) (a) if the authority is satisfied that—

- (a) the applicant; or
- (b) any person looking after, or likely to be looking after, any children on any premises on which the applicant is, or is likely to be, child minding,

is not fit to look after children under the age of twelve.

(2) An authority may refuse to register an applicant for registration under Article 118(1)(a) if the authority is satisfied that—

- (a) any person living, or likely to be living, at any premises on which the applicant is, or is likely to be, child minding; or
- (b) any person employed, or likely to be employed, on those premises,

is not fit to be in the proximity of children under the age of twelve.

(3) An authority may refuse to register an applicant for registration under Article 118(1)(b) if the authority is satisfied that any person looking after, or likely to be looking after, any children on the premises to which the application relates is not fit to look after children under the age of twelve.

(4) An authority may refuse to register an applicant for registration under Article 118(1)(b) if the authority is satisfied that—

- (a) any person living, or likely to be living, at the premises to which the application relates; or
- (b) any person employed, or likely to be employed, on those premises,

is not fit to be in the proximity of children under the age of twelve.

(5) An authority may refuse to register an applicant for registration under this Part if the authority is satisfied—

- (a) in the case of an application for registration under Article 118(1)(a), that any premises on which the applicant is, or is likely to be, child minding; or
- (b) in the case of an application for registration under Article 118(1)(b), that the premises to which the application relates,

are not fit to be used for looking after children under the age of twelve, whether because of their condition or the condition of any equipment used on the premises or for any reason connected with their situation, construction or size.

### **Requirements to be complied with by child minders**

**125.**—(1) Where an authority registers a person under Article 118(1)(a), it shall impose such reasonable requirements on him as it considers appropriate in his case.

(2) In imposing requirements on him, the authority shall—

- (a) specify the maximum number of children, or the maximum number of children within specified age groups, whom he may look after when acting as a child minder;

- (b) require him to secure that any premises on which he so looks after any child, and the equipment used in those premises, are adequately maintained and kept safe;
  - (c) require him to keep a record of the name and address of—
    - (i) any child so looked after by him on any premises within the authority's area;
    - (ii) any person who assists in looking after any such child; and
    - (iii) any person living, or likely at any time to be living, at those premises;
  - (d) require him to notify the authority in writing of any change in the persons mentioned in sub-paragraph (c)(ii) and (iii).
- (3) The Department may by regulations make provision as to—
- (a) requirements which must be imposed by an authority under this Article in prescribed circumstances;
  - (b) requirements of such descriptions as may be prescribed which must not be imposed by an authority under this Article.
- (4) In determining the maximum number of children to be specified under paragraph (2)(a), the authority shall take account of the number of other children who may at any time be on any premises on which the person concerned acts, or is likely to act, as a child minder.
- (5) Where, in addition to the requirements mentioned in paragraph (2), an authority imposes other requirements, those other requirements must not be incompatible with any of the paragraph (2) requirements.
- (6) An authority may at any time—
- (a) vary any requirement imposed under this Article;
  - (b) impose any additional requirement; or
  - (c) remove any requirement.

### **Requirements to be complied with by persons providing day care for young children**

**126.**—(1) Where an authority registers a person under Article 118(1)(b) it shall impose such reasonable requirements on him as it considers appropriate in his case.

(2) Where a person is registered under Article 118(1)(b) with respect to different premises within the area of the same authority, this Article applies separately in relation to each registration.

(3) In imposing requirements on him, the authority shall—

- (a) specify the maximum number of children, or the maximum number of children within specified age groups, who may be looked after on the premises;
- (b) require him to secure that the premises, and the equipment used in them, are adequately maintained and kept safe;
- (c) require him to notify the authority of any change in the facilities which he provides or in the period during which he provides them;
- (d) specify the number of persons required to assist in looking after children on the premises;
- (e) require him to keep a record of the name and address of—
  - (i) any child looked after on the registered premises;
  - (ii) any person who assists in looking after any such child; and
  - (iii) any person who lives, or is likely at any time to be living, at those premises;
- (f) require him to notify the authority in writing of any change in the persons mentioned in sub-paragraph (e)(ii) and (iii).

(4) The Department may by regulations make provision as to—

- (a) requirements which must be imposed by an authority under this Article in prescribed circumstances;
- (b) requirements of such descriptions as may be prescribed which must not be imposed by an authority under this Article.

(5) In paragraph (3) references to children looked after are to children looked after in accordance with the provision of day care made by the registered person.

(6) In determining the maximum number of children to be specified under paragraph (3)(a), the authority shall take account of the number of other children who may at any time be on the premises.

(7) Where, in addition to the requirements mentioned in paragraph (3), an authority imposes other requirements, those other requirements must not be incompatible with any of the paragraph (3) requirements.

(8) An authority may at any time—

- (a) vary any requirement imposed under this Article;
- (b) impose any additional requirement; or
- (c) remove any requirement.

### **Certificate of registration**

**127.**—(1) Where an authority registers a person under Article 118 it shall issue him with a certificate of registration.

(2) The certificate shall specify—

- (a) the registered person's name and address;
- (b) in a case falling within Article 118(1)(b), the address or situation of the premises concerned; and
- (c) any requirements imposed under Article 125 or 126.

(3) Where, due to a change of circumstances, any part of the certificate requires to be amended, the authority shall issue an amended certificate.

(4) Where the authority is satisfied that the certificate has been lost or destroyed, the authority shall issue a copy, on payment by the registered person of such fee as may be determined by the Department.

### **Cancellation of registration**

**128.**—(1) An authority may cancel the registration of any person under Article 118(1)(a) if—

- (a) it appears to the authority that the circumstances of the case are such that it would be justified in refusing to register that person as a child minder;
- (b) the care provided by that person when looking after any child as a child minder is, in the opinion of the authority, seriously inadequate having regard to the needs of that child; or
- (c) that person has contravened any requirement imposed on him under Article 125.

(2) An authority may cancel the registration of any person under Article 118(1)(b) with respect to particular premises if—

- (a) it appears to the authority that the circumstances of the case are such that it would be justified in refusing to register that person with respect to those premises;
- (b) the day care provided by that person on those premises is, in the opinion of the authority, seriously inadequate having regard to the needs of the children concerned; or

- (c) that person has contravened any requirement imposed on him under Article 126.
- (3) An authority may cancel all registrations of any person under Article 118(1)(b) if it appears to the authority that the circumstances of the case are such that it would be justified in refusing to register that person with respect to any premises.
- (4) Where a requirement to carry out repairs or make alterations or additions has been imposed on a registered person under Article 125 or 126, his registration shall not be cancelled on the ground that the premises are not fit to be used for looking after children if—
  - (a) the time set for complying with the requirement has not expired; and
  - (b) it is shown that the condition of the premises is due to the repairs not having been carried out or the alterations or additions not having been made.
- (5) Any cancellation under this Article must be in writing.
- (6) In considering the needs of any child for the purposes of paragraph (1)(b) or (2)(b), an authority shall, in particular, have regard to the child's religious persuasion, racial origin and cultural and linguistic background.

### **Protection of children in an emergency**

#### **129.—(1) If—**

- (a) an authority applies to the court for an order—
  - (i) cancelling a registered person's registration;
  - (ii) varying any requirement imposed on a registered person under Article 125 or 126; or
  - (iii) removing a requirement or imposing an additional requirement on such a person; and
- (b) it appears to the court that a child who is being, or may be, looked after by that person, or (as the case may be) in accordance with the provision for day care made by that person, is suffering, or is likely to suffer, significant harm,

the court may make the order.

(2) Any such cancellation, variation, removal or imposition shall take effect immediately the order is made.

(3) An application under paragraph (1) may be made ex parte and shall be supported by a written statement of the authority's reasons for making it.

(4) Where an order is made under this Article, the authority shall serve on the registered person, as soon as is reasonably practicable after the making of the order—

- (a) notice of the order and of its terms; and
- (b) a copy of the statement of the authority's reasons which supported its application for the order.

(5) Where the court imposes or varies any requirement under paragraph (1), the requirement, or the requirement as varied, shall be treated for all purposes, other than those of Article 131, as if it had been imposed under Article 125 or (as the case may be) 126 by the authority.

### **Inspection**

#### **130.—(1) Any person authorised to do so by an authority may at any reasonable time enter—**

- (a) any domestic premises within the authority's area on which child minding is at any time carried on; or
- (b) any premises within the authority's area on which day care for children under the age of twelve is at any time provided.

(2) Where an authority has reasonable cause to believe that a child is being looked after on any premises within the authority's area in contravention of this Part, any person authorised to do so by the authority may enter those premises at any reasonable time.

(3) Any person entering premises under this Article may inspect—

- (a) the premises;
- (b) any children being looked after on the premises;
- (c) the arrangements made for their welfare; and
- (d) any records relating to them which are kept for the purposes of this Part.

(4) Every authority shall secure that the premises mentioned in paragraph (1) are inspected at least once every year.

(5) Where—

- (a) a person is registered under Article 118; and
- (b) an annual inspection of the premises in question is to be carried out under this Article,

the authority shall serve on that person a notice informing him that the inspection is to be carried out.

(6) Any person inspecting any records under this Article—

- (a) shall be entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is, or has been, in use in connection with the records in question; and

(b) may require—

- (i) the person by whom or on whose behalf the computer is or has been so used; or
- (ii) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material,

to afford him such reasonable assistance as he may require.

(7) A person exercising any power conferred by this Article shall, if so required, produce some duly authenticated document showing his authority to do so.

## **Appeals**

**131.**—(1) Not less than 14 days before—

- (a) refusing an application for registration under Article 118;
- (b) cancelling any such registration;
- (c) refusing consent under Article 122;
- (d) imposing, removing or varying any requirement under Article 125 or 126; or
- (e) refusing to grant any application for the variation or removal of any such requirement,

an authority shall send to the applicant, or (as the case may be) registered person, notice in writing of the authority's intention to take the step in question ("the step").

(2) Every such notice shall—

- (a) give the authority's reasons for proposing to take the step; and
- (b) inform the person concerned of his rights under this Article.

(3) Where the recipient of such a notice informs the authority in writing of his desire to object to the step being taken, the authority shall afford him an opportunity to do so.

(4) Any objection made under paragraph (3) may be made in person or by a representative.



(5) If the authority, after giving the person concerned an opportunity to object to the step being taken, decides nevertheless to take it the authority shall send him written notice of its decision.

(6) A person aggrieved by the taking of any step mentioned in paragraph (1) may appeal against it to the court.

(7) Where the court imposes or varies any requirement under paragraph (8) or (9) the requirement, or the requirement as varied, shall be treated for all purposes (other than this Article) as if it had been imposed by the authority.

(8) Where the court allows an appeal against the refusal or cancellation of any registration under Article 118 it may impose requirements under Article 125 or (as the case may be) 126.

(9) Where the court allows an appeal against such a requirement it may, instead of cancelling the requirement, vary it.

(10) A step of a kind mentioned in paragraph (1)(b) or (d) shall not take effect until the expiry of the time within which an appeal may be brought under this Article or, where such an appeal is brought, before its determination.

## **Offences**

**132.**—(1) No person shall provide day care for children under the age of twelve on any premises within the area of an authority unless he is registered by the authority under Article 118(1)(b) with respect to those premises.

(2) If any person contravenes paragraph (1) without reasonable excuse, he shall be guilty of an offence.

(3) No person shall act as a child minder on domestic premises within the area of an authority unless he is registered by the authority under Article 118(1)(a).

(4) Where it appears to an authority that a person has contravened paragraph (3), the authority may serve a notice (“an enforcement notice”) on him.

(5) An enforcement notice shall have effect for a period of one year beginning with the date on which it is served.

(6) If a person with respect to whom an enforcement notice is in force contravenes paragraph (3) without reasonable excuse he shall be guilty of an offence.

(7) Paragraph (6) applies whether or not the subsequent contravention occurs within the area of the authority which served the enforcement notice.

(8) Any person who without reasonable excuse contravenes any requirement imposed on him under Article 125 or 126 shall be guilty of an offence.

(9) If any person—

(a) acts as a child minder on domestic premises at any time when he is disqualified by regulations made under Article 122; or

(b) provides day care for children under the age of twelve on premises (other than domestic premises) at any time when he is so disqualified; or

(c) contravenes paragraph (3), (4) or (5) of Article 122,

he shall be guilty of an offence.

(10) Where a person contravenes paragraph (3) of Article 122 he shall not be guilty of an offence under this Article if he proves that he did not know, and had no reasonable grounds for believing, that the person in question was living or employed in the household.

(11) Where a person contravenes paragraph (5) of Article 122 he shall not be guilty of an offence under this Article if he proves that he did not know, and had no reasonable grounds for believing, that the person whom he was employing was disqualified.

(12) Any person who intentionally obstructs another in the exercise of any power conferred by Article 130 shall be guilty of an offence.

(13) A person guilty of an offence under this Article shall be liable on summary conviction—

- (a) in the case of an offence under paragraph (8), to a fine not exceeding level 4 on the standard scale;
- (b) in the case of an offence under paragraph (9), to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the standard scale, or to both;
- (c) in the case of an offence under paragraph (12), to a fine not exceeding level 3 on the standard scale;
- (d) in the case of any other offence, to a fine not exceeding level 5 on the standard scale.