
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

Inclusion in list under Article 3

Inclusion in list on reference following disciplinary action, etc.

4.—(1) A child care organisation shall, and any other organisation may, refer to the Department an individual who is or has been employed in a child care position 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 organisation has dismissed the individual on the grounds of misconduct (whether or not in the course of his employment) which harmed a child or placed a child at risk of harm;
- (b) that the individual has resigned, retired or been made redundant in circumstances such that the organisation 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 organisation has, on such grounds, transferred the individual to a position within the organisation which is not a child care position;
- (d) that the organisation has, on such grounds, suspended the individual or provisionally transferred him to such a position as is mentioned in sub-paragraph (c), 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 organisation has dismissed the individual, he has resigned, retired or been made redundant or the organisation has transferred him to a position within the organisation which is not a child care position;
- (b) information not available to the organisation at the time of the dismissal, resignation, retirement, redundancy or transfer has since become available; and
- (c) the organisation has formed the opinion that, if that information had been available at that time and if (where applicable) the individual had not resigned, retired or been made redundant, the organisation 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 individual to be included in the list kept under Article 3, the Department shall—

- (a) determine the reference in accordance with paragraphs (5) to (7); and
- (b) pending that determination, provisionally include the individual in the list.

(5) 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 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 organisation has dismissed the individual or, as the case may be, has confirmed his transfer on such grounds as are there mentioned,

the Department shall confirm the individual'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 organisation reasonably considered the individual to be guilty of misconduct (whether or not in the course of his employment) which harmed a child or placed a child at risk of harm; and
- (b) that the individual is unsuitable to work with children.

(8) The reference in paragraph (6)(b) to the organisation dismissing the individual 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 organisation 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 organisation transferring him, on such grounds, to a position within the organisation which is not a child care position.

(9) This Article does not apply where—

- (a) the organisation carries on an employment agency, nursing agency or employment business; and
- (b) the individual in question is a supply worker in relation to it.

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

5.—(1) An organisation which carries on an employment agency or a nursing agency shall refer a supply worker to the Department if—

- (a) the organisation 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 a child or placed a child at risk of harm; or
- (b) the organisation has decided on such grounds not to find the worker further employment, or supply him for further employment, in a child care position.

(2) An organisation which carries on an employment business shall refer a supply worker to the Department if—

- (a) the organisation has dismissed the worker on the grounds of misconduct (whether or not in the course of his employment) which harmed a child or placed a child at risk of harm;
 - (b) the worker has resigned, retired or been made redundant in circumstances such that the organisation 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 organisation has, on such grounds, decided not to supply the worker for further employment in a child 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 3, 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 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).
- (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 organisation reasonably considered the worker to be guilty of misconduct (whether or not in the course of his employment) which harmed a child or placed a child at risk of harm; and
 - (b) that the worker is unsuitable to work with children.

Power of other authorities to refer

- 6.—**(1) A person to whom this Article applies may refer to the Department an individual who is or has been employed in a child care position 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 child or placed a child at risk of harm; and
 - (b) the individual has not been referred to the Department under Article 4 or 5 in respect of the misconduct.
- (2) The persons to whom this Article applies are—
- (a) an 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—
- (a) in relation to an authority, functions under Parts VII to IX and XI and Article 176 of the Children Order;

- (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 4(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 an organisation under Article 4(1).

Individuals named in the findings of certain inquiries

- 7.—(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 child 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 children.
- (2) The Department—
- (a) may provisionally include the individual in the list kept under Article 3; 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 children.
- (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 child care position;
- “relevant misconduct” means misconduct which harmed a child or placed a child 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 child 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 III

8.—(1) Article 36(4) to (7) shall, in the case of any reference under paragraph (1) of that Article or Article 38, apply in relation to the list kept under Article 3 as it applies in relation to the list kept under Article 35, but as if the reference in paragraph (7)(b) to vulnerable adults were a reference to children.

(2) Article 37(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 3 as it applies in relation to the list kept under Article 35, but as if the reference in paragraph (6)(b) to vulnerable adults were a reference to children.

(3) Article 39 shall apply in relation to the list kept under Article 3 as it applies in relation to the list kept under Article 35, but as if the references in paragraphs (1)(c)(ii) and (5)(b) to vulnerable adults were references to children.

(4) But the Department may not by virtue of this Article provisionally include an individual in the list kept under Article 3, or confirm his inclusion in that list, unless it provisionally includes him in the list kept under Article 35 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 3, Article 11 shall apply to him as if the references in paragraphs (3)(a) and (4) to a child were references to a vulnerable adult.

Reference by authority making direct payments in respect of services

9.—(1) An authority may refer a relevant individual to the Department where, as a result of enquiries made, or caused to be made, by it under Article 66 of the Children Order, the authority considers that the individual has been guilty of misconduct (whether or not in the course of his employment) which harmed a child or placed a child at risk of harm.

(2) Article 4(4) to (7) shall apply in relation to a reference made by an authority under paragraph (1) as it applies in relation to a reference made by an organisation under Article 4(1).

(3) In this Article—

“funded care” means care in respect of a person’s securing the provision of which the authority has made a payment under Article 18C of the Children Order (direct payments);

“relevant individual” means an individual who is or has been employed to provide funded care to a child.

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

10.—(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 3;
- (b) he was so included on a reference made to the Department by an organisation; and

- (c) any of the conditions mentioned in Article 4(2)(a) to (c), or the condition mentioned in Article 4(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 3, 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 3 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 child or placed a child at risk of harm; and
 - (b) that the individual is unsuitable to work with children.
- (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 child 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 children; and
 - (d) the individual is included in the Pre-Employment Consultancy Service Register (otherwise than provisionally) immediately before the commencement of Article 3.
- (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 3 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 children.
- (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 child care position;
 - “relevant inquiry” has the same meaning as in Article 7;

“relevant misconduct” means misconduct which harmed a child or placed a child 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 child care position.