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STATUTORY INSTRUMENTS

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**2003 No. 417**

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

**PART II**

**PROTECTION OF CHILDREN**

**CHAPTER II**

**DISQUALIFICATION FROM WORKING WITH CHILDREN**

*Disqualification orders*

**Meaning of “offence against a child”**

**22.**—(1) For the purposes of this Chapter, an individual commits an offence against a child if—

- (a) he commits any offence mentioned in paragraph 1 of the Schedule,
- (b) he commits against a child any offence mentioned in paragraph 2 of the Schedule, or
- (c) he falls within paragraph 3 of the Schedule,

and references to being convicted of, or charged with, an offence against a child are to be read accordingly.

(2) The Department may by order amend the Schedule so as to add, modify or omit any entry.

(3) No order shall be made under paragraph (2) unless a draft of the order has been laid before and approved by resolution of the Assembly.

**Disqualification of adults from working with children**

**23.**—(1) This Article 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 on indictment of an offence against a child committed when he was aged 18 or over, and
- (b) a qualifying sentence is imposed by the court in respect of the conviction.

(3) The second condition is that—

- (a) the individual is charged on indictment with an offence against a child committed when he was aged 18 or over, and
- (b) a relevant order is made by the court in respect of the act or omission charged against him as the offence.

(4) Subject to paragraph (5), the court must order the individual to be disqualified from working with children.

*Status: Point in time view as at 01/04/2009.*

*Changes to legislation: There are currently no known outstanding effects for the The Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003, Cross Heading: Disqualification orders. (See end of Document for details)*

(5) An order shall not be made under this Article 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 Article, it must state its reasons for not doing so and cause those reasons to be included in the record of the proceedings.

### **Disqualification of juveniles from working with children**

**24.**—(1) This Article 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 on indictment 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 the court in respect of the conviction.

(3) The second condition is that—

- (a) the individual is charged on indictment 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 the 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 Article, it must state its reasons for doing so and cause those reasons to be included in the record of the proceedings.

### **Articles 23 and 24: supplementary**

**25.**—(1) In Articles 23 and 24—

“qualifying sentence” means—

- (a) a sentence of imprisonment for a term of 12 months or more,
- (b) an order for detention in a young offenders centre for a term of 12 months or more,
- (c) a sentence of detention during the pleasure of the Secretary of State under Article 45 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9),
- (d) a hospital order within the meaning of the Mental Health (Northern Ireland) Order 1986 (NI 4), or
- (e) a guardianship order within the meaning of that Order;

“relevant order” means—

- (a) an order that the individual in question be admitted to hospital, or
- (b) a guardianship order within the meaning of the Mental Health (Northern Ireland) Order 1986.

(2) In this Chapter references to a sentence of imprisonment or order for detention include references to a suspended sentence or order.

(3) If, for the purposes of making an order under Article 23 or 24 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 Article (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.

(4) Below in this Chapter—

- (a) references to a disqualification order are to an order under Article 23 or 24,
- (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 paragraph (2) or (3) of Article 23 or 24, references to his sentence are to that sentence or order.

## Appeals

26. An individual may appeal against a disqualification order—

- (a) where the first condition mentioned in Article 23 or 24 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 Article 23 or 24 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.

## Review of disqualification

27.—(1) Subject to Article 28, an individual who is subject to a disqualification order may make an application to<sup>F1</sup> the Care Tribunal under this Article.

(2) On an application under this Article 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.

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## Conditions for applications under Article 27

28.—(1) An individual may only make an application under Article 27 with the leave of the Tribunal.

(2) An application for leave under this Article 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 Article, 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 Article, he has made no other such application.

(5) The Tribunal may not grant an application under this Article 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 Article, and
- (b) that the change is such that leave should be granted.

(6) In this Article, “the relevant date” means—

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- (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 within the meaning of the Mental Health (Northern Ireland) Order 1986 (NI 4), the day on which the disqualification order is made.
- (7) In this Article—
- “actual term of custody” means a term of imprisonment or detention which is not suspended, or is suspended but takes effect,
- “order for admission to hospital” means—
- (a) an order that the individual be admitted to hospital, or
  - (b) a hospital order within the meaning of the Mental Health (Northern Ireland) Order 1986.
- (8) In paragraph (7) “detention” means detention under any sentence or order mentioned in paragraph (b) or (c) of the definition of “qualifying sentence” in Article 25(1).

### **Restoration of disqualification order**

**29.**—(1) If it appears to the Chief Constable or a director of [<sup>F2</sup>social care] that the conditions set out in paragraph (2) are satisfied in the case of an individual, the Chief Constable or (as the case may be) the director may apply to the High Court for an order under this Article 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 Article is necessary to protect children in general, or any children in particular, from serious harm from him.
- (3) An application under this Article 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 paragraph (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 Article, Article 28 has effect with the following modifications—
- (a) in paragraph (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 Article was made,
  - (b) in paragraphs (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 Article was made,
  - (c) in paragraph (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 Article was made.

(6) For the purposes of this Article a disqualification order is no longer in force if a direction under Article 27(3) has been given in respect of it and it is not restored by virtue of an order under this Article.

**F2** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), **Sch. 6 para. 1(1)(a)** (with Sch. 6 para. 1(2)(3)); S.R. 2009/114, **art. 2**

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