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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 III**

**PROTECTION OF VULNERABLE ADULTS**

*Appeals and applications to Social Care Tribunal*

**Appeals against inclusion in list**

**42.**—(1) An individual who is included (otherwise than provisionally) in the list kept by the Department under Article 35 may appeal to a Social Care Tribunal against—

- (a) the decision to include him in the list; or
- (b) with the leave of the Tribunal, any decision of the Department not to remove him from the list under Article 35(3).

(2) Subject to paragraph (5), an individual who has been provisionally included for a period of more than nine months in the list kept by the Department under Article 35 may, with the leave of a Social Care Tribunal, have the issue of his inclusion in the list determined by the Tribunal instead of by the Department.

(3) If on an appeal or determination under this Article the Tribunal is not satisfied of either of the following, namely—

- (a) that the individual was 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 individual is unsuitable to work with vulnerable adults,

the Tribunal shall allow the appeal or determine the issue in the individual's favour and (in either case) direct his removal from the list; otherwise it shall dismiss the appeal or direct the individual's inclusion in the list.

(4) Where an individual has been convicted of an offence involving misconduct (whether or not in the course of his employment) which harmed or placed at risk of harm a vulnerable adult, no finding of fact on which the conviction must be taken to have been based shall be challenged on an appeal or determination under this Article.

(5) Where the misconduct of which the individual is alleged to have been guilty is the subject of any civil or criminal proceedings, an application for leave under paragraph (2) may not be made before the end of the period of six months immediately following the final determination of the proceedings.

(6) For the purposes of paragraph (5), proceedings are finally determined when—

- (a) the proceedings are terminated without a decision being made;
- (b) a decision is made against which no appeal lies;

- (c) in a case where an appeal lies with leave against a decision, the time limited for applications for leave expires without leave being granted; or
- (d) in a case where leave to appeal against a decision is granted or is not required, the time limited for appeal expires without an appeal being brought.

#### **Application for removal from list**

**43.**—(1) Subject to Article 44, an individual who is included in the list kept by the Department under Article 35 may make an application to a Social Care Tribunal under this Article.

(2) On an application under this Article the Tribunal shall determine whether or not the individual should continue to be included in the list.

(3) If the Tribunal is satisfied that the individual is no longer unsuitable to work with vulnerable adults it shall direct his removal from the list; otherwise it shall dismiss the application.

#### **Conditions for application under Article 43**

**44.**—(1) An individual may only make an application under Article 43 with the leave of a Social Care 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 a child when he was included (otherwise than provisionally) in the list, the appropriate conditions are satisfied if—

- (a) he has been so included for a continuous period of at least five years; 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) he has been included (otherwise than provisionally) in the list for a continuous period of at least ten years; 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 shall not grant an application under this Article unless it considers—

- (a) that the individual's circumstances have changed since he was included (otherwise than provisionally) in the list, 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.

#### **Restoration to list**

**45.**—(1) If it appears to the Chief Constable or a director of social services 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) the individual is no longer included in the list kept by the Department under Article 35, and
- (b) the individual has acted in such a way (whether before or after he ceased to be included in the list) as to give reasonable cause to believe that an order under this Article is necessary to protect vulnerable adults in general, or any vulnerable adults in particular, from serious harm from him.

(3) An application under this Article may be made at any time after the individual ceased to be included in the list.

(4) If the High Court is satisfied that the conditions set out in paragraph (2) are satisfied, it must order the restoration of the individual's inclusion in the list; otherwise it must dismiss the application.

(5) Where an order is made under this Article, Article 44 has effect with the following modifications—

- (a) in paragraph (3), the reference to the individual being a child when he was included in the list is to be read as a reference to his being a child when the order under this Article was made,
- (b) paragraphs (3)(a) and (4)(a) are to have effect as if after “years” there were inserted “beginning with the making of the order under Article 45”,
- (c) in paragraph (5)(a), the reference to the individual's circumstances changing since he was included in the list 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 an individual is no longer included in the list if a direction under Article 43(3) has been given in respect of him and his inclusion in the list is not restored by virtue of an order under this Article.