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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**

*Effect of inclusion in list*

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**46.**—(1) Where a person who provides care to vulnerable adults proposes to offer an individual employment in a care position, that person—

- (a) shall ascertain whether the individual is included in the list kept under Article 35; and
- (b) if he is included in that list, shall not offer him employment in such a position.

(2) Where a person who provides care to vulnerable adults discovers that an individual employed by him in a care position is included in that list, he shall cease to employ him in a care position; and for the purposes of this paragraph an individual is not employed in a care position if he has been suspended or provisionally transferred to a position which is not a care position.

(3) Where a person who provides care to vulnerable adults (“the provider”) proposes to offer employment in a care position to an individual who has been supplied by a person who carries on an employment agency, nursing agency or employment business, there is a sufficient compliance with paragraph (1) if the provider—

- (a) satisfies himself that, on a date within the last 12 months, the other person ascertained whether the individual was included in the list kept under Article 35;
- (b) obtains written confirmation of the facts as ascertained by that person; and
- (c) if the individual was included in the list on that date, does not offer him employment in a care position.

(4) It is immaterial for the purposes of paragraph (1) or (3) whether the individual is already employed by the provider.

(5) An individual who is included (otherwise than provisionally) in the list kept by the Department under Article 35 shall be guilty of an offence if he knowingly applies for, offers to do, accepts or does any work in a care position.

(6) An individual is guilty of an offence if he knowingly—

- (a) offers work in a care position to, or procures work in a care position for, an individual who is included (otherwise than provisionally) in the list kept by the Department under Article 35, or
- (b) fails to remove such an individual from such work.

(7) It is a defence for an individual charged with an offence under paragraph (5) to prove that he did not know, and could not reasonably be expected to know, that he was so included in that list.

(8) An individual who is guilty of an offence under paragraph (5) or (6) shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both.

### **Access to list**

**47.**—(1) In relation to any time before the commencement of paragraphs (3) and (4), any person seeking to ascertain whether a relevant individual is included in the list kept under Article 35 shall be entitled to that information on making application for the purpose to the Department and paying any fee that is payable in connection with the application under regulations.

(2) For the purposes of paragraph (1) a relevant individual is—

- (a) an individual to whom the person proposes to offer employment in a care position;
- (b) an individual for whom the person proposes to find employment, or whom he proposes to supply for employment, in a care position; or
- (c) an individual of a prescribed description who does not fall within sub-paragraph (a) or (b).

(3) In section 113 of the Police Act 1997 after subsection (3EB) there shall be inserted—

“(3EC) If an application under this section is accompanied by a statement by the registered person that the certificate is required for the purpose of considering the applicant’s suitability to be employed, supplied to work, found work or given work in a position (whether paid or unpaid) within subsection (3ED) the criminal record certificate shall also state—

- (a) whether the applicant is included in the list kept under Article 35 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003; and
- (b) if he is included in that list, such details of his inclusion as may be prescribed.

(3ED) A position is within this subsection if it is—

- (a) a care position within the meaning of Part III of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003; or
- (b) a position of such other description as may be prescribed.”.

(4) In section 115 of that Act after subsection (6EA) there shall be inserted—

“(6EB) If an application under this section is accompanied by a statement by the registered person that the certificate is required for the purpose of considering the applicant’s suitability to be employed, supplied to work, found work or given work in a position (whether paid or unpaid) within subsection (3ED) of section 113, the enhanced criminal record certificate shall also state—

- (a) whether the applicant is included in the list kept under Article 35 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003; and
- (b) if he is included in that list, such details of his inclusion as may be prescribed.”

(5) In sections 119(1A) and 120A (3)(b) after “(3EA)” there shall be inserted “or (3EC)”.