

Draft Protection of Children and Vulnerable Adults (Northern Ireland) Order

EXPLANATORY MEMORANDUM

Background

This draft Protection of Children and Vulnerable Adults (NI) Order (“the Order”) will be made under Paragraph 1(1) to the Schedule to the Northern Ireland Act 2000 subject to approval by each House of Parliament. It is intended to strengthen existing arrangements, known as the Pre-Employment Consultancy Service (PECS), under which checks are carried out as to the suitability of those seeking work with children or adults with a learning disability. In broad terms the Order provides an equivalent to the Protection of Children Act 1999, Part VII of the Care Standards Act 2000 and provisions equivalent to some of those in the Criminal Justice and Court Services Act 2000 in relation to the protection of children. Part I of the Order is introductory. Parts II and III deal with the protection of children and vulnerable adults respectively.

Commentary on Articles

PART II PROTECTION OF CHILDREN

Articles 3-6 place a duty on the Department of Health, Social Services and Public Safety (the Department) to keep a list of individuals who are considered unsuitable to work with children and set out the circumstances under which an individual may be placed on the list. Child care organisations must, and other organisations may, refer individuals to the Department for inclusion on the list. In general terms, the conditions are that the individual has been dismissed, transferred or otherwise removed from a child care position on the grounds of misconduct which harmed a child or placed a child at risk of harm. Requirements are also placed on employment agencies, nursing agencies and employment businesses to make referrals. Certain other authorities may make referrals in specified cases. The Department may place an individual on the list following a relevant inquiry. Before confirming an individual’s inclusion on the list the Department must follow specified procedures which include inviting the comments of the individual.

Articles 7-10 set out other circumstances under which an individual may be placed on the list. These include cases where the Department considers that an individual should be listed following a relevant inquiry and transfers from the existing PECS Register.

Articles 11-14 provide that an individual may appeal to a Social Care Tribunal against any decision by the Department to include his or her name on the list. An individual may also apply to a Social Care Tribunal to be removed from the list. The criteria for appeals and applications are set out. Applications for removal from the list may only be made with leave of the Tribunal and subject to other conditions set out in the Order. Provision is made for the Chief Constable or a director of social services to apply to the High Court for an individual to be restored to the list, where specified criteria are met.

Article 15 provides that regulations relating to employment in schools may prohibit individuals working as teachers, or in non-teaching posts, on the grounds that they are unsuitable to work with children.

Articles 16-17 provide that where a child care organisation proposes to offer an individual employment in a child care position it must check whether the individual is included on the list of those deemed unsuitable to work with children held by the Department, or the list of those deemed unsuitable to work with children by virtue of regulations to which Article 15 applies. Those wishing to have checks carried out may apply to the Department and regulations may provide for a fee to be imposed in relation to checks. This is an interim provision pending commencement in Northern Ireland of Part V of the Police Act 1997, which provides for disclosures of criminal records and other information relating to those seeking certain types of employment.

Article 18 provides that the Department may establish a voluntary accreditation scheme. The intention is to enable non-child care organisations to apply for accreditation. The accreditation scheme will be designed to encourage organisations to adopt good child protection practice.

Article 19 provides that a person connected with a child care organisation may report failures of their own, or another child care organisation, to carry out checks or make referrals as required by Article 4(1) or Article 16(1)(a).

Articles 20-21 include definitions of certain terms including “child care organisation” and “child care position” and include transitional provisions.

Articles 22-29 make provision for courts to make a “disqualification order” where an individual has committed certain offences which are set out in the Schedule and receives a “qualifying sentence”. Subject to conditions set out in the Order, applications may be made to a Social Care Tribunal for a review of a disqualification order and the Tribunal may direct that a disqualification order is to cease to have effect, if it is satisfied that the individual is suitable to work with children. The High Court will be able to restore a disqualification order, on the application of the Chief Constable or a director of social services, if it is satisfied that that the individual has acted in a way which gives reasonable cause to believe that the individual poses a risk to children.

Articles 30-31 provide that it will be an offence for an individual to work in a “regulated position” whilst on the list of those deemed unsuitable to work with children held by the Department, the list of those deemed unsuitable to work in teaching or other education-related employment, or whilst subject to a disqualification order. It will also be an offence to apply for, offer to do or accept work in such a position. A person who knowingly offers or procures work in a regulated position for such an individual will commit an offence and will also do so if he fails to remove such an individual from a regulated position. The definition of “regulated position” is set out in Article 31 and is intended to cover a wide range of occupations involving work with children or the management of services for children.

Article 32 provides the Department with a power to provide, by order, that the offences referred to above will apply to an individual subject to a prohibition or disqualification made in another jurisdiction.

Articles 33-34 provide that the imposition of a disqualification order will have no impact on the period of rehabilitation applicable under the Rehabilitation of Offender’s (NI) Order 1978 and include definitions of certain terms.

PART III PROTECTION OF VULNERABLE ADULTS

Articles 35-41 are broadly equivalent to Articles 3-6 and Articles 7, 8 and 10. A duty is placed on providers of services to vulnerable adults to refer individuals to the Department for inclusion on the list of those deemed unsuitable to work with vulnerable adults which the Department will be required to maintain. The conditions for referral are that the individual has been dismissed, transferred or otherwise removed from a care position on the grounds of misconduct which harmed a vulnerable adult or placed a vulnerable adult at risk of harm. Requirements are also placed on employment agencies, nursing agencies and employment businesses to make referrals. Certain other authorities may also make referrals. The Department may place an individual on the list following a relevant inquiry and may transfer names on the existing PECS Register to the new list. In all cases, the Department must follow certain procedures before placing an individual on the list; these include inviting the comments of the individual.

Articles 42-45 are broadly equivalent to Articles 11-14. An individual will be able to appeal to a Social Care Tribunal against the Department's decision to include his or her name on the list of those deemed unsuitable to work with vulnerable adults and to apply for his or her name to be removed from the list. The Chief Constable or a director of social services may apply to the High Court for an individual to be restored to the list where specified criteria are met.

Articles 46-47 are broadly equivalent to Articles 16-17. A provider of care to vulnerable adults who proposes to offer an individual work in a care position must check whether the individual is on the list of those deemed unsuitable to work with vulnerable adults held by the Department. Provision is also made for checks to be carried out in relation to individuals supplied by employment agencies, nursing agencies and employment businesses. The provisions as to how checks are to be carried out are the same as those in relation to children. An individual will commit an offence if he knowingly applies for, offers to do, accepts or does any work in a care position. It will be an offence for a person knowingly to employ a listed individual in a care position or to fail to remove such a person from a care position. It will also be an offence knowingly to offer or procure work in a care position for a listed individual.

Articles 48-49 set out definitions of terms used in Part III, including “care position” and “vulnerable adult” and include transitional provisions.

PART IV SOCIAL CARE TRIBUNALS

Article 50 makes amendments to the Registered Homes (NI) Order 1992 regarding the operation of Social Care Tribunals.

Consultation

The proposals for a Bill were the subject of public consultation and received widespread support. The main issue raised was that all organisations should be *required* to make referrals to the list relating to children, not only “child care organisations”.

Assembly scrutiny

The Bill passed its Second Stage in the Assembly and was before the HSSPS Committee. The Committee had not made any proposals for amendment at the time devolution was suspended. The main issue discussed by the Committee was as indicated above in relation to public consultation. Also, a question was raised as to whether a disqualification order (made under Article 23 or 24) should be dependent on the length of sentence imposed (in general terms the Bill required that the individual must receive a sentence of at least 12 months before a disqualification order could be made).

A small amendment was discussed in relation to whistleblowing. It was felt that any person associated with a child care organisation should be able to report a failure by any child care organisation that it had failed in its duty to carry out checks or make referrals where it should have done so (the Bill limited reports to individuals within the organisation being reported upon). Another issue discussed was the commencement in Northern Ireland of Part V of the Police Act 1997. The Bill made provision for the Department to deal with requests for checks against the list of those deemed unsuitable to work with children (and the equivalent list relating to vulnerable adults), together with the list in relation to employment in schools. However, the Committee was concerned that commencement of Part V of the Police Act was important in that it also addresses the disclosure of important police information as to whether an individual posed a threat.

Amendments

No amendments had been made to the Bill in the Assembly. The draft Order, apart from some minor drafting changes, reflects the Bill as introduced in the Assembly. However the suggestion made regarding whistleblowing, noted above, has been taken into account in the draft Order.

Financial effects of the draft Order

The Department already operates the non-statutory PECS system of checks and referrals in relation to children and adults with a learning disability. Although the existing service is provided free of charge, with modest cost to the Department, it is likely that costs will increase. The Order includes a power to enable the Department to impose charges to cover the costs of the proposed system. Any such costs will fall to organisations rather than the general public.

European Convention on Human Rights

The provisions of the Order are compatible with the Convention on Human Rights.

Equality Impact assessment

As the Order is intended to improve the safeguards for children and vulnerable adults, it will have a positive effect in ensuring equality between vulnerable groups and the wider public and would have no adverse effect on any group mentioned in section 75 of the Northern Ireland Act 1998.

Summary of the regulatory appraisal

The impact on business in relation to those working with children will be negligible given that the vast majority of organisations who will be required to carry out checks are currently doing so under the current PECS system. In relation to vulnerable adults, it is likely that there will be some impact on the nursing and residential care home sectors. However, given that each organisation will be required under the legislative proposals to carry out checks on new employees only, the impact is considered to be minimal.