



# Care Standards Act 2000

## 2000 CHAPTER 14

### PART VII

#### PROTECTION OF CHILDREN AND VULNERABLE ADULTS

##### *Protection of vulnerable adults*

#### **80 Basic definitions.**

- (1) Subsections (2) to (7) apply for the purposes of this Part.
- (2) “Care worker” means—
  - (a) an individual who is or has been employed in a position which is such as to enable him to have regular contact in the course of his duties with adults to whom accommodation is provided at a care home;
  - (b) an individual who is or has been employed in a position which is such as to enable him to have regular contact in the course of his duties with adults to whom prescribed services are provided by an independent hospital, an independent clinic, an independent medical agency or a National Health Service body;
  - (c) an individual who is or has been employed in a position which is concerned with the provision of personal care in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.
- (3) “Care position”, in relation to an individual, means a position such as is mentioned in subsection (2)(a), (b) or (c).
- (4) “Employment” has the same meaning as in the <sup>M1</sup>Protection of Children Act 1999 (referred to in this Act as “the 1999 Act”); and references to an individual being employed shall be construed accordingly.
- (5) “Supply worker”—

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- (a) in relation to an employment agency, means an individual supplied by the agency for employment in a care position or for whom the agency has found employment in a care position;
  - (b) in relation to an employment business, means an individual supplied by the business for employment in a care position.
- (6) “Vulnerable adult” means—
- (a) an adult to whom accommodation and nursing or personal care are provided in a care home;
  - (b) an adult to whom personal care is provided in their own home under arrangements made by a domiciliary care agency; or
  - (c) an adult to whom prescribed services are provided by an independent hospital, independent clinic, independent medical agency or National Health Service body.
- (7) The persons who provide care for vulnerable adults are—
- (a) any person who carries on a care home;
  - (b) any person who carries on a domiciliary care agency;
  - (c) any person who carries on an independent hospital, an independent clinic or an independent medical agency, which provides prescribed services; and
  - (d) a National Health Service body which provides prescribed services.
- (8) Regulations for the purposes of this section or section 91, 93 or 103 may only be made by the Secretary of State; and before making any regulations for the purposes of this section or section 93 or 103 the Secretary of State shall consult the Assembly.

#### Commencement Information

**II** S. 80 partly in force; s. 80 not in force at Royal Assent see s. 122; s. 80(8) in force at 2.10.2000 for certain purposes by S.I. 2000/2544, art. 2(2)(a); s. 80 in force for certain purposes at 26.7.2004 by S.I. 2004/1757, art. 2

#### Marginal Citations

**M1** 1999 c. 14.

VALID FROM 26/07/2004

#### **81 Duty of Secretary of State to keep list.**

- (1) The Secretary of State shall keep a list of individuals who are considered unsuitable to work with vulnerable adults.
- (2) An individual shall not be included in the list except in accordance with this Part.
- (3) The Secretary of State may at any time remove an individual from the list if he is satisfied that the individual should not have been included in it.

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VALID FROM 26/07/2004

## **82 Persons who provide care for vulnerable adults: duty to refer.**

- (1) A person who provides care for vulnerable adults (“the provider”) shall refer a care worker to the Secretary of State if there is fulfilled—
  - (a) any of the conditions mentioned in subsection (2); or
  - (b) the condition mentioned in subsection (3).
- (2) The conditions referred to in subsection (1)(a) are—
  - (a) that the provider has dismissed the worker on the grounds of misconduct (whether or not in the course of his employment) which harmed or placed at risk of harm a vulnerable adult;
  - (b) that the worker has resigned, retired or been made redundant in circumstances such that the provider 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 provider has, on such grounds, transferred the worker to a position which is not a care position;
  - (d) that the provider has, on such grounds, suspended the worker or provisionally transferred him to a position which is not a care position but has not yet decided whether to dismiss him or to confirm the transfer.
- (3) The condition referred to in subsection (1)(b) is that—
  - (a) in circumstances not falling within subsection (2), the provider has dismissed the worker, he has resigned or retired or the provider has transferred him to a position which is not a care position;
  - (b) information not available to the provider at the time of the dismissal, resignation, retirement or transfer has since become available; and
  - (c) the provider has formed the opinion that, if that information had been available at that time and if (where applicable) the worker had not resigned or retired, the provider would have dismissed him, or would have considered dismissing him, on such grounds as are mentioned in subsection (2)(a).
- (4) If it appears from the information submitted with a reference under subsection (1) that it may be appropriate for the worker to be included in the list kept under section 81, the Secretary of State shall—
  - (a) determine the reference in accordance with subsections (5) to (7); and
  - (b) pending that determination, provisionally include the worker in the list.
- (5) The Secretary of State shall—
  - (a) invite observations from the worker on the information submitted with the reference and, if he thinks fit, on any observations submitted under paragraph (b); and
  - (b) invite observations from the provider on any observations on the information submitted with the reference and, if he thinks fit, on any other observations under paragraph (a).
- (6) Where—

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- (a) the Secretary of State has considered the information submitted with the reference, any observations submitted to him and any other information which he considers relevant; and
- (b) in the case of a reference under subsection (2)(d), the provider has dismissed the worker or, as the case may be, has confirmed his transfer on such grounds as are there mentioned,

the Secretary of State shall confirm the worker’s inclusion in the list if subsection (7) applies; otherwise he shall remove him from the list.

- (7) This subsection applies if the Secretary of State is of the opinion—
- (a) that the provider reasonably considered the worker to be 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 worker is unsuitable to work with vulnerable adults.
- (8) The reference in subsection (6)(b) to the provider dismissing the worker on such grounds as are mentioned in subsection (2)(d) includes—
- (a) a reference to his resigning, retiring or being made redundant in circumstances such that the provider 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 provider transferring him, on such grounds, to a position which is not a care position.
- (9) This section does not apply where—
- (a) the provider carries on a domiciliary care agency, or an independent medical agency, which is or includes an employment agency or an employment business; and
  - (b) the worker in question is a supply worker in relation to him.
- (10) Nothing in this section shall require a person who provides care for vulnerable adults to refer a worker to the Secretary of State in any case where the dismissal, resignation, retirement, transfer or suspension took place or, as the case may be, the opinion was formed before the commencement of this section.

**Modifications etc. (not altering text)**

- C1** S. 82(4)-(7) applied (with modifications) (26.7.2004) by 1999 c. 14, ss. 2C(1)(4)(5) (as inserted by 2000 c. 14, ss. 97(1), 122; S.I. 2004/1757, art. 2(b))

VALID FROM 26/07/2004

**83 Employment agencies and businesses: duty to refer.**

- (1) A person who carries on an employment agency or an employment business (“the provider”) shall refer a supply worker to the Secretary of State if there is fulfilled—
- (a) in the case of an employment agency, any of the conditions mentioned in subsection (2); or
  - (b) in the case of an employment business, any of the conditions mentioned in subsection (3).

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- (2) The conditions referred to in subsection (1)(a) are—
  - (a) that the provider has decided not to do any further business with the worker on grounds of misconduct (whether or not in the course of his employment) which harmed or placed at risk of harm a vulnerable adult;
  - (b) that the provider has decided on such grounds not to find the worker further employment, or supply him for further employment, in a care position.
- (3) The conditions mentioned in subsection (1)(b) are—
  - (a) that the provider has dismissed the worker on the grounds of misconduct (whether or not in the course of his employment) which harmed or placed at risk of harm a vulnerable adult;
  - (b) that the worker has resigned or retired in circumstances such that the provider would have dismissed him, or would have considered dismissing him, on such grounds if he had not resigned or retired;
  - (c) that the provider has, on such grounds, decided not to supply the worker for further employment in a care position.
- (4) If it appears from the information submitted with a reference under subsection (1) that it may be appropriate for the worker to be included in the list kept under section 81, the Secretary of State shall—
  - (a) determine the reference in accordance with subsections (5) to (7); and
  - (b) pending that determination, provisionally include the worker in the list.
- (5) The Secretary of State shall—
  - (a) invite observations from the worker on the information submitted with the reference and, if he thinks fit, on any observations submitted under paragraph (b); and
  - (b) invite observations from the provider on any observations on the information submitted with the reference and, if he thinks fit, on any other observations under paragraph (a).
- (6) Where the Secretary of State has considered the information submitted with the reference, any observations submitted to him and any other information which he considers relevant, the Secretary of State shall confirm the worker's inclusion in the list if subsection (7) applies; otherwise he shall remove him from the list.
- (7) This subsection applies if the Secretary of State is of the opinion—
  - (a) that the provider reasonably considered the worker to be 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 worker is unsuitable to work with vulnerable adults.
- (8) Nothing in this section shall require a person who provides care for vulnerable adults to refer a worker to the Secretary of State in any case where the dismissal, resignation or retirement took place or, as the case may be, the decision was made before the commencement of this section.

**Modifications etc. (not altering text)**

- C2 S. 83(4)-(7) applied (with modifications) (26.7.2004) by 1999 c. 14, s. 2C(2)(4)(5) (as inserted by 2000 c. 14, ss. 97(1), 122; S.I. 2004/1757, art. 2(b))

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VALID FROM 26/07/2004

#### **84 Power of registration authority to refer.**

- (1) The registration authority may refer a care worker to the Secretary of State if—
  - (a) on the basis of evidence obtained by it in the exercise of its functions under Part II of this Act, the authority considers that the worker has been 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) the worker has not been referred to the Secretary of State under section 82 or 83 in respect of the misconduct.
- (2) Section 82(4) to (7) shall apply in relation to a reference made by the registration authority under subsection (1) as it applies in relation to a reference made by a person under section 82(1).
- (3) The reference in subsection (1) to misconduct is to misconduct which occurred after the commencement of this section.

VALID FROM 26/07/2004

#### **85 Individuals named in the findings of certain inquiries.**

- (1) Subsection (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 care position; and
  - (c) it appears to the Secretary of State 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 vulnerable adults.
- (2) The Secretary of State—
  - (a) may provisionally include the individual in the list kept under section 81; and
  - (b) if he does so, shall determine in accordance with subsections (3) to (5) whether the individual's inclusion in the list should be confirmed.
- (3) The Secretary of State shall—
  - (a) invite observations from the individual on the report, so far as relating to him, and, if the Secretary of State thinks fit, on any observations submitted under paragraph (b); and
  - (b) invite observations from the relevant employer on any observations on the report and, if the Secretary of State thinks fit, on any other observations under paragraph (a).
- (4) Where the Secretary of State has considered the report, any observations submitted to him and any other information which he considers relevant, he shall confirm that individual's inclusion in the list if subsection (5) applies; otherwise he shall remove him from the list.

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- (5) This subsection applies if the Secretary of State 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 vulnerable adults.
- (6) In this section—
- “relevant employer” means the person who, at the time mentioned in the definition of “relevant misconduct” below, employed the individual in a care position;
- “relevant misconduct” means misconduct which harmed or placed at risk of harm a vulnerable adult and was committed (whether or not in the course of his employment) at a time when the individual was employed in a care position.
- (7) In this section “relevant inquiry” means any of the following—
- (a) an inquiry held under—
    - (i) section 10;
    - (ii) section 35 of the <sup>M2</sup>Government of Wales Act 1998;
    - (iii) section 81 of the 1989 Act;
    - (iv) section 84 of the <sup>M3</sup>National Health Service Act 1977;
    - (v) section 7C of the <sup>M4</sup>Local Authority Social Services Act 1970;
  - (b) an inquiry to which the <sup>M5</sup>Tribunals of Inquiry (Evidence) Act 1921 applies;
  - (c) any other inquiry or hearing designated for the purposes of this section by an order made by the Secretary of State.
- (8) Before making an order under subsection (7) the Secretary of State shall consult the Assembly.

**Modifications etc. (not altering text)**

- C3** S. 85 applied (with modifications) (26.7.2004) by 1999 c. 14, s. 2C(3)(4)(5) (as inserted by 2000 c. 14, ss. 97(1), 122; S.I. 2004/1757, art. 2(b))

**Marginal Citations**

- M2** 1998 c. 38.  
**M3** 1977 c. 49.  
**M4** 1970 c. 42.  
**M5** 1921 c. 7.

VALID FROM 26/07/2004

**86 Appeals against inclusion in list.**

- (1) An individual who is included (otherwise than provisionally) in the list kept by the Secretary of State under section 81 may appeal to the Tribunal against—
- (a) the decision to include him in the list; or
  - (b) with the leave of the Tribunal, any decision of the Secretary of State not to remove him from the list under section 81(3).



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- (2) Subject to subsection (5), an individual who has been provisionally included for a period of more than nine months in the list kept by the Secretary of State under section 81 may, with the leave of the Tribunal, have the issue of his inclusion in the list determined by the Tribunal instead of by the Secretary of State.
- (3) If on an appeal or determination under this section 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 duties) 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 section.
- (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 subsection (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 subsection (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.

VALID FROM 26/07/2004

## **87 Applications for removal from list.**

- (1) Subject to section 88, an individual who is included in the list kept by the Secretary of State under section 81 may make an application to the Tribunal under this section.
- (2) On an application under this section 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.



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## **88 Conditions for application under section 87.**

- (1) An individual may only make an application under section 87 with the leave of the Tribunal.
- (2) An application for leave under this section 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 section, 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 section, he has made no other such application.
- (5) The Tribunal shall not grant an application under this section 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 section; and
  - (b) that the change is such that leave should be granted.

VALID FROM 26/07/2004

## **89 Effect of inclusion in list.**

- (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 section 81; 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.

For the purposes of this subsection 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 or employment business, there is a sufficient compliance with subsection (1) if the provider—

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- (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 section 81;
  - (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 subsection (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 Secretary of State under section 81 shall be guilty of an offence if he knowingly applies for, offers to do, accepts or does any work in a care position.
- (6) It shall be a defence for an individual charged with an offence under subsection (5) to prove that he did not know, and could not reasonably be expected to know, that he was so included in that list.
- (7) An individual who is guilty of an offence under this section shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six 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 five years, or to a fine, or to both.

VALID FROM 26/07/2004

**90 Searches of list under Part V of Police Act 1997.**

- (1) After subsection (3B) of section 113 of the <sup>M6</sup>Police Act 1997 (criminal record certificates) there shall be inserted—

“(3C) 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 (3D), the criminal record certificate shall also state—

- (a) whether the applicant is included in the list kept under section 81 of the Care Standards Act 2000; and
- (b) if he is included in that list, such details of his inclusion as may be prescribed.

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

- (a) a care position within the meaning of Part VII of the Care Standards Act 2000; or
- (b) a position of such other description as may be prescribed.”

- (2) After subsection (6A) of section 115 of that Act (enhanced criminal record certificates) there shall be inserted—

“(6B) 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,

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found work or given work in a position (whether paid or unpaid) falling within subsection (3D) of section 113, the enhanced criminal record certificate shall also state—

- (a) whether the applicant is included in the list kept under section 81 of the Care Standards Act 2000; and
- (b) if he is included in that list, such details of his inclusion as may be prescribed.”

#### Marginal Citations

M6 1997 c. 50.

### 91 Access to list before commencement of section 90.

- (1) In relation to any time before the commencement of section 90, any person seeking to ascertain whether a relevant individual is included in the list kept under section 81 shall be entitled to that information on making application for the purpose to the Secretary of State.
- (2) For the purposes of subsection (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 paragraph (a) or (b).

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### 92 Persons referred for inclusion in list under Protection of Children Act 1999.

- (1) Section 2(4) to (7) of the 1999 Act (referrals for inclusion in list of individuals who are considered unsuitable to work with children) shall, in the case of any reference under section 2, 2A or 2D of that Act, apply in relation to the list kept under section 81 as they apply in relation to the list kept under section 1 of that Act, but as if the reference in subsection (7)(b) to children were a reference to vulnerable adults.
- (2) Section 2B of the 1999 Act shall apply in relation to the list kept under section 81 as it applies in relation to the list kept under section 1 of that Act, but as if the references in subsections (1)(c)(ii) and (5)(b) to children were references to vulnerable adults.
- (3) But the Secretary of State may not by virtue of subsection (1) or (2) provisionally include an individual in the list kept under section 81, or confirm his inclusion in that list, unless he provisionally includes him in the list kept under section 1 of the 1999 Act or, as the case requires, confirms his inclusion in that list.
- (4) Where an individual has by virtue of subsection (1) or (2) been included in the list kept under section 81, section 86 shall apply to him as if the references in subsections (3)(a) and (4) to a vulnerable adult were references to a child.

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VALID FROM 26/07/2004

**93 Power to extend Part VII.**

- (1) The Secretary of State may by regulations—
  - (a) add to the list in section 80(7) any prescribed persons to whom subsection (2) applies;
  - (b) amend the definitions of “care worker”, “care position” and “vulnerable adult” accordingly.
- (2) This subsection applies to—
  - (a) local authorities providing services to adults in the exercise of their social services functions;
  - (b) persons who provide to adults services which are similar to services which—
    - (i) may or must be so provided by local authorities; or
    - (ii) may or must be provided by National Health Service bodies.
- (3) In its application by virtue of subsection (1), this Part shall have effect—
  - (a) if the regulations so provide, as if “may” were substituted for “ shall ” in sections 82(1) and 83(1), and section 89 were omitted;
  - (b) with such other modifications as may be specified in the regulations.

*The list kept under section 1 of the 1999 Act*

**94 Employment agencies and businesses.**

- (1) In subsection (9) of section 2 of the 1999 Act (inclusion on reference to Secretary of State in list of individuals who are considered unsuitable to work with children)—
  - (a) for “This section” there shall be substituted “ Subsections (1) to (8) and (10) of this section ”; and
  - (b) for the words from “(a)” to “harm” there shall be substituted—
    - “(a) in subsection (1), for the words from “there is” to the end there were substituted the following paragraphs—
    - “(” the organisation has decided not to do any further business with 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; or
    - (b) the organisation has decided on such grounds not to find the individual further employment, or supply him for further employment, in a child care position; ””
- (2) After subsection (9) of that section there shall be inserted—
  - “(9A) Subsections (1) to (8) and (10) of this section shall have effect in relation to an organisation which carries on an employment business as if—
    - (a) in subsection (1)—
      - (i) for the words from “who” to “position” there were substituted the words “who has been supplied by the organisation for employment in a child care position”; and

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- (ii) paragraph (b) and the word “or” preceding it were omitted;
- (b) for subsection (2)(c) and (d) there were substituted the following paragraph—
- (“ that the organisation has, on such grounds, decided not to supply the individual for further employment in a child care position. ” and
- (c) subsections (3), (6)(b) and (8) were omitted.”

## **95 Inclusion in 1999 Act list on reference by certain authorities.**

(1) After section 2 of the 1999 Act there is inserted—

### **“2A Power of certain authorities to refer individuals for inclusion in list.**

- (1) A person to whom this section applies may refer to the Secretary of State 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 his functions under Part II of the Care Standards Act 2000 or Part XA of the Children Act 1989, 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 Secretary of State under section 1 above in respect of the misconduct.
  - (2) The persons to whom this section applies are—
    - (a) the National Care Standards Commission;
    - (b) the National Assembly for Wales; and
    - (c) Her Majesty’s Chief Inspector of Schools in England.
  - (3) Section 2(4) to (7) above shall apply in relation to a reference made by a person under subsection (1) above as it applies in relation to a reference made by an organisation under section 2(1) above.
  - (4) The reference in subsection (1) above to misconduct is to misconduct which occurred after the commencement of this section.”
- (2) In section 1(2)(a) of that Act (duty of Secretary of State to keep list), after “2” there is inserted “ or 2A ”.
- (3) For the sidenote to section 2 of that Act there is substituted “ Inclusion in list on reference following disciplinary action etc. ”.

### **Commencement Information**

**I2** S. 95 wholly in force at 1.4.2002; s. 95 not in force at Royal Assent see s. 122; s. 95 in force for W. at 1.4.2002 by S.I. 2002/920, arts. 1(4), 3(3) (subject to art. 3(4)(5) and to transitional provisions in Schs. 1-3); s. 95 in force for E. at 1.4.2002 by S.I. 2002/1493, arts. 1(2), 3(2) (subject to transitional provisions in art. 4)

## **96 Inclusion in 1999 Act list of individuals named in findings of certain inquiries.**

(1) After section 2A of the 1999 Act (inserted by section 95) there is inserted—

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*Status: Point in time view as at 01/04/2004. This version of this part contains provisions that are not valid for this point in time.*

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## **“2B Individuals named in the findings of certain inquiries.**

- (1) Subsection (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 Secretary of State 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 Secretary of State—
  - (a) may provisionally include the individual in the list kept under section 1 above; and
  - (b) if he does so, shall determine in accordance with subsections (3) to (5) below whether the individual’s inclusion in the list should be confirmed.
- (3) The Secretary of State shall—
  - (a) invite observations from the individual on the report, so far as relating to him, and, if the Secretary of State thinks fit, on any observations submitted under paragraph (b) below; and
  - (b) invite observations from the relevant employer on any observations on the report and, if the Secretary of State thinks fit, on any other observations under paragraph (a) above.
- (4) Where the Secretary of State has considered the report, any observations submitted to him and any other information which he considers relevant, he shall confirm that individual’s inclusion in the list if subsection (5) below applies; otherwise he shall remove him from the list.
- (5) This subsection applies if the Secretary of State 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 section—
 

“relevant employer” means the person who, at the time referred to 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 section “relevant inquiry” means any of the following—
  - (a) an inquiry held under—
    - (i) section 10 of the Care Standards Act 2000;
    - (ii) section 35 of the <sup>M7</sup>Government of Wales Act 1998;
    - (iii) section 81 of the <sup>M8</sup>Children Act 1989;
    - (iv) section 84 of the <sup>M9</sup>National Health Service Act 1977;

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- (v) section 7C of the <sup>M10</sup>Local Authority Social Services Act 1970;
- (b) an inquiry to which the <sup>M11</sup>Tribunals of Inquiry (Evidence) Act 1921 applies;
- (c) any other inquiry or hearing designated for the purposes of this section by an order made by the Secretary of State.
- (8) An order under subsection (7) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Before making an order under subsection (7) above the Secretary of State shall consult the National Assembly for Wales.”
- (2) In section 1(2) of that Act (duty of Secretary of State to keep list), before the “or” preceding paragraph (b) there shall be inserted—
- “(aa) he has been included in the list under section 2B below;”.

#### Commencement Information

- I3** S. 96 wholly in force at 2.10.2000; s. 96 not in force at Royal Assent see s. 122; s. 96 in force at 15.9.2000 for certain purposes and at 2.10.2000 in so far as not already in force by S.I. 2000/2544, art. 2(1)(a)(2)(c)

#### Marginal Citations

- M7** 1998 c. 38.  
**M8** 1989 c. 41.  
**M9** 1977 c. 49.  
**M10** 1970 c. 42.  
**M11** 1921 c. 7.

VALID FROM 26/07/2004

#### 97 Inclusion in 1999 Act list on reference under this Part.

- (1) After section 2B of the 1999 Act (inserted by section 95) there shall be inserted—

**“2C Inclusion in list on reference under Part VII of Care Standards Act 2000.**

- (1) Section 82(4) to (7) of the Care Standards Act 2000 (persons who provide care for vulnerable adults: duty to refer) shall, in the case of any reference under subsection (1) of that section or section 84 of that Act, apply in relation to the list kept under section 1 above as it applies in relation to the list kept under section 81 of that Act, but as if the reference in subsection (7)(b) to vulnerable adults were a reference to children.
- (2) Section 83(4) to (7) of that Act (employment agencies and businesses: duty to refer) shall, in the case of any reference under subsection (1) of that section, apply in relation to the list kept under section 1 above as it applies



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in relation to the list kept under section 81 of that Act, but as if the reference in subsection (7)(b) to vulnerable adults were a reference to children.

- (3) Section 85 of that Act (individuals named in the findings of certain inquiries) shall apply in relation to the list kept under section 1 above as it applies in relation to the list kept under section 81 of that Act, but as if the references in subsections (1)(c)(ii) and (5)(b) to vulnerable adults were references to children.
- (4) But the Secretary of State may not by virtue of this section provisionally include an individual in the list kept under section 1 above, or confirm his inclusion in that list, unless he provisionally includes him in the list kept under section 81 of that Act or, as the case requires, confirms his inclusion in that list.
- (5) Where an individual has by virtue of this section been included in the list kept under section 1 above, section 4 below shall apply to him as if the references in subsections (3)(a) and (4) to a child were references to a vulnerable adult.”
- (2) In section 1(2)(a) of the 1999 Act (individuals who may be included on list), after “below” there shall be inserted “ or Part VII of the Care Standards Act 2000 ”.

## 98 Individuals providing care funded by direct payments.

- (1) After section 2C of the 1999 Act (inserted by section 97) there is inserted—

### “2D Local authorities proposing to make direct payments in respect of services.

- (1) A local authority may refer a relevant individual to the Secretary of State where, as a result of enquiries made, or caused to be made, by it under section 47 of the <sup>M12</sup>Children Act 1989, 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) Section 2(4) to (7) above shall apply in relation to a reference made by a local authority under subsection (1) above as it applies in relation to a reference made by an organisation under section 2(1) above.
- (3) In this section—  
 “funded care” means care in respect of a person’s securing the provision of which the authority has made a payment under section 17A of the <sup>M13</sup>Children Act 1989 (direct payments);  
 “relevant individual” means an individual who is or has been employed to provide funded care to a child.
- (4) The reference in subsection (1) above to misconduct is to misconduct which occurred after the commencement of this section.”
- (2) In section 7 of that Act (effect of inclusion in certain statutory lists), after subsection (1) there shall be inserted—  
 “(1A) Where—

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- (a) a person (“the recipient”) employs, or proposes to employ, an individual to provide care for a child; and
  - (b) a local authority proposes to make a payment to the recipient under section 17A of the <sup>M14</sup>Children Act 1989 (direct payments) in respect of his securing the provision of the care,
- the authority shall, if the recipient asks it to do so, ascertain whether the individual is included in any of the lists mentioned in subsection (1) above.”
- (3) After subsection (2) of that section there shall be inserted—
- “(2A) Where a local authority is required under subsection (1A) above to ascertain whether an individual who has been supplied as mentioned in subsection (2) above is included in any of the lists there mentioned, there is sufficient compliance with subsection (1A) above if the authority—
- (a) satisfies itself that, on a date within the last 12 months, the organisation which supplied the individual ascertained whether he was included in any of those lists; and
  - (b) obtains written confirmation of the facts as ascertained by the organisation.”
- (4) In section 1(2)(a) of that Act (duty of Secretary of State to keep list), after “or 2A” there is inserted “ or 2D ”.

#### Commencement Information

**I4** S. 98 wholly in force at 1.7.2001; s. 98 not in force at Royal Assent see s. 122; s. 98 in force for E. at 1.4.2001 by S.I. 2001/1193, arts. 1(3), 2(2); s. 98 in force for W. at 1.7.2001 by S.I. 2001/2354, art. 2

#### Marginal Citations

**M12** 1989 c. 41.

**M13** 1989 c. 41.

**M14** 1989 c. 41.

## 99 Transfer from Consultancy Service Index of individuals named in past inquiries.

- (1) Section 3 of the 1999 Act (inclusion in list on transfer from Consultancy Service Index) shall be amended as follows.
- (2) In subsection (1), for “This section” there shall be substituted “ Subsections (2) and (3) below ” and in paragraph (a), for “this section” there shall be substituted “ section 1 above ”.
- (3) After subsection (3) there shall be inserted—

“(4) Subsections (5) and (6) below 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 Secretary of State 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

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- (d) the individual is included in the Consultancy Service Index (otherwise than provisionally) immediately before the commencement of section 1 above.
- (5) The Secretary of State shall—
  - (a) invite observations from the individual on the report, so far as relating to him, and, if the Secretary of State thinks fit, on any observations submitted under paragraph (b) below; and
  - (b) invite observations from the relevant employer on any observations on the report and, if the Secretary of State thinks fit, on any other observations under paragraph (a) above.
- (6) The Secretary of State shall include the individual in the list kept by him under section 1 above if, after he has considered the report, any observations submitted to him and any other information which he considers relevant, he 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 section—
  - “relevant employer”, in relation to an individual named in the report of a relevant inquiry, means the person who, at the time referred to in the definition of “relevant misconduct” below, employed the individual in a child care position;
  - “relevant inquiry” has the same meaning as in section 2B above;
  - “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.”

*Restrictions on working with children in independent schools*

**100 Additional ground of complaint.**

F1 .....

**Textual Amendments**

**F1** S. 100 repealed (1.9.2003 for E. and 1.1.2004 for W.) by [Education Act 2002 \(c. 32\)](#), ss. 215(2), 216, [Sch. 22 Pt. 3](#) (with s. 210(8), 214(4); [S.I. 2003/1667](#), [art. 4](#); [S.I. 2003/2961](#), [art. 6](#), [Sch. Pt. 3](#))

**101 Effect of inclusion in 1996 Act list.**

- (1) Section 7 of the 1999 Act (effect of inclusion in either list) shall be amended as follows.
- (2) For subsection (1) there shall be substituted—
  - “(1) Where a child care organisation proposes to offer an individual employment in a child care position, the organisation—
    - (a) shall ascertain whether the individual is included in—

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- (i) the list kept under section 1 above;
  - (ii) the list kept for the purposes of regulations made under section 218(6) of the 1988 Act (“the 1988 Act list”); or
  - (iii) any list kept by the Secretary of State or the National Assembly for Wales of persons disqualified under section 470 or 471 of the <sup>M15</sup>Education Act 1996 (“the 1996 Act list”); and
- (b) if he is included in any of those lists, shall not offer him employment in such a position.”
- (3) In subsection (2)—
- (a) in paragraph (a), for the words from “the list” to the end there shall be substituted “ any of the lists mentioned in subsection (1) above ”; and
  - (b) in paragraph (c), for “either list” there shall be substituted “ any of those lists ”.
- (4) For subsection (4) there shall be substituted—
- “(4) In this section—
- (a) any reference to inclusion in the 1988 Act list is a reference to inclusion in that list on the grounds mentioned in section 218(6ZA) (c) of the 1988 Act; and
  - (b) any reference to inclusion in the 1996 Act list is a reference to inclusion in that list as a person disqualified on the grounds mentioned in section 469(1)(d)(i) of the <sup>M16</sup>Education Act 1996.”

#### Marginal Citations

M15 1996 c. 56.

M16 1996 c. 56.

## 102 Searches of 1996 Act list.

- (1) In subsection (3A) of section 113 of the <sup>M17</sup>Police Act 1997 (criminal record certificates), for the words from “in the list” to the end there shall be substituted “in—
- (i) the list kept under section 1 of the <sup>M18</sup>Protection of Children Act 1999;
  - (ii) the list kept for the purposes of regulations made under section 218(6) of the <sup>M19</sup>Education Reform Act 1988 (“the 1988 Act list”); or
  - (iii) any list kept by the Secretary of State or the National Assembly for Wales of persons disqualified under section 470 or 471 of the Education Act 1996 (“the 1996 Act list”); and
- (b) if he is included in any of those lists, such details of his inclusion as may be prescribed, including—
- (i) in the case of the 1988 Act list, the grounds on which he is so included; or
  - (ii) in the case of the 1996 Act list, the grounds on which he was disqualified under section 470 or 471.”

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- (2) In subsection (6A) of section 115 of that Act (enhanced criminal record certificates), for the words from “in the list” to the end there shall be substituted “in—
- (i) the list kept under section 1 of the <sup>M20</sup>Protection of Children Act 1999;
  - (ii) the list kept for the purposes of regulations made under section 218(6) of the <sup>M21</sup>Education Reform Act 1988 (“the 1988 Act list”); or
  - (iii) any list kept by the Secretary of State or the National Assembly for Wales of persons disqualified under section 470 or 471 of the <sup>M22</sup>Education Act 1996 (“the 1996 Act list”); and
- (b) if he is included in any of those lists, such details of his inclusion as may be prescribed, including—
- (i) in the case of the 1988 Act list, the grounds on which he is so included; or
  - (ii) in the case of the 1996 Act list, the grounds on which he was disqualified under section 470 or 471.”

#### **Marginal Citations**

**M17** 1997 c. 50.  
**M18** 1999 c. 14.  
**M19** 1988 c. 40.  
**M20** 1999 c. 14.  
**M21** 1988 c. 40.  
**M22** 1996 c. 56.

#### *General*

### **103 Temporary provision for access to lists.**

- (1) Any person seeking to ascertain whether a relevant individual is included in—
- (a) the list kept under section 1 of the 1999 Act;
  - (b) the list kept for the purposes of regulations made under section 218(6) of the <sup>M23</sup>Education Reform Act 1988; or
  - (c) any list kept by the Secretary of State or the Assembly of persons disqualified under section 470 or 471 of the <sup>M24</sup>Education Act 1996,
- shall be entitled to that information on making, before the relevant commencement, an application for the purpose to the Secretary of State.
- (2) In this section “relevant individual” means—
- (a) in relation to a person who carries on an employment agency, an individual with whom he proposes to do business or an individual of any other prescribed description;
  - (b) in relation to any other person, an individual to whom he proposes to offer, or whom he proposes to supply for employment in, a child care position or an individual of any other prescribed description.
- (3) The relevant commencement is—

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- (a) for applications relating to the list mentioned in subsection (1)(a) or (b), the commencement of section 8 of the 1999 Act; and
  - (b) for applications relating to the list mentioned in subsection (1)(c), the commencement of section 102.
- (4) Paragraphs (b) and (c) of subsection (1) are without prejudice to any right conferred otherwise than by virtue of those provisions.

**Modifications etc. (not altering text)**

C4 S. 103(2)(b) extended (9.10.2000) by S.I. 2000/2537, reg. 2

**Marginal Citations**

M23 1988 c. 40.

M24 1996 c. 56.

**104 Suitability to adopt a child: searches of lists.**

- (1) The <sup>M25</sup>Police Act 1997 shall be amended as follows.
- (2) In section 113 (criminal record certificates)—
- (a) in subsection (3A), after “(3B),” there shall be inserted “ or his suitability to adopt a child, ”; and
  - (b) after subsection (3D) (inserted by section 90) there shall be inserted—  
“(3E) The references in subsections (3A) and (3C) to suitability to be employed, supplied to work, found work or given work in a position falling within subsection (3B) or (3D) include references to suitability to be registered—
    - (a) under Part II of the Care Standards Act 2000 (establishments and agencies);
    - (b) under Part IV of that Act (social care workers); or
    - (c) for child minding or providing day care under Part XA of the <sup>M26</sup>Children Act 1989, or under section 71 of that Act or Article 118 of the <sup>M27</sup>Children (Northern Ireland) Order 1995 (child minding and day care).”
- (3) In section 115 (enhanced criminal record certificates)—
- (a) in subsection (5)—
    - (i) after paragraph (e) there shall be inserted—
      - “(ea) registration under Part II of the Care Standards Act 2000 (establishments and agencies);
      - (eb) registration under Part IV of that Act (social care workers);”;
    - and
    - (ii) after paragraph (g) there shall be inserted—
      - “(h) a decision made by an adoption agency within the meaning of section 11 of the <sup>M28</sup>Adoption Act 1976 as to a person’s suitability to adopt a child.”;
    - and

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- (b) in subsection (6A), after “113,” there shall be inserted “ or his suitability to adopt a child, ”.

#### Commencement Information

**I5** S. 104 partly in force; s. 104 not in force at Royal Assent see s. 122; s. 104 in force for certain purposes at 18.3.2002 and 1.4.2002 by S.I. 2002/629, arts. 1(3), 2; s. 104 in force for W. for certain purposes at 1.4.2003 by S.I. 2003/501, art. 2(2); s. 104 in force for E. for certain purposes at 1.4.2003 by S.I. 2003/933, art. 2(2)

#### Marginal Citations

**M25** 1997 c. 50.  
**M26** 1989 c. 41.  
**M27** S.I. 1995/755 (N.I. 2).  
**M28** 1976 c. 36.



**Status:**

Point in time view as at 01/04/2004. This version of this part contains provisions that are not valid for this point in time.

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