



Care Standards Act 2000

2000 CHAPTER 14

PART VII

PROTECTION OF CHILDREN AND VULNERABLE ADULTS

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—
 - “(a) 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)—

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- (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
- (ii) paragraph (b) and the word “or” preceding it were omitted;
- (b) for subsection (2)(c) and (d) there were substituted the following paragraph—
 - “(c) 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.”.

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—

“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 Government of Wales Act 1998;
 - (iii) section 81 of the Children Act 1989;
 - (iv) section 84 of the National Health Service Act 1977;

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- (v) section 7C of the Local Authority Social Services Act 1970;
 - (b) an inquiry to which the 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;”.

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 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 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 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—

(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 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”.

Status: This is the original version (as it was originally enacted).

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
 - (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.”