Status: *Point in time view as at 02/10/2000. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Protection of Children Act 1999 is up to date with all changes known to be in force on or before 17 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Protection of Children Act 1999

1999 CHAPTER 14

An Act to require a list to be kept of persons considered unsuitable to work with children; to extend the power to make regulations under section 218(6) of the Education Reform Act 1988; to make further provision with respect to that list and the list kept for the purposes of such regulations; to enable the protection afforded to children to be afforded to persons suffering from mental impairment; and for connected purposes. [15th July 1999]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Extent Information

E1 S. 9, Sch. extend to the United Kingdom from 11.1.2001 as a consequence of the amendment to s. 14 by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 159**; S.I. 2000/3302, **art. 2(b)**

Modifications etc. (not altering text)

C1 Act amended (1.4.2001) by 2000 c. 43, **s. 24(1)**; S.I. 2001/919, **art. 2(a)**

Department of Health list

1 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 children.

(2) An individual shall not be included in the list unless—

(a) he has been referred to the Secretary of State under section 2 below; or

(b) he is transferred to the list from the Consultancy Service Index under section 3 below.

Status: *Point in time view as at 02/10/2000. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Protection of Children Act 1999 is up to date with all changes known to be in force on or before 17 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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.

1 Duty of Secretary of State to keep list. E+W

(1) The Secretary of State shall keep a list of individuals who are considered unsuitable to work with children.

(2) An individual shall not be included in the list unless—

(a) he has been referred to the Secretary of State under section 2 below; or

[[F27](aa) he has been included in the list under section 2B below;**]**

(b) he is transferred to the list from the Consultancy Service Index under section 3 below.

(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.

Textual Amendments

F27 S. 1(2)(aa) inserted (15.9.2000 for certain purposes only and 1.10.2000 otherwise) by 2000 c. 14, **s. 96(2)**; S.I. 2000/2544, **art. 2(1)(a)(2)(c)**

2 [Inclusion in list on reference to Secretary of State.]

(1) A child care organisation shall, and any other organisation may, refer to the Secretary of State an individual who is or has been employed in a child care position if there is fulfilled—

(a) any of the conditions mentioned in subsection (2) below; or

(b) the condition mentioned in subsection (3) below.

(2) The conditions referred to in subsection (1)(a) above are—

(a) that the organisation has dismissed 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;

(b) that the individual has resigned **[**[F1], retired or made redundant**]** in circumstances such that the organisation would have dismissed him, or would have considered dismissing him, on such grounds if he had not resigned **[**[F1], retired or made redundant**]**;

(c) that the organisation has, on such grounds, transferred the individual to a position within the organisation which is not a child care position;

(d) that the organisation has, on such grounds, suspended the individual or provisionally transferred him to such a position as is mentioned in paragraph (c) above, but has not yet decided whether to dismiss him or to confirm the transfer.

(3) The condition referred to in subsection (1)(b) above is that—

(a) in circumstances not falling within subsection (2) above, the organisation has dismissed the individual, he has resigned or retired or the organisation has transferred him to a position within the organisation which is not a child care position;

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(b) information not available to the organisation at the time of the dismissal, resignation, retirement or transfer has since become available; and

(c) the organisation has formed the opinion that, if that information had been available at that time and if (where applicable) the individual had not resigned or retired, the organisation would have dismissed him, or would have considered dismissing him, on such grounds as are mentioned in subsection (2)(a) above.

(4) If it appears from the information submitted with a reference under subsection (1) above that it may be appropriate for the individual to be included in the list kept under section 1 above, the Secretary of State shall—

(a) determine the reference in accordance with subsections (5) to (7) below; and

(b) pending that determination, provisionally include the individual in the list.

(5) The Secretary of State shall—

(a) invite observations from the individual on the information submitted with the reference and, if he thinks fit, on any observations submitted under paragraph (b) below; and

(b) invite observations from the organisation on any observations on the information submitted with the reference and, if he thinks fit, on any other observations under paragraph (a) above.

(6) Where—

(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) above, the organisation has dismissed the individual or, as the case may be, has confirmed his transfer on such grounds as are there mentioned,

the Secretary of State shall confirm the individual's inclusion in the list if subsection (7) below 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 organisation reasonably considered the individual to be 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) that the individual is unsuitable to work with children.

(8) The reference in subsection (6)(b) above to the organisation dismissing the individual on such grounds as are mentioned in subsection (2)(d) above includes—

(a) a reference to his resigning **[**[F2], retiring or being made redundant**]** in circumstances such that the organisation would have dismissed him, or would have considered dismissing him, on such grounds if he had not resigned **[**[F2], retired or been made redundant**]**; and

(b) a reference to the organisation transferring him, on such grounds, to a position within the organisation which is not a child care position.

(9) **[**[F3]Subsections (1) to (8) and (10) of this section**]** shall have effect in relation to an organisation which carries on an employment agency, or an agency for the supply of nurses, as if—

[[F4](a) in subsection (1), for the words from "there is" to the end there were substituted the following paragraphs—

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(“) 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; ”]and

(b) subsections (2), (3), (6)(b) and (8) were omitted.

[F5(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

(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.]

(10) Nothing in this section shall require a child care organisation to refer an individual 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.

Textual Amendments

F1 Words in s. 2(2)(b) substituted (2.10.2000) by 2000 c. 14, s. 116, **Sch. 4 para. 26(2)(a)**; S.I. 2000/2544, **art. 2(2)(g)**

F2 Words in s. 2(8)(a) substituted (2.10.2000) by 2000 c. 14, s. 116, **Sch. 4 para. 26(2)(b)**; S.I. 2000/2544, **art. 2(2)(g)**

F3 Words in s. 2(9) substituted (2.10.2000) by 2000 c. 14, **s. 94(1)(a)**: S.I. 2000/2544, **art. 2(2)(b)**

F4 Words in s. 2(9)(a) substituted (2.10.2000) by 2000 c. 14, **s. 94(1)(b)**; S.I. 2000/2544, **art. 2(2)(b)**

F5 S. 2(9A) inserted (2.10.2000) by 2000 c. 14. s. 94(2); S.I. 2000/2544, **art. 2(2)(b)**

Commencement Information

I1 S. 2 wholly in force at 2.10.2000; s. 2 not in force at Royal Assent see s. 14(2); s. 2(2)(a)-(c) in force (1.9.2000) in so far as it relates to s. 3 by S.I. 2000/2337, **art. 2(1)(a)**; s. 2 in force at 2.10.2000 in so far as not already in force by S.I. 2000/2337, **art. 2(2)**

VALID FROM 01/04/2002

[F6 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

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(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.**]**

Textual Amendments

F6 S. 2A inserted (1.4.2002) by 2000 c. 14, **s. 95(1)**; S.I. 2002/1493, **art. 3**; S.I. 2002/920, **art. 3(3)(c)** (with Schs. 1-3)

[F7 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.

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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 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 [M1]Government of Wales Act 1998;

(iii) section 81 of the [M2]Children Act 1989;

(iv) section 84 of the [M3]National Health Service Act 1977;

(v) section 7C of the [M4]Local Authority Social Services Act 1970;

(b) an inquiry to which the [M5]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.**]**

Textual Amendments

F7 S. 2B inserted (15.9.2000 for certain purposes only and 2.10.2000 otherwise) by 2000 c. 14, **s. 96(1)**; S.I. 2000/2544, **art. 2(1)(a)(2)(c)**

Modifications etc. (not altering text)

C2 S. 2B applied (with modifications) (26.7.2004) by 2000 c. 14, **ss. 92(2)-(4)**, 122; S.I. 2004/1757, **art. 2(b)**

Marginal Citations

M1 1998 c. 38.

M2 1989 c. 41.

M3 1977 c. 49.

M4 1970 c. 42.

M5 1921 c. 7.

Status: *Point in time view as at 02/10/2000. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 26/07/2004

[F8 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.**]**

Textual Amendments

F8 S. 2C inserted (26.7.2004) by 2000 c. 14, **ss. 97(1)**, 122; S.I. 2004/1757, **art. 2(b)**

VALID FROM 01/04/2001

[F9 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 M6 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—

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"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 [M7]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.**]**

Textual Amendments

F9 S. 2D inserted (1.4.2001 for E. and 1.7.2001 for W.) by 2000 c. 14, **s. 98(1)**; S.I. 2001/1193, **art. 2(2)**; S.I. 2001/2354, **art. 2**

Marginal Citations

M6 1989 c. 41.

M7 1989 c. 41.

3 Inclusion in list on transfer from Consultancy Service Index.

(1) **[**[F10]Subsections (2) and (3) below**]**applies where—

(a) an individual is included in the Consultancy Service Index (otherwise than provisionally) immediately before the commencement of **[**[F11]section 1 above**]**;

(b) he was so included on a reference made to the Secretary of State by an organisation; and

(c) any of the conditions mentioned in section 2(2)(a) to (c) above, or the condition mentioned in section 2(3) above, was fulfilled in relation to that reference.

(2) If it appears from the information submitted with the reference that it may be appropriate for the individual to be included in the list kept by the Secretary of State under section 1 above, the Secretary of State shall—

(a) invite observations from the individual on the information submitted with the reference and, if he thinks fit, on any observations submitted under paragraph (b) below; and

(b) invite observations from the organisation on any observations on the information submitted with the reference and, if he thinks fit, on any other observations under paragraph (a) above.

(3) The Secretary of State shall include the individual in the list kept by him under section 1 above if, after he has considered the information submitted with the reference, any observations submitted to him and any other information which he considers relevant, he is of the opinion—

(a) that the organisation reasonably considered the individual to be 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) that the individual is unsuitable to work with children.

[[F12](4) Subsections (5) and (6) below apply where—

(a) a relevant inquiry has been held;

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(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.**]**

Textual Amendments

F10 Words in s. 3(1) substituted (15.9.2000) by 2000 c. 14, **s. 99(2)**; S.I. 2000/2544, **art. 2(1)(b)**

F11 Words in s. 3(1)(a) substituted (15.9.2000) by 2000 c. 14, **s. 99(2)**; S.I. 2000/2544, **art. 2(1)(b)**

F12 S. 3(4)-(7) inserted (15.9.2000) by 2000 c. 14, **s. 99(3)**; S.I. 2000/2544, **art. 2(1)(b)**

Commencement Information

I2 S. 3 wholly in force at 2.10.2000; s. 3 not in force at Royal Assent see s. 14(2); s. 3(1)(2) in force (5.6.2000) by S.I. 2000/1459, **art. 2**; s. 3(3) in force (1.9.2000) for certain purposes by S.I. 2000/2337, **art. 2(1)(b)**; s. 3 in force at 2.10.2000 in so far as not already in force by S.I. 2000/2337, **art. 2(2)**

4 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 1 above may appeal to the Tribunal against—

(a) the decision to include him in the list; or

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(b) with the leave of the Tribunal, any decision of the Secretary of State not to remove him from the list under section 1(3) above.

(2) Subject to subsection (5) below, 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 1 above 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 a child or placed a child at risk of harm; and

(b) that the individual is unsuitable to work with children,

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 a child or placed a child at risk of harm, 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) above 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) above, 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 11/01/2001

[F13 4A Applications for removal from list.

(1) Subject to section 4B below, an individual who is included in the list kept by the Secretary of State under section 1 above 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 children it shall direct his removal from the list; otherwise it shall dismiss the application.**]**

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Textual Amendments

F13 Ss. 4A-4C inserted (11.1.2001) by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 155**; S.I. 2000/3302, **art. 2(b)**

VALID FROM 11/01/2001

[4B F14Conditions for application under section 4A.

(1) An individual may only make an application under section 4A above 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.**]**

Textual Amendments

F14 Ss. 4A-4C inserted (11.1.2001) by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 155**; S.I. 2000/3302, **art. 2(b)**

VALID FROM 11/01/2001

[4C F15Restoration to list.

(1) If it appears to a chief officer of police or a director of social services of a local authority that the conditions set out in subsection (2) below are satisfied in the case of an individual, the chief officer or (as the case may be) the director may apply to the High Court for an order under this section 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 Secretary of State under section 1 above, and

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(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 section is necessary to protect children in general, or any children in particular, from serious harm from him.

(3) An application under this section 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 subsection (2) above 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 section, section 4B above has effect with the following modifications—

(a) in subsection (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 section was made,

(b) subsections (3)(a) and (4)(a) are to have effect as if at the end there were inserted "beginning with the making of the order under section 4C below",

(c) in subsection (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 section was made.

(6) For the purposes of this section an individual is no longer included in the list if a direction under section 4A(3) above has been given in respect of him and his inclusion in the list is not restored by virtue of an order under this section.

(7) In this section, "local authority" has the same meaning as in the [M8]Education Act 1996.**]**

Textual Amendments

F15 Ss. 4A-4C inserted (11.1.2001) by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 155**; S.I. 2000/3302, **art. 2(b)**

Marginal Citations

M8 1996 c. 56.

Department for Education and Employment list

5 Additional grounds for prohibiting or restricting employment.

(1) In subsection (6) of section 218 (provision for prohibiting or restricting employment of teachers etc.) of the Education Reform Act 1988 ("the 1988 Act"), for the words from "on medical grounds" to the end there shall be substituted the words " on the grounds mentioned in subsection (6ZA) below ".

(2) After that subsection there shall be inserted the following subsection—

"(6ZA) The grounds are—

(a) medical grounds;

(b) the grounds of misconduct;

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(c) the grounds that the persons concerned are not fit and proper persons to be employed as teachers or in such work as is mentioned in subsection (5)(c) above;

(d) the grounds that the persons concerned are included (otherwise than provisionally) in the list kept by the Secretary of State under section 1 of the Protection of Children Act 1999 (list of individuals considered unsuitable to work with children); and

(e) as respects employment or further employment as teachers, educational grounds."

(3) In subsection (6A) of that section, for the words "on medical grounds, or in cases of misconduct," there shall be substituted the words " on the grounds mentioned in subsection (6ZA)(a) to (d) above ".

(4) In section 15 of the [M9]Teaching and Higher Education Act 1998 (supply of information relating to the dismissal or resignation of teachers), after the words "on the grounds of misconduct or incompetence" there shall be inserted the words " , on the grounds mentioned in section 218(6ZA)(c) of that Act ".

Marginal Citations

M9 1998 c.30.

6 Appeals against prohibition or restriction of employment.

(1) The power to make regulations under subsection (6) of section 218 of the 1988 Act includes power to provide that a person may appeal to the Tribunal against—

(a) a decision to prohibit or restrict the person's employment or further employment on the grounds mentioned in subsection (6ZA)(a) to (d) of that section; or

(b) a decision not to revoke or vary such a decision as is mentioned in paragraph (a) above.

(2) Regulations made by virtue of this section may make provision as to the circumstances in which the Tribunal shall allow an appeal under the regulations and as to the powers available to it on allowing such an appeal.

(3) Such regulations may provide that, where a person has been convicted of an offence involving misconduct, no finding of fact on which the conviction must be taken to have been based shall be challenged on an appeal under the regulations.

General

7 Effect of inclusion in either list.

[[F16](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—

(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

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(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 [M10]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.**]**

[[F17](1A) Where a child care organisation discovers that an individual employed by it in a child care position is included in any of the lists mentioned in subsection (1) above, it shall cease to employ him in a child care position.

For the purposes of this subsection an individual is not employed in a child care position if he has been suspended or provisionally transferred to a position which is not a child care position.**]**

(2) Where a child care organisation proposes to offer employment in a child care position to an individual who has been supplied by an organisation which carries on an employment agency **[**[F18]or an employment business**]**, or an agency for the supply of nurses, there is a sufficient compliance with subsection (1) above if the child care organisation—

(a) satisfies itself that, on a date within the last 12 months, the other organisation ascertained whether the individual was included in **[**[F19]any of the lists mentioned in subsection (1) above**]**;

(b) obtains written confirmation of the facts as ascertained by that organisation; and

(c) if the individual was included in **[**[F20]any of those lists**]** on that date, does not offer him employment in a child care position.

(3) It is immaterial for the purposes of subsection (1) or (2) above whether the individual is already employed by the child care organisation.

[[F21](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 [M11]Education Act 1996.**]**

Textual Amendments

F16 S. 7(1) substituted (2.10.2000) by 2000 c. 14, **s. 101(2)**; S.I. 2000/2544, **art. 2(2)(e)**

F17 S. 7(1A) inserted (2.10.2000) by 2000 c. 14, s. 116, **Sch. 4 para. 26(2)(a)**; S.I. 2000/2544, **art. 2(2)(g)**

F18 Words in s. 7(2) inserted (2.10.2000) by 2000 c. 14, s. 116, **Sch. 4 para. 26(2)(b)**; S.I. 2000/2544, **art. 2(2)(e)**

F19 Words in s. 7(2)(a) substituted (2.10.2000) by 2000 c. 14, **s. 101(3)(a)**; S.I. 2000/2544, **art. 2(2)(e)**

F20 Words in s. 7(2)(c) substituted (2.10.2000) by 2000 c. 14, **s. 101(3)(b)**; S.I. 2000/2544, **art. 2(2)(e)**

F21 S. 7(4) substituted (2.10.2000) by 2000 c. 14, **s. 101(4)**; S.I. 2000/2544, **art. 2(2)(e)**

Marginal Citations

M10 1996 c. 56.

M11 1996 c. 56.

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VALID FROM 12/03/2002

8 Searches of both lists under Part V of Police Act 1997.

(1) After subsection (3) of section 113 of the [M12]Police Act 1997 (criminal record certificates) there shall be inserted the following subsections—

"(3A) 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 for a position (whether paid or unpaid) within subsection (3B), the criminal record certificate shall also state—

(a) whether the applicant is included in the list kept under section 1 of the Protection of Children Act 1999, or the list kept for the purposes of regulations made under section 218(6) of the [M13]Education Reform Act 1988; and

(b) if he is included in either list, such details of his inclusion as may be prescribed, including (in the case of the latter list) the grounds on which he is so included.

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

(a) a child care position within the meaning of the Protection of Children Act 1999;

(b) a position employment or further employment in which may be prohibited or restricted by regulations made under subsection (6) of section 218 of the [M14]Education Reform Act 1988;

(c) a position such that the holder's access to persons aged under 19 may be prohibited or restricted by regulations under subsection (6A) of that section; or

(d) a position of such other description as may be prescribed;

and the reference to employment or further employment in paragraph (b) shall be construed in accordance with subsection (13) of that section."

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

"(6A) 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 for a position (whether paid or unpaid) falling within subsection (3B) of section 113, the enhanced criminal record certificate shall also state—

(a) whether the applicant is included in the list kept under section 1 of the Protection of Children Act 1999, or the list kept for the purposes of regulations made under section 218(6) of the Education Reform Act 1988; and

(b) if he is included in either list, such details of his inclusion as may be prescribed, including (in the case of the latter list) the grounds on which he is so included."

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Commencement Information

I3 S. 8 partly in force; s. 8 not in force at Royal Assent see s. 14(2); s. 8 in force at 12.3.2002 for E.W. by S.I. 2002/1436, **art. 2**

Marginal Citations

M12 1997 c.50.
M13 1988 c.40.
M14 1988 c.40.

9 The Tribunal.

(1) There shall be a tribunal ("the Tribunal") which shall exercise the jurisdiction conferred on it by section 4 and regulations made under section 6 above.

(2) The Secretary of State may by regulations make provision about the proceedings of the Tribunal on an appeal or determination under section 4 or regulations made under section 6 above.

(3) The regulations may, in particular, include provision—

(a) as to the manner in which appeals are to be instituted or applications for determinations are to be made;
(b) as to the period within which appeals are to be instituted;
(c) as to the circumstances in which applications for leave may be made;
(d) for enabling any functions which relate to applications for leave or other matters preliminary or incidental to an appeal or determination to be performed by the President, or by the chairman;
(e) for the holding of hearings in private in prescribed circumstances;
(f) for imposing reporting restrictions in prescribed circumstances;
(g) as to the persons who may appear on behalf of the parties;
(h) for granting any person such discovery or inspection of documents or right to further particulars as might be granted by a county court;
(i) for obtaining a medical report in a case where the decision appealed against was made on medical grounds;
(j) for requiring persons to attend to give evidence and produce documents;
(k) for authorising the administration of oaths to witnesses;
(l) for the determination of appeals or issues or applications for leave without a hearing in prescribed circumstances;
(m) as to the withdrawal of appeals or applications for determinations;
(n) for the award of costs or expenses;
(o) for taxing or otherwise settling any such costs or expenses (and, in particular, for enabling such costs to be taxed in the county court);
(p) for the recording and proof of decisions and orders of the Tribunal;
(q) for enabling the Tribunal to review its decisions, or revoke or vary its orders, in such circumstances as may be determined in accordance with the regulations; and
(r) for notification of the result of an appeal or determination to be given to such persons as may be prescribed.

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(4) Part I of the [M15]Arbitration Act 1996 shall not apply to any proceedings before the Tribunal but regulations may make provision corresponding to any provision of that Act.

(5) Any person who without reasonable excuse fails to comply with—

(a) any requirement imposed by the regulations by virtue of subsection (3)(f) above;

(b) any requirement in respect of the discovery or inspection of documents imposed by the regulations by virtue of subsection (3)(h) above; or

(c) any requirement imposed by the regulations by virtue of subsection (3)(j) above,

is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) An appeal shall lie to the High Court on a point of law from a decision of the Tribunal.

(7) The Schedule to this Act shall have effect with respect to the Tribunal.

Extent Information

E2 S. 9, Sch. extend to the United Kingdom from 11.1.2001 as a consequence of the amendment to s. 14 by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 159**; S.I. 2000/3302, **art. 2(b)**

Commencement Information

I4 S. 9 wholly in force at 2.10.2000: s. 9 not in force at Royal Assent see s. 14(2); s. 9 in force (1.9.2000) for the purpose only of making regulations by S.I. 2000/2337, **art. 2(1)(e)**; s. 9 in force at 2.10.2000 in so far as not already in force by S.I. 2000/2337, **art. 2(2)**

Marginal Citations

M15 1996 c.23.

Supplemental

PROSPECTIVE

[F22]10 . . . . . .

Textual Amendments

F22 S. 10 repealed (2.10.2000) by 2000 c. 14, s. 117(2), **Sch. 6**; S.I. 2000/2544, **art. 2(2)(h)**

11 Financial provisions.

There shall be paid out of money provided by Parliament—

(a) any expenditure incurred by the Secretary of State under or by virtue of this Act;

(b) any increase attributable to this Act in the sums payable out of money so provided under any other Act.

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12 Interpretation.

(1) In this Act—

"the 1988 Act" means the [M16]Education Reform Act 1988;

"agency for the supply of nurses" has the same meaning as in the [M17]Nurses Agencies Act 1957;

"child" means a person aged under 18;

"child care organisation" means an organisation—

(a) which is concerned with the provision of accommodation, social services or health care services to children or the supervision of children;

(b) whose activities are regulated by or by virtue of any prescribed enactment; and

(c) which fulfils such other conditions as may be prescribed;

"child care position" means a position which—

(a) is concerned with the provision of accommodation, social services or health care services to children or the supervision of children;

(b) is such as to enable the holder to have regular contact with children in the course of his duties; and

(c) is not a position within subsection (3) below;

"the Consultancy Service Index" means the list kept under that name by the Secretary of State;

"employment"—

(a) means any employment, whether paid or unpaid and whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract; and

(b) includes an office established by or by virtue of a prescribed enactment,

and references to an individual being employed shall be construed accordingly;

"employment agency" **[**[F23]and "employment business" have the same meanings**]** as in the [M18]Employment Agencies Act 1973;

"harm" has the same meaning as in section 31 of the [M19]Children Act 1989;

[[F24]"local authority" has the same meaning as in the Children Act 1989;**]**

"mental impairment" means a state of arrested or incomplete development of mind which includes a significant impairment of intelligence and social functioning;

"organisation" means a body corporate or unincorporate or an individual who employs others in the course of a business;

"prescribed" means prescribed by regulations made by the Secretary of State;

"the Tribunal" means the tribunal established under section 9 above.

(2) Where part of an organisation fulfils the condition in paragraph (b) of the above definition of "child care organisation" and part of it does not, this Act shall have effect as if the two parts were separate organisations.

(3) A position is within this subsection if—

(a) employment or further employment in it may be prohibited or restricted by regulations made under section 218(6) of the 1988 Act; and

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(b) it is not a position at an independent school which is a children's home for the purposes of Part VIII of the Children Act 1989.

[F25(3A) For the purposes of this Act, an individual is made redundant if—

(a) he is dismissed; and

(b) for the purposes of the Employment Rights Act 1996 the dismissal is by reason of redundancy.]

(4) Regulations under this Act shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F23 S. 12(1): words in definition of 'employment agency' substituted (2.10.2000) by 2000 c. 14, s. 116, **Sch. 4 para. 26(4)(a)(i)**; S.I. 2000/2544, **art. 2(2)(g)**

F24 S. 12(1): definition of 'local authority' inserted (2.10.2000) by 2000 c. 14, s. 116, **Sch. 4 para. 26(4)(a)(ii)**; S.I. 2000/2544, **art. 2(2)(g)**

F25 S. 12(3A) inserted (2.10.2000) by 2000 c. 14, s. 116, **Sch. 4 para. 26(4)(b)**; S.I. 2000/2544, **art. 2(2)(g)**

Marginal Citations

M16 1988 c.40.

M17 1957 c.16.

M18 1973 c.35.

M19 1989 c.41.

13 Transitional provisions.

(1) Where—

(a) an individual who is or has been employed in a child care position has been referred by an organisation to the Secretary of State for inclusion in the Consultancy Service Index;

(b) the reference has not been determined at the commencement of section 2 above; and

(c) any of the conditions mentioned in subsection (2), or the condition mentioned in subsection (3), of that section was fulfilled in relation to the reference,

that section shall apply as if the reference had been a reference made by the organisation under subsection (1) of that section.

(2) For the purposes of subsection (1) above, a reference of an individual for inclusion in that Index is determined only when, following the reference—

(a) the individual is included (otherwise than provisionally) in the Index; or

(b) the Secretary of State determines that he should not be included in it.

F26(3) . . . . . .

F26(4) . . . . . .

Textual Amendments

F26 S. 13(3)(4) repealed (2.10.2000) by 2000 c. 14, s. 117(2), **Sch. 6**; S.I. 2000/2544, **art. 2(2)(h)**

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14 Short title, commencement and extent.

(1) This Act may be cited as the Protection of Children Act 1999.

(2) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed for different purposes.

(3) This Act, except section 8 and this section, extends to England and Wales only.

(4) Section 8 above and this section extend to Northern Ireland.

Subordinate Legislation Made

P1 Power partly exercised (26.5.2000): 5.6.2000 appointed for specific provisions by S.I. 2000/1459, **art. 2**; power partly exercised (31.8.2000): 1.9.2000 & 2.10.2000 appointed for specific provisions by S.I. 2000/2337, **art. 2(1)(2)**

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SCHEDULE

THE TRIBUNAL

Extent Information

E4 S. 9, Sch. extend to the United Kingdom from 11.1.2001 as a consequence of the amendment to s. 14 by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 159**; S.I. 2000/3302, **art. 2(b)**

Constitution of Tribunal

1 (1) There shall be appointed—

(a) a President of the Tribunal ("the President");

(b) a panel of persons ("the chairmen's panel") who may serve as chairmen of the Tribunal; and

(c) a panel of persons ("the lay panel") who may serve as the other two members of the Tribunal apart from the chairman.

(2) The Tribunal shall consist of—

(a) a chairman nominated by the President from the chairmen's panel; and

(b) two other persons nominated by the President from the lay panel.

Extent Information

E5 S. 9, Sch. extend to the United Kingdom from 11.1.2001 as a consequence of the amendment to s. 14 by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 159**; S.I. 2000/3302, **art. 2(b)**

Appointment of President and members of the panels

2 (1) The President and the members of the chairmen's panel shall each be appointed by the Lord Chancellor.

(2) No person may be appointed President or member of the chairmen's panel unless he has a seven year general qualification (within the meaning of section 71 of the [M20]Courts and Legal Services Act 1990).

(3) The members of the lay panel shall each be appointed by the Lord Chancellor after consultation with the Secretary of State.

(4) No person may be appointed member of the lay panel unless he satisfies such requirements as may be prescribed.

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Extent Information

E6 S. 9, Sch. extend to the United Kingdom from 11.1.2001 as a consequence of the amendment to s. 14 by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 159**; S.I. 2000/3302, **art. 2(b)**

Marginal Citations

M20 1990 c.41.

Tenure of office

3 (1) The President and each member of the chairmen's panel or lay panel shall hold and vacate office under the terms of the instrument under which he is appointed.

(2) The President or a member of the chairmen's panel or lay panel—

(a) may resign office by notice in writing to the Lord Chancellor; and

(b) is eligible for re-appointment if he ceases to hold office.

Extent Information

E7 S. 9, Sch. extend to the United Kingdom from 11.1.2001 as a consequence of the amendment to s. 14 by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 159**; S.I. 2000/3302, **art. 2(b)**

Meetings and training

4 The President shall arrange such meetings for the members of the chairmen's and lay panels, and such training for them, as he considers appropriate.

Extent Information

E8 S. 9, Sch. extend to the United Kingdom from 11.1.2001 as a consequence of the amendment to s. 14 by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 159**; S.I. 2000/3302, **art. 2(b)**

Staff and accommodation

5 The Secretary of State may, with the consent of the Treasury, provide such staff and accommodation as the Tribunal may require.

Extent Information

E9 S. 9, Sch. extend to the United Kingdom from 11.1.2001 as a consequence of the amendment to s. 14 by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 159**; S.I. 2000/3302, **art. 2(b)**

Remuneration and expenses

6 (1) The Secretary of State may pay to the President, and to any other person in respect of his service as a member of the Tribunal, such remuneration and allowances as the Secretary of State may, with the consent of the Treasury, determine.

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(2) The Secretary of State may defray the expenses of the Tribunal to such amount as he may, with the consent of the Treasury, determine.

Extent Information

E10 S. 9, Sch. extend to the United Kingdom from 11.1.2001 as a consequence of the amendment to s. 14 by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 159**; S.I. 2000/3302, **art. 2(b)**

Attendance allowances

7 The Secretary of State may pay such allowances for the purpose of or in connection with the attendance of persons at the Tribunal as he may, with the consent of the Treasury, determine.

Extent Information

E11 S. 9, Sch. extend to the United Kingdom from 11.1.2001 as a consequence of the amendment to s. 14 by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 159**; S.I. 2000/3302, **art. 2(b)**

Council on Tribunals

8 In Schedule 1 to the [M21]Tribunals and Inquiries Act 1992 (tribunals under the supervision of the Council on Tribunals), after paragraph 36 there shall be inserted—

Protection of children

"36A The tribunal constituted under section 9 of the Protection of Children Act 1999."

Extent Information

E12 S. 9, Sch. extend to the United Kingdom from 11.1.2001 as a consequence of the amendment to s. 14 by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 159**; S.I. 2000/3302, **art. 2(b)**

Marginal Citations

M21 1992 c.53.

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