



# Protection of Children Act 1999

## 1999 CHAPTER 14

### *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.
- (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**

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  - (a) he has been referred to the Secretary of State under section 2 below; or
  - <sup>F16</sup>(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**

**F16** 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)

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## **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 [<sup>F1</sup>, 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 [<sup>F1</sup>, 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;
  - (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—

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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) 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 [<sup>F2</sup>, 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 [<sup>F2</sup>, 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) [<sup>F3</sup>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—
- [<sup>F4</sup>(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; ”]and
  - (b) subsections (2), (3), (6)(b) and (8) were omitted.
- [<sup>F5</sup>(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

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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

- II** 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

#### [<sup>F6</sup>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.]

#### 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)

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## **[<sup>F7</sup>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>M1</sup>Government of Wales Act 1998;
    - (iii) section 81 of the <sup>M2</sup>Children Act 1989;
    - (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;

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- (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)

**C1** 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.

VALID FROM 26/07/2004

#### [<sup>F8</sup>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.

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- (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

#### [<sup>F9</sup>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>M6</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>M7</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.]

#### 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) [<sup>F10</sup>Subsections (2) and (3) below]applies where—
- an individual is included in the Consultancy Service Index (otherwise than provisionally) immediately before the commencement of [<sup>F11</sup>section 1 above];
  - he was so included on a reference made to the Secretary of State by an organisation; and

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- (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.
- [<sup>F12</sup>(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



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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
  - (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—

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- (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.

**[<sup>F13</sup>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.]

**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)**

**[4B <sup>F14</sup>Conditions 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.]

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#### 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)**

#### [4C <sup>F15</sup>Restoration 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
  - (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 <sup>M8</sup>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.

**Status:**

Point in time view as at 11/01/2001. This version of this cross heading contains provisions that are not valid for this point in time.

**Changes to legislation:**

Protection of Children Act 1999, Cross Heading: Department of Health list is up to date with all changes known to be in force on or before 19 October 2023. 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.