



# Protection of Children Act 1999

## 1999 CHAPTER 14

### *General*

#### **7 Effect of inclusion in either list.**

[<sup>F1</sup>(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) <sup>F2</sup>.....

(iii) <sup>F2</sup>.....

(b) if he is included in [<sup>F3</sup>that list], shall not offer him employment in such a position.]

[<sup>F4</sup>(c) shall ascertain whether he is subject to a direction under section 142 of the Education Act 2002, given on the grounds that he is unsuitable to work with children; and

(d) if he is subject to a direction under that section given on those grounds, shall not offer him employment in a child care position]

[<sup>F5</sup>(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 <sup>M1</sup>Children Act 1989 (direct payments) in respect of his securing the provision of the care,

the authority shall, if the recipient asks it to do so, ascertain whether the individual is included in any of the lists mentioned in subsection (1) above.]

[<sup>F6</sup>(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.

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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 [<sup>F7</sup>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 [<sup>F8</sup>the list kept under section 1 above or subject to a direction under section 142 of the Education Act 2002, given on the grounds that he is unsuitable to work with children];
  - (b) obtains written confirmation of the facts as ascertained by that organisation;  
<sup>F9</sup> ...
  - (c) if the individual was included in [<sup>F10</sup>the list kept under section 1 above] on that date, does not offer him employment in a child care position [<sup>F11</sup>; and
  - (d) if the individual was subject to a direction under section 142 of the Education Act 2002, given on the grounds that he is unsuitable to work with children, does not offer him employment in a child care position]
- [<sup>F12</sup>(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.]
- (3) It is immaterial for the purposes of subsection (1) or (2) above whether the individual is already employed by the child care organisation.
- [<sup>F13</sup>(3A) This section does not apply in relation to an offer of relevant NHS employment if each of the following paragraphs applies in respect of the individual to whom the offer is made—
- (a) at the time the offer is made he is employed by an NHS body;
  - (b) that NHS body has ascertained that he is not included in the list kept under section 1 above or (during the period that he is employed by that body) another NHS body or an employment agency or employment business has ascertained that he is not included in the list;
  - (c) subsection (1A) (inserted by paragraph 26(2) of Schedule 4 to the Care Standards Act 2000) does not apply to him;
  - (d) he accepts the offer and for so long as he is employed in the employment to which the offer relates paragraph (c) applies.
- (3B) Relevant NHS employment is employment in a child care position with an NHS body.
- (3C) Each of the following is an NHS body—
- (a) a National Health Service trust;
  - (b) a Strategic Health Authority;
  - (c) an NHS foundation trust;

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- (d) a Health Authority;
- (e) a Local Health Board;
- (f) a Special Health Authority;
- (g) a Primary Care Trust.]

(4) <sup>F14</sup> .....

#### Textual Amendments

- F1** S. 7(1) substituted (2.10.2000) by 2000 c. 14, s. 101(2); S.I. 2000/2544, art. 2(2)(e)
- F2** S. 7(1)(a)(ii)(iii) repealed (31.3.2003 for W. and 1.6.2003 for E.) by 2002 c. 32, ss. 215, 216, Sch. 21 para. 121(2)(a), **Sch. 22 Pt. 3** (with ss. 210(8), 214(4)); S.I. 2002/3185, art. 5, **Sch. Pt. 2**; S.I. 2003/1115, art. 3
- F3** Words in s. 7(1)(b) substituted (31.3.2003 for W. and 1.6.2003 for E.) by 2002 c. 32, ss. 215(1), 216, **Sch. 21 para. 121(2)(b)** (with ss. 210(8), 214(4)); S.I. 2002/3185, art. 5, **Sch. Pt. 2**; S.I. 2003/1115, art. 3
- F4** S. 7(1)(c)(d) inserted (31.3.2003 for W. and 1.6.2003 for E.) by 2002 c. 32, ss. 215(1), 216, **Sch. 21 para. 121(2)(c)** (with ss. 210(8), 214(4)); S.I. 2002/3185, art. 5, **Sch. Pt. 2**; S.I. 2003/1115, art. 3
- F5** S. 7(1A) inserted (1.4.2001 for E. and 1.7.2001 for W.) by 2000 c. 14, s. 98(2); S.I. 2001/1193, art. 2(2); S.I. 2001/2354, art. 2
- F6** 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)
- F7** 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)
- F8** Words in s. 7(2)(a) substituted (31.3.2003 for W. and 1.6.2003 for E.) by 2002 c. 32, ss. 215(1), 216, **Sch. 21 para. 121(3)(a)** (with ss. 210(8), 214(4)); S.I. 2002/3185, art. 5, **Sch. Pt. 2**; S.I. 2003/1115, art. 3
- F9** Word in s. 7(2) repealed (31.3.2003 for W. and 1.6.2003 for E.) by 2002 c. 32, ss. 215, 216, Sch. 21 para. 121(3)(b), **Sch. 22 Pt. 3** (with ss. 210(8), 214(4)); S.I. 2002/3185, art. 5, **Sch. Pt. 2**; S.I. 2003/1115, art. 3
- F10** Words in s. 7(2)(c) substituted (31.3.2003 for W. and 1.6.2003 for E.) by 2002 c. 32, ss. 215(1), 216, **Sch. 21 para. 121(3)(c)** (with ss. 210(8), 214(4)); S.I. 2002/3185, art. 5, **Sch. Pt. 2**; S.I. 2003/1115, art. 3
- F11** S. 7(2)(d) and word inserted (31.3.2003 for W. and 1.6.2003 for E.) by 2002 c. 32, ss. 215(1), 216, **Sch. 21 para. 121(3)(d)** (with ss. 210(8), 214(4)); S.I. 2002/3185, art. 5, **Sch. Pt. 2**; S.I. 2003/1115, art. 3
- F12** S. 7(2A) inserted (1.4.2001 for E. and 1.7.2001 for W.) by 2000 c. 14, s. 98(3); S.I. 2001/1193, art. 2(2); S.I. 2001/2354, art. 2
- F13** S. 7(3A)-(3C) inserted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 189(1), 199(1)(4); S.I. 2004/759, art. 11
- F14** S. 7(4) repealed (31.3.2003 for W. and 1.6.2003 for E.) by 2002 c. 32, ss. 215, 216, Sch. 21 para. 121(4), **Sch. 22 Pt. 3** (with ss. 210(8), 214(4)); S.I. 2002/3185, art. 5, **Sch. Pt. 2**; S.I. 2003/1115, art. 3

#### Marginal Citations

- M1** 1989 c. 41.

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

(1) After subsection (3) of section 113 of the <sup>M2</sup>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

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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 <sup>M3</sup>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 <sup>M4</sup>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.”

#### Commencement Information

**I1** 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

**M2** 1997 c.50.  
**M3** 1988 c.40.  
**M4** 1988 c.40.

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## 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
  - <sup>F15</sup>(a) on an appeal or determination under section 4 <sup>F16</sup>, 4A or 4B] above;
  - <sup>F17</sup>(b) [ on an appeal, application for leave or review under section 144 of the Education Act 2002;]
  - (c) on an appeal under section 65A of the <sup>M5</sup>Children Act 1989 or under, or by virtue of, Part XA of that Act;
  - <sup>F18</sup>(ca) [ on an appeal under paragraph 10(1A) of Schedule 26 to the School Standards and Framework Act 1998;]
  - (d) on an appeal or determination under section 21, 68, 86, 87 or 88 of the Care Standards Act 2000;]<sup>F19</sup><sup>F20</sup> ...
  - (e) on a determination under section 32 or 33 of the Criminal Justice and Court Services Act 2000;]<sup>F21</sup>or
  - (f) on an appeal under section 166 of the Education Act 2002;]
- (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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- [<sup>F22</sup>(3A) The regulations may also include provision for enabling the Tribunal to make investigations for the purposes of a determination under section 87 or 88 of the Care Standards Act 2000; and the provision that may be made by virtue of subsection (3) (j) and (k) above includes provision in relation to such investigations.
- (3B) Regulations under this section may make different provision for different cases or classes of case.
- (3C) Before making in regulations under this section provision such as is mentioned in subsection (2)(c) or (d) above, the Secretary of State shall consult the National Assembly for Wales.]
- (4) Part I of the <sup>M6</sup>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

- 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)**

#### Textual Amendments

- F15** S. 9(2)(a)-(d) substituted for words (1.4.2002 for specified purposes, 4.3.2003 for W. for specified purposes, 7.3.2003 for E. for specified purposes and 26.7.2004 in so far as not already in force) by 2000 c. 14, ss. 116, 122, **Sch. 4 para. 26(3)(a)**; S.I. 2001/3852, **art. 3(7)(i)** (subject to Sch. 1 (as amended (27.3.2002) by S.I. 2002/1493, **art. 5** and (31.5.2002) by S.I. 2002/1790, **art. 2** and (29.7.2002) by S.I. 2002/2001, **arts. 2(3), 3**); S.I. 2003/501, **art. 2(1)**; S.I. 2003/933, **art. 2(1)(c)**; S.I. 2004/1757, **art. 2(c)**
- F16** Words in s. 9(2)(a) inserted (11.1.2001) by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 157(a)**; S.I. 2000/3302, **art. 2(b)**
- F17** S. 9(2)(b) substituted (31.3.2003 for W. and 1.6.2003 in so far as not already in force) by 2002 c. 32, ss. 215(1), 216, **Sch. 21 para. 122(a)** (with ss. 210(8), 214(4)); S.I. 2002/3185, **art. 5**, **Sch. Pt. 2**; S.I. 2003/1115, **art. 3**
- F18** S. 9(2)(ca) substituted (1.10.2002 except in relation to W. and 1.9.2004 in so far as not already in force) by 2002 c. 32, ss. 155, 216, **Sch. 14 para. 6** (with ss. 210(8), 214(4)); S.I. 2002/2439, **art. 3**; S.I. 2004/1728, **art. 5**, **Sch. Pt. 2**
- F19** Word in s. 9(2)(d) repealed (31.3.2003 for W. and 1.6.2003 in so far as not already in force) by 2002 c. 32, ss. 215(2), 216, **Sch. 22 Pt. 3** (with ss. 210(8), 214(4)); S.I. 2002/3185, **art. 5**, **Sch. Pt. 2**; S.I. 2003/1115, **art. 3**

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- F20** S. 9(2)(e) and word inserted (11.1.2001) by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 157(d)**; S.I. 2000/3302, **art. 2(b)**
- F21** S 9(2)(f) and word inserted (1.1.2004 for W. and 1.6.2003 in so far as not already in force) by 2002 c. 32, s. 216(4), **Sch. 21 para. 122(b)** (with s. 210(8), 214(4); S.I. 2003/1115, **art. 3**; S.I. 2003/2961, **art. 6**, **Sch. Pt. 3**)
- F22** S. 9(3A)-(3C) inserted (1.4.2002 for specified purposes, 7.3.2003 for E. for specified purposes and 26.7.2004 in so far as not already in force) by 2000 c. 14, ss. 116, 122, **Sch. 4 para. 26(3)(b)**; S.I. 2001/3852, **art. 3(7)(i)** (subject to **Sch. 1** (as amended (27.3.2002) by S.I. 2002/1493, **art. 5** and (31.5.2002) by S.I. 2002/1790, **art. 2** and (29.7.2002) by S.I. 2002/2001, **arts. 2(3), 3**); S.I. 2003/933, **art. 2(1)(c)**; S.I. 2004/1757, **art. 2(c)**)

#### Commencement Information

- I2** 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

- M5** 1989 c. 41.  
**M6** 1996 c.23.

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