

# CARE STANDARDS ACT 2000

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part VII: Protection of Children and Vulnerable Adults

##### The List kept under Section 1 of the 1999 Act

248. *Sections 94 to 104* make necessary amendments to PoCA.

##### *Section 94 Employment agencies and businesses*

249. This section inserts a new section into PoCA to modify the application of that Act to employment businesses.

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

250. *Section 95* provides analogous powers to section 84 by amending PoCA to allow the Commission, the Assembly and Her Majesty's Chief Inspector of Schools in England to refer child care workers to the Secretary of State. This power would be used when these bodies, in the course of their duties, come across child care workers who they consider to be guilty of misconduct which has harmed, or risked harm to children and who have not been referred to the Secretary of State by their employers. This misconduct need not necessarily be committed in the course of their employment. This power would be used, for example, in cases where employers, for whatever reason, had not fulfilled their responsibilities under PoCA, to refer workers guilty of misconduct to the Secretary of State.

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

251. This section is exactly analogous to section 85. It amends section 2A of PoCA and provides for the Secretary of State to be able to consider for inclusion on the list, individuals who have been named in the findings of certain inquiries. It also describes the process that the Secretary of State must use to determine whether a person so named should be included on the list. If it appears to the Secretary of State that the person who held the inquiry found that the individual was guilty of relevant misconduct while in a child care position and that the individual is unsuitable to work with children then the person will be provisionally included in the List. The Secretary of State will invite observations from the individual on the report, so far as it relates to him, and from the employer of the individual at the time the misconduct took place. If he feels it is appropriate, the Secretary of State will invite each to comment on the other party's observations. The Secretary of State will come to a decision once all the relevant information has been received.

252. *Subsection (6)* defines "relevant employer" and "relevant misconduct". *Subsections (7) to (9)* provide a list of relevant types of inquiry, and provide the Secretary of State with an order making power (in consultation with the Assembly), to enable him to add other types of inquiries or hearings to this list.

***Section 97 Inclusion in 1999 Act on reference under this Part***

253. This section inserts a new section 3A into PoCA to take account of cross-referral matters. It mirrors the provision under section 92, in that the Secretary of State may in some circumstances consider an individual for inclusion in the PoCA list when they have been referred for inclusion in the PoVA list, but only if he also includes the person in the PoVA list.

***Section 98 Individuals providing care funded by direct payments***

254. *Section 98* extends the provisions of PoCA to child care workers employed through certain direct payments. *Subsection (1)* enables a local authority to refer to the PoCA list a relevant individual whom the authority considers is guilty of misconduct which harmed a child or placed a child at risk of harm. “Relevant individual” is defined as a person who is or has been employed to provide care to a child, where that employment is funded by a direct payment under section 17A of the Children Act.
255. *Subsections (2) and (3)* amend PoCA so as to require a local authority to check whether an individual is in the list before making a direct payment, if the parent proposing to employ the individual asks it to. Regulations made under *section 103* will permit these checks to be made pending the coming into operation of the Criminal Records Bureau.

***Section 99 Transfer from Consultancy Service Index of individuals named in past inquiries***

256. This section amends section 3 of PoCA. It enables names held on the Consultancy Service Index as a result of a relevant inquiry, to be transferred to the Protection of Children Act list in circumstances where it appears to the Secretary of State that the person who held the inquiry found the individual guilty of misconduct, and that the individual is unsuitable to work with children.