



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.

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 or retired in circumstances such that the organisation would have dismissed him, or would have considered dismissing him, on such grounds if he had not resigned or retired;
 - (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—
- (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 or retiring in circumstances such that the organisation would have dismissed him, or would have considered dismissing him, on such grounds if he had not resigned or retired; 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) 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—
- (a) in subsection (1), for the words from “there is” to the end there were substituted the words “the organisation has refused 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”; and
 - (b) subsections (2), (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.

3 Inclusion in list on transfer from Consultancy Service Index

- (1) This section applies where—
- (a) an individual is included in the Consultancy Service Index (otherwise than provisionally) immediately before the commencement of this section;
 - (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.

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—
 - (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.