

# CARE STANDARDS ACT 2000

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

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

##### Protection of vulnerable adults

##### *Section 82 Persons who provide care for vulnerable adults: duty to refer*

228. *Section 82* sets out the duty on providers of care services for vulnerable adults to refer care workers to the Secretary of State for inclusion in the list under certain circumstances. The circumstances, set out in *subsection (2)*, turn on a worker having placed a protected adult at risk of harm, whether or not in the course of his employment. The circumstances include not only that a worker has been dismissed on grounds of misconduct which harmed or risked harm to a vulnerable adult, but that a worker has resigned or retired before the employer has dismissed him; that they have been transferred to other work; that they have been suspended or provisionally transferred to other duties pending a final decision of the employer; or that they have been made redundant in circumstances where the employer would otherwise have considered dismissing them. The definition of “harm” is given in *section 121* (General interpretation *etc.*).
229. *Subsection (3)* further provides that if, after a worker has resigned, retired, been dismissed or been transferred to other duties, relevant information comes to light, the employer is still under a duty to refer the person to the Secretary of State for inclusion on the list.
230. *Subsections (4) to (7)* describe the process that the Secretary of State must use to determine whether a referred person should be included on the list. Providing that the Secretary of State considers it may be appropriate to list the person, then the person will be provisionally included in the list while the referral is under consideration. The Secretary of State will invite both the person referred and the provider to make any observations on the information the other submits, and if he thinks appropriate, will subsequently 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, and he has been notified that any pending action against the worker has resulted in dismissal or permanent transfer to other duties. If the Secretary of State forms the opinion that it was reasonable for the provider to consider the care worker guilty of misconduct, and that the person is unsuitable to work with vulnerable adults, then the person’s name will be confirmed on the list.
231. *Subsection (10)* makes it clear that referrals are not required unless the dismissal, resignation *etc.* occurred after the commencement of this section. This is a similar approach to that adopted under PoCA, section 2(10).