

The Protection of Children Act 1999

**A Practical Guide to the Act for
all Organisations Working
with Children**



The Protection of Children Act 1999

**A Practical Guide to the Act for
all Organisations Working
with Children**

Contents

1. Introduction and Foreword	4
2. The Main Provisions of the Act	5
3. The Application of the Act to Your Organisation	7
• What it means if you are a “child care organisation”	8
• “Other organisations”	8
• Health service posts	10
• Employment Agencies/Businesses	11
4. A Child Care Position – Definition for the Purposes of the Act	13
5. Checking Potential Employees/Volunteers	14
• Requirement for “child care organisations”	14
• Other organisations	15
6. How checks are to be made	16
7. Referring Names to the Secretary of State	17
• What constitutes misconduct	19
• Information to be supplied with a referral	20
• Action following the provisional listing of an individual	22
• Where referrals are to be sent	23
8. Rights of the Person Referred	24
9. The Definition of “Employment”	26
10. The Definition of “Harm”	27
11. Some Further Questions and Answers	28
12. Contact Points	32
Annex A: Form POCA 1 –Request for check against PoCA List	33

1. Introduction and Foreword

We have not set out in this guidance simply to reproduce the words contained in the Act itself or in its accompanying Explanatory Memorandum and Regulations. Rather, we have tried to make the guidance as *practical* as possible. We hope therefore that it is written in a style which will enable all organisations to understand what this Act achieves and how its provisions impact on them and how, when properly applied, these provisions will significantly add to the protection of children.

The Protection of Children Act is an important first step towards the Government's aim of establishing a framework of a coherent cross-sector scheme for identifying those people considered to be unsuitable to work with children. It will also go a long way towards ensuring that when such people have been identified they are prevented from gaining access to children through their work.

This new Act enhances significantly the level of protection for children. However, it remains of paramount importance that all organisations entrusted with the care of children practise the full range of pre-employment checks. This includes interviews, the full investigation of applicants employment history and taking up references.

My thanks go to Debra Shipley MP for proposing this legislation and for successfully steering it through Parliament. It is now up to us all to ensure that its successful implementation and operation affords those who are most vulnerable within our society the protection they deserve.



John Hutton
Minister of State

2. The Main Provisions of the Act

The Act makes four **principal** changes to the Law:

- It places the existing Department of Health Consultancy Service Index (a list of persons considered to be unsuitable to work with children) onto a statutory basis. It then provides for names to be referred to this newly created *Protection of Children Act List* and also a right of appeal to a new Tribunal against inclusion on the *Protection of Children Act List* (and also inclusion on *List 99*). It also extends the scheme to health care services provided to children.
- It amends s218 of the Education Reform Act 1988 to enable the Department for Education and Employment to identify people who are put on *List 99* because they are not fit and proper persons to work with children.
- It amends Part V of the Police Act 1997 to enable the Criminal Records Bureau, when established, to disclose information about people who are included on the *Protection of Children Act List or List 99* along with their criminal records. In this way the Act provides for a “one stop shop” system of checking persons seeking to work with children.
- It *requires* child care organisations (as defined in the Act) proposing to employ someone in a child care position (as defined) to ensure that individuals are checked through the “one stop shop” against the *Protection of Children Act List* and the relevant part of *List 99* and not to employ anyone who is included on either list.

The Protection of Children Act 1999

The Act also contains other provisions, the most important of which are:

- to enable organisations (other than child care organisations as defined within the Act) to refer names to the *Protection of Children Act List*;
- to permit the Secretary of State to consider the transfer of names currently held on the DH Consultancy Service Index to be transferred to the *Protection of Children Act List*; and
- to allow organisations to access the new *Protection of Children Act List* and *List 99* without first going through the Criminal Records Bureau until such time as the “one stop shop” comes into operation within the Bureau.

This guidance reflects a number of changes that have been made to the Protection of Children Act 1999 by the Care Standards Act 2000.

3. The Application of the Act to Your Organisation

3.1 Section 1 of the Act imposes a duty on the Secretary of State to establish a list of people considered unsuitable to work with children. This new List is to be known as the *Protection of Children Act List* (the PoCA List).

3.2 Section 2 of the Act sets out the procedure and criteria for inclusion on the PoCA List and later parts of this Guidance explore these issues in more detail. It is important, however, to note that the Act makes a distinction between “*child care organisations*” (which **must** apply the provisions of the Act) and “*other organisations*” (which are encouraged to apply the provisions of the Act in a similar fashion).

3.3 Is your organisation a child care organisation for the purposes of the Act?

The Act defines “*child care organisation*” to mean an organisation:

- (a) which is concerned with the provision of accommodation, social services or health care services to children or the supervision of children;
- (b) whose activities are regulated by or by virtue of any prescribed enactment, and
- (c) which fulfils such other conditions as may be prescribed.

Thus to be a “child care organisation” for the purposes of the Act conditions (a) and (b) must be fulfilled. The condition in (a) is

self-explanatory. With regard to (b) Regulations have been made which prescribe the enactments for these purposes. Organisations which are regulated under any of any of the enactments listed in these Regulations are “child care organisations” for the purposes of the Act. (See also Para 3.7 below.)

3.4 What it means if you are a child care organisation

When the Act is implemented all “child care organisations” will have a **statutory requirement** placed on them by the Act to:

- (a) refer names to the Secretary of State in certain circumstances for possible inclusion on the PoCA List;
- (b) to check against the PoCA List (and DfEE List 99) when proposing to appoint someone to a child care position;
- (c) not to employ a person in a child care position if that person is included on the PoCA List (or DfEE List 99);
- (d) to cease to employ someone in a child care position if it discovers that the individual is included in the PoCA List or (DfEE List 99).

3.5 “Other organisations”

There are many other organisations outside of the “regulated” sectors as set out above which also “care” for children in one way or another. These organisations range from the smaller voluntary organisations through the “uniformed” youth activities (Scouts, Guides, Cadet Forces etc) to national and local youth clubs and religious organisations and incorporate the whole range of sporting and leisure activities undertaken by children.

3.6 Whilst the provisions of the Protection of Children Act 1999 are not made mandatory for these organisations it is the Government's hope that they will take advantage of the scheme to its fullest extent so as to ensure that they provide a comparable level of safety to children in their care as that afforded within the regulated child care sector. Thus all such "*other*" organisations are encouraged to refer names to the Secretary of State for consideration of inclusion in the PoCA List and to check against the List when proposing to appoint people to child care positions.

3.7 Is it possible to be both a "child care organisation" and an "other organisation" for the purposes of the Act?

The answer is "yes". There will clearly be a number of organisations which provide services to children which fall within the definition of "child care organisations" within the meaning of the Act and which also provide other services to children outside of this definition. An example might be a voluntary organisation providing both residential care for children and also certain outreach/counseling services. Whilst within both sectors there are likely to be people occupying positions (paid or unpaid) which meet the definition of a "child care position" for the purposes of the Act, the organisation will only be under a *duty* to apply the provisions of the Act to that part of its services which are within the *regulated* child care sector – i.e. in this example, its residential care services.

3.8 The Government does, however, expect that while there is no mandatory provision relating to these other activities all organisations in such a position will adopt the same level of protection for children in their care.

3.9 The National Health Service

The Protection of Children Act 1999 extends to all NHS statutory bodies and therefore covers staff employed in childcare positions by all NHS Trusts, Health Authorities and Primary Care Trusts. GPs as good employers will also wish to check and refer employed staff against the Protection of Children Act List. Staff employed to work directly with children, or who provide services to children, should be checked against the Protection of Children Act List prior to appointment. Under these provisions it will be necessary to check all staff who have “regular” contact with children in the course of his or her duties. It will be important for each organisation to consider the relevant areas and posts that would fall under this definition. This may vary depending on the type of service delivery for example, an A & E ambulance driver in an acute trust may not be included because he/she does not have regular contact with children. However, it may be appropriate to include a driver in a learning disability centre in a community trust, if he/she has regular contact with children.

- 3.10 If a situation arose and it was deemed appropriate to refer an individual to the Protection of Children Act List then the responsibility for this would rest with the employer. Additionally, for professional staff the employer will also want to inform the relevant regulatory body of any action taken.
- 3.11 The new arrangements introduced by the Protection of Children Act do not alter the current position with regard to criminal record checks, which will continue to be in accordance with HSG(94)43, for staff with “substantial unsupervised access to children” until such time as the Criminal Records Bureau becomes operational.

Independent Health Care

- 3.12 Providers of independent health care are regulated under the Registered Homes Act 1984 (proposed to be replaced with effect from April 2002 by a new regulatory system that the Care Standards Act aims to introduce). Therefore, the Protection of Children Act 1999 places a **statutory requirement** as outlined at paragraph 3.4 above on independent sector organisations that provide health care services for children, ie to refer names for possible inclusion on the PoCA List, to check against the List, and not to employ someone in a child care position if they are on the List. As with NHS statutory bodies, this will mean in practice that staff employed to work with children or in an area that delivers services to children should be checked against the PoCA List prior to appointment. It will be necessary to check all staff who have “regular” contact with children in the course of his or her duties. It will be important for each organisation to consider the relevant areas and posts that would fall under this definition.

Employment Agencies and Employment Businesses

- 3.13 “Child care organisations” must satisfy themselves that someone they intend to employ in a child care position is not included on the PoCA List or List 99. It will, therefore, be necessary for employment agencies and employment businesses to check the names of staff they intend to place in such positions within child care organisations.
- 3.14 Employment agencies, including locum agencies, and employment businesses will need to demonstrate to a child care organisation that the person put forward for a child care post had been checked against the Lists within the last 12 months. They will be required to provide written confirmation of this to the child care organisation.

- 3.15 When an employment agency, including locum agencies, or an employment business decides that it should no longer do business with an 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, the Agency or Business should refer the name to the Secretary of State for him to consider inclusion on the PoCA List.

4. What is a “child care position”

4.1 The Act defines “child care position” as one which

(a) is concerned with the provision of accommodation, social services or health care services to children or the supervision of children: and

(b) is such as to enable the holder to have regular contact with children in the course of his duties.

4.2 Thus both (a) and (b) must apply when considering the implications of the provisions of this Act. A “child care organisation” *MUST* and any “other organisation” *MAY* refer names of persons who occupied such positions or seek checks on persons they propose to appoint to such positions. Only posts which meet this definition come within the scope of the Act.

4.3 Positions which would clearly *NOT* be within the scope of the Act provisions would be those where the post holder – although employed within a child care organisation, (eg the administrative offices of a local authority social services department or voluntary organisation) nevertheless does not have direct contact with children.

4.4 For the purposes of the Act it makes no difference if the child care post is a paid or unpaid position. Thus a person who is acting as a volunteer coach in, say, a local sports club (he may even be a parent helper) may be referred to the List if he was in a position which meets the criteria of a “child care position”.

5. Checking potential employees/volunteers for child care positions

5.1 Child care organisations

S 7(1) of the Act *requires* child care organisations to check both the Protection of Children Act List and the DfEE List 99 in every instance where they propose to offer an individual a child care position. If the individual is included on the PoCA List (whether or not provisionally), or if they are included on List 99 on grounds that they are not a fit and proper person to work with children, the child care organisation shall not offer the individual employment in the child care position.

5.2 Where the child care organisation proposes to offer employment in a child care position to an individual who has been supplied by an employment agency they must:

- ensure that the employment agency has sought a check against the PoCA List and List 99 within the last 12 months;
- obtain written confirmation about this; and
- not employ the individual if he is included on either list.

NB. Child Care organisations should note that this process must be undertaken even in situations where the individual may already be employed by the organisation other than in a child care position and where the individual is applying for a child care position.

5.3 Other organisations

(See **Paragraph 3.5**). Organisations other than “child care organisations” will also have access to the information held on the Lists. Whilst these organisations are not required by the Act to seek checks they should note that carrying out these checks forms an essential and integral part of the pre-employment vetting process before appointing persons to child care positions.

6. How checks against the PoCA list are to be made

- 6.1 Until the Criminal Records Bureau is established the Department of Health will continue to undertake checks against the PoCA List and will arrange access to it via the Internet. Those organisations which currently carry out checks via the Voluntary Organisations Consultancy Service (VOCS) should continue to do so. The Department of Health will share the PoCA List with VOCS. Guidance on how to access checks via the Criminal Records Bureau will be issued in due course.
- 6.2 Organisations should seek a check on the name of an individual at the stage when they are about to make the offer of employment. Checks will be possible by two methods:
- Internet based system. Those organisations registered with the Department of Health for this service will be able to undertake checks electronically. Should your organisation wish to register for this service you should contact The Manager, Protection of Children Act List, at the address given at the end of this booklet, or alternatively complete the electronic registration form located on the internet at the following address, <http://194.200.241.12/pocals/pocals.nsf/home?open>
 - Paper based system. Using *Form POCA 1* –(see Annex A). This form is available from the Department of Health and is posted on the internet where it can be downloaded (and photocopied) for use by those organisations not seeking checks via the internet.
- 6.3 Organisations will wish to note that the Department of Health will also check names against the DfEE List 99 at the same time as carrying out a check against the PoCA List.

7. Referring names to the Secretary of State

7.1 The Act sets out the circumstances where a child care organisation **must** and other organisations **may** refer names to the Secretary of State for consideration of inclusion in the Protection of Children Act List. These 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 in (c) above, but has not yet decided whether to dismiss him or to confirm the transfer.

7.2 Additionally and very importantly, child care organisations and other organisations may refer names to the Secretary of State in other circumstances. This would be where they have dismissed an individual, he has resigned, retired or has transferred to a position within the organisation which is not a child care position and where information not available to the organisation at the time has

since become available. On the basis of that information the organisation has formed the opinion that, had the information been available at the time and if (where applicable) the individual had not resigned or retired, the organisation *would have*, or *would have considered* dismissing him on the grounds of misconduct which harmed a child or placed a child at risk of harm.

7.3 “*Would have dismissed*” This covers the situation where an individual has engaged in misconduct which satisfied the criteria for referral (i.e. misconduct which harmed a child or placed a child at risk of harm), and has possibly been suspended or moved whilst the matter is investigated by the employer. As a result of the employer’s investigation (and possibly a disciplinary hearing) the employer is **satisfied that the individual has carried out the misconduct and as a result should be dismissed or moved to a non-childcare post.** However, before this decision can be communicated to the individual he resigns/retires. The point here is that the employer **has come to the conclusion that dismissal was appropriate in the circumstances.** The employer can only come to this conclusion because he has completed his enquiry into the allegations.

7.4 “*Would have considered dismissing*”. This type of referral will be where an allegation has come to light which satisfies the criteria. However, before the employer has had the opportunity to complete his investigation the individual retires/resigns. Until the employer has completed his investigation he cannot conclude, with any degree of certainty, that he would have dismissed. Whilst the employer should undertake all investigations open to him it may not be possible to conclude all enquiries. For example, if a child made an allegation of abuse the employer would need to interview the child and seek any corroborating evidence from any independent sources. He should also attempt to obtain the individual’s comments on the allegations. In the circumstances where the employer has only been able to obtain one side of the story (for example where it has not been possible to get the

individual's comments), it is difficult for him to conclude that he would have dismissed the individual. He could only realistically conclude that he *would have considered dismissing* the individual. Employers could only come to that conclusion bearing in mind the nature of the allegations made, dismissal would have been a serious possibility – ie within the range of reasonable options.

- 7.5 It is important here for all employers to note that referrals are not required when dismissal of the individual was *not a serious option*. For example, when it would only have been a passing consideration within the range of possible options but not a real possibility. If a referral was made in such circumstances the Secretary of State would take the matter no further on the basis that it would not be appropriate for the individual to be included on the List. Misconduct after the individual left his position is never relevant for this purpose, because once he had left the post he could not have been dismissed.

7.6 What constitutes “misconduct”?

During the passage of this Act through Parliament Members were anxious to ensure that situations where incompetence (whether or not attributable to inadequate training and/or supervision) and “youthful indiscretions”, did not result in “automatic” referrals to the Secretary of State. “Misconduct” is not defined within the Act. The determination of “misconduct” must be a matter for the employer to decide. Keeping in mind the criteria for referrals, the types of circumstance where the Secretary of State would expect a referral to be made would be where any action or inaction on the part of the individual harmed a child or put a child at risk of harm. Act of omission and commission should both be considered.

- 7.7 It is difficult in Guidance such as this to give precise examples, because it is not possible to reflect every situation likely to apply. However in the circumstances of this Act misconduct would range

from serious sexual abuse through to physical abuse which may include intentional inappropriate restraint and/or poor child care practices in contravention of organisational codes of conduct which resulted in harm or risk of harm to children.

7.8 Information to be supplied with a referral

Only the names of persons who occupied child care positions within the meaning of the Act may be referred to the Secretary of State for consideration of inclusion on the Protection of Children Act List. The circumstances under which a referral must be made/may be made are set out in 7.1 above.

7.9 Organisations should note that a referral of a name does not lead to automatic inclusion on the PoCA List. The minimum information that the Secretary of State will require for all referrals is as follows:

- Full name, date of birth of the individual;
- Confirmation that the individual occupied a child care post – within the meaning of the Act;
- Full details of the alleged misconduct;
- Detailed explanation about how – by his misconduct – the individual harmed a child or placed a child at risk of harm;
- Details of any investigations carried out to date – and their conclusions – including copies of all relevant papers (including statements, notes of interviews, minutes of meetings and minutes/notes of disciplinary hearings) and details of the organisation's disciplinary procedures;
- Details of the action taken against the individual – has he been suspended, dismissed or transferred from a child care position etc;

- Information on any police involvement (or the involvement of any other agency);
- Details of proposed further action – i.e. dates for disciplinary hearings, timetable on further investigations etc;
- Any other information considered relevant to the circumstances of the alleged misconduct.

7.10 *NB: In circumstances where a child care worker has been suspended or dismissed (or has resigned etc) after having been charged with offences against children and who is awaiting the outcome of criminal investigation or trial, a referral to the Secretary of State should also be made.*

7.11 The Secretary of State will initially examine the quality of the information submitted with a referral. He may decide either not to proceed if the case is clearly not suitable for inclusion, (i.e. the individual was clearly not in a child care position or it is evident from the outset that no children were harmed or put at risk of harm by the actions of the individual), or to seek more information from the organisation before considering whether to proceed with a decision to provisionally include the name on the PoCA List.

7.12 The Secretary of State will be looking to make decisions about the provisional listing of individuals as quickly as is reasonably possible. Should he require more information from the referring organisation he will expect his request to be considered as a matter of utmost priority by the organisation – and would normally expect the organisation to be able to respond within 7 working days.

7.13 Having satisfied himself that the information provided with the referral (either with in the original referral letter or as a result of subsequent further correspondence) is complete the Secretary of State will decide about provisional listing.

7.14 Action following provisional listing

If a name is included on the PoCA List, provisionally, the Secretary of State will confirm this with the organisation (the person who made the referral) and will immediately inform the individual by letter sent by *Recorded Delivery*. The individual will then have the opportunity to make written representations direct to the Secretary of State as to why his name should not be retained on the PoCA List. The Secretary of State will provide the individual with full details of the information submitted by the referring organisation and will usually copy all papers to the individual.

- 7.15 The individual will be given 28 days in which to make written representations, or to indicate that he intends to make representations within a reasonable period.
- 7.16 *Persons provisionally included in the PoCA list may not be employed in a child care post within a child care organisation. Other organisations should also pay particular regard to the fact that the person is provisionally included in the List when considering his appointment to a post which involves contact with children.*
- 7.17 Before a name may be retained on the PoCA List the Secretary of State will need to be of the opinion that the referring organisation *reasonably* considered the person to be guilty of misconduct which harmed a child or placed a child at risk of harm, (whether or not in the course of employment), and that the individual is unsuitable to work with children. Thus all representations made by the individual will be passed to the referring organisation for comment. Similarly the Secretary of State would expect to be able to provide the individual concerned with copies of all papers submitted to him from the referring organisation.
- 7.18 This process of information gathering and exchange will continue for as long as it takes for the Secretary of State to be satisfied that he has sufficient information to enable him to come to the opinion

he is required to reach. Before confirming that a name is to be retained on the PoCA List (other than provisionally) the Secretary of State must form the opinion 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
- That the individual is unsuitable to work with children.

It should be noted that some people may be included on the PoCA List, even though the facts which the Secretary of State take into account do not lead to conviction for an offence.

- 7.19 Where a person has been provisionally included in the PoCA List whilst suspended or provisionally transferred to a position within the organisation which is not a child care position, the Secretary of State will not form his opinion about confirming the name on the List until the organisation has dismissed the individual, or has confirmed his transfer. However, even if the Secretary of State has been unable to reach a conclusion, the person provisionally on the PoCA List will have a right of appeal as described below.

7.20. Where referrals are to be sent

All referrals (and any correspondence relating to the operation of the Protection of Children Act List) should be sent to:

The Manager
The Protection of Children Act List
Department of Health
Room 134 Wellington House
133 – 155 Waterloo Road
London SE1 8UG

8. Rights of the person referred

- 8.1 Any individual provisionally included in the PoCA List will have the right to make representations to the Secretary of State as to why his name should not be retained on the List. (See Paragraph 7.15).
- 8.2 Persons who have been provisionally included in the PoCA List for more than nine months may, with leave of the Tribunal, have the issue of their inclusion on the List determined by the Tribunal instead of by the Secretary of State. However, if the person who is alleged to have been guilty is the subject of any civil or criminal proceedings in connection with these allegations, he or she cannot apply to the Tribunal until six months after those proceedings have been disposed of. This may mean that the nine-month delay before applying has to be extended.
- 8.3 Individuals who are included in the PoCA List will have the right of Appeal to the Protection of Children Act Tribunal. This is an independent Tribunal and its decisions about the facts of individual cases are binding and final. However, appeals may be made to the High Court on points of law.
- 8.4 The Secretary of State has discretionary powers to remove names from the PoCA list in limited circumstances (for instance where a conviction has been quashed or on appeal or where a malicious referral is uncovered following the production of new evidence), without the need to go through the Tribunal. It will still be possible for an individual to seek leave to appeal against a decision of the Secretary of State not to remove a name after consideration in such cases, as it will be to appeal against inclusion in the list itself.

- 8.5 The Tribunal will be producing guidance about its operation for potential appellants. Copies will be available, free of charge, from the Tribunal at the following address: The Secretary, Protection of Children Act Tribunal, St Christopher House, Southwark Street, London, SE1 0TD.

9. The definition of “employment”

The Act defines “employment” as

- (a) “any employment, whether paid or unpaid and whether under a contract of services or apprenticeship, under a contract for services, or otherwise than under a contract...”
- (b) includes an office established or by virtue of a prescribed enactment.

Whilst the majority of employees will be employed under a contract, whether made orally or in writing, there are likely to be some arrangements not covered by a contractual arrangement. The definition used in the Act is designed to ensure that even the most casual connections and voluntary work are covered by the provisions of the Act.

10. The definition of “harm”

The Act explains that “harm” has the same meaning as in section 31 of the Children Act 1989:

“ill treatment or the impairment of health or development;

“development” means physical, intellectual, emotional, social or behavioral development;

“health” means physical or mental health; and

“ill treatment” includes sexual abuse and forms of ill-treatment which are not physical.

11. Some further questions and answers

- *Is there a charge made by the Department of Health for carrying out a check?* No, the Department of Health service is free of charge. Nor will there be any registration costs for those organisations using the internet checking system.
- *Should I also carry out a criminal record check as well as a PoCA List check?* If you have access to criminal record checks these should continue to be sought. Checks against the PoCA List are *not* criminal record checks.
- *Will staff in primary care settings be covered by the provisions of the Act?* Yes. All staff appointed in the community in NHS Trusts or Primary Care Trusts who have regular contact with children should be checked against the PoCA List and List 99.
- *Will it be necessary to check all staff already occupying child care positions?* No, this will not be necessary.
- *What will happen to names on the current Consultancy Service Index?* All names on the current Index will be reviewed with a view to deciding whether it would be appropriate to transfer them to the PoCA List. The same procedures and protections will apply to this review exercise and anyone whom it is proposed to include on the PoCA List will be informed accordingly, given the chance to make representations and will have the right of appeal to the Tribunal. This review will be completed to coincide with the implementation of the Protection of Children Act.

- *What should a child care organisation do if it discovers that a member of staff occupying a child care position is included on the PoCA List?* Where a child care organisation discovers that an individual employed by it in a child care position is included in the PoCA List it should cease to employ him/her in a child care position – he/she may be suspended or transferred to a position which is not a child care position.
- *What action should an organisation take if it discovers that a person who is seeking work with children with their organisation is included on the DH List or List 99?* If the organisation has substantial concerns that the person is attempting to get contact with children they should consider sharing their concerns with the relevant authorities after having taken appropriate legal advice. See “Working Together to Safeguard Children” (Department of Health, The Stationery Office 2000. ISBN 0-11-322309-9).
- *I currently get checks done via VOCS. Do I now need to also check the PoCA List?* No. Organisations currently using the VOCS service should continue to do so since this will include a check against the POCA List and List 99.
- *What will happen when a referral is made and the individual concerned cannot be traced to offer his observations?* All reasonable attempts will be made to locate the individual. If these are unsuccessful, a decision will be taken based on all available evidence. If the individual later provides observations these will be fully considered in conjunction with all the relevant information and a further decision taken as to whether it would be appropriate to continue to include the name or alternatively, remove it under the power in Section 1(3) of the Act.

- *Do the mandatory provisions of the Act apply to Nanny Agencies?* No. However as with all other organisations they will have full access to the scheme and are encouraged to use it to the full.
- *Why should agencies check staff every 12 months.*
Staff employed by agencies often take up very short term appointments. It would not be appropriate for such people to have to be checked by relevant child care organisations every time they take up a new post which may only last a week or so.
- *I am a volunteer in Scouting; if one of my volunteer assistants is dismissed for misconduct which harmed a child, may I refer his/her name to the PoCA List?* Yes. All voluntary youth organisations are encouraged to refer names to the PoCA List where the criteria for referral are met. Such referrals should be made via the organisation's governing body.
- *What about Religious Organisations?* There are likely to be many individuals within the variety of religious organisations who occupy "child care posts" (whether or not in paid occupation or as voluntary work). All organisations employing persons to work directly with children are encouraged to check them against the PoCA List before appointment and to refer names where appropriate.
- *What is the position of Foster Carers and Adoptive Parents?*
There is clearly an "employment relationship" insofar as Foster Carers are concerned. Child care organisations are therefore required to check names of prospective foster carers and to refer names in appropriate circumstances. Amendments to the Care Standards Act 2000 extend the scope of the Act to provide access to the PoCA List as part of the approval process for prospective adopters.

- *Does the Protection of Children Act also cover vulnerable adults?* No. The Secretary of State will keep a separate list of individuals who are considered unsuitable to work with vulnerable adults. This will be known as POVA (Protection of Vulnerable Adults) List, which is proposed for implementation in April 2002. Once POVA is established, it will be possible in some cases for an individual to be included in both lists following a referral to either one of them. Details of the 'cross-referral' provisions will be explained nearer the time.
- *What is the relationship between the PoCA legislation and the Disqualification for Caring for Children Regulations and the Protection from Offenders Regulations?* The PoCA legislation applies to those who wish to work in child care positions whether as employees or volunteers. Persons who are subject to the Disqualification for Caring for Children Regulations, such as those who have been running or working in children's homes whose registration has been cancelled, may not work in or run a children's home unless they have written permission from the registration authority to do so. Under the Protection from Offenders Regulations children are protected from those who would be foster carers who have committed a sexual offence or have committed actual bodily harm or something more serious against a child. The Disqualification for Caring for Children Regulations also disqualify such people from being able to work in children's homes.

12. Contact point

- Department of Health
Social Care Group 4
Room 134, Wellington House
133-155 Waterloo Road
London SE1 8UG

Tel: 020 7972 1332

Please note that this a general inquiry line and you will be asked to leave a brief message explaining the nature of your query. A member of the Protection of Children Act team will return your call as soon as they are able.

Annex A

PROTECTION OF CHILDREN ACT LIST REQUEST FOR CHECK



CONFIDENTIAL: To The Manager, The Protection of Children Act List, Room 134, Wellington House,
133-155 Waterloo Road, London, SE1 8UG

In accordance with the guidance issued under the Protection of Children Act 1999, I would be grateful if you could undertake a check against the following individual who we propose to appoint to a child care position (as defined within the Act).

PLEASE COMPLETE IN BLOCK CAPITALS

SURNAME: _____	
FORENAMES: _____	
MALE/FEMALE (please circle)	DATE OF BIRTH: DD MM YYYY _/_/____/____
MAIDEN NAME:	PREVIOUS/OTHER NAMES: (if known)
PRESENT ADDRESS:	PREVIOUS ADDRESS(ES): (if known)
NAME & ADDRESS OF ENQUIRING ORGANISATION:	
Signed: _____ Name (Please print): _____ Date: _____	
Position Held: _____ Telephone: _____	
TO BE COMPLETED BY THE DEPARTMENT OF HEALTH	
OBSERVATIONS:	
DATE:	
Please note that this name has been checked against the Protection of Children Act list and the Department for Education and Employment List 99	



NB. A STAMPED & SELF ADDRESSED ENVELOPE MUST BE ENCLOSED WITH THIS FORM

Form POCA1 – September 2000



© Crown Copyright
Produced by Department of Health

22331 1p 2k Sep 00 (ABBA)

CHLORINE FREE PAPER

Further copies of this document are available free from:
Department of Health, PO Box 777,
London SE1 6XH.

This guide is available on the department's website at:
www.doh.gov.uk/scg/childprotect