

THE PROTECTION OF CHILDREN ACT 1999

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

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department for
education and skills
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NB ‘The Act’ means the Protection of Children Act 1999

1. Introduction

1.1 The Protection of Children Act 1999 came into force in October 2000 and introduced the Protection of Children Act (PoCA) List in which the Secretary of State has a duty to record the names of individuals who are considered unsuitable to work with children.

1.2 All regulated child care organisations (as defined in the Act) have a statutory duty to refer the names of those individuals who fulfil certain criteria making them unsuitable to work with children for possible inclusion in the PoCA List.

1.3 The Act also permits other organisations, such as voluntary organisations, sports clubs and scout associations to refer names for possible inclusion in the PoCA List.

1.4 The effect of inclusion in the PoCA List is that child care organisations, which are obliged to check names of prospective employees against the list (through the Criminal Records Bureau) before offering employment, will be told whether or not an individual is listed in the PoCA List.

1.5 Child care organisations proposing to offer individuals employment in child care positions¹ must not employ individuals whose names are included on the PoCA List or List 99 (on the grounds that they are unsuitable to work with children) and must cease to employ such individuals in child care positions if they subsequently discover that they are included on these Lists. In fact, under the Criminal Justice and Court Services Act 2000 it is an offence to knowingly offer work to or to employ in a so-called “regulated” position (which includes child care positions) an individual who is disqualified from working with children, either by virtue of being included on one of the Secretary of State’s Lists (the PoCA List or its equivalent in Scotland, or List 99) or a disqualification order from the court; and individuals who apply or offer to work, accept work or continue to work with children in such positions will be committing a criminal offence and can face prosecution if they are so disqualified.

¹ For the definition of a child care position, the Protection of Children Act 1999 refers to the Criminal Justice and Court Services Act 2000 which provides a comprehensive definition of what is known as a ‘regulated’ position for the purposes of that Act. However, a child care position does not include positions covered by section 142 of the Education Act 2002 or positions at schools which are children’s homes for the purpose of the Care Standards Act 2000 (see also paragraph 3.1).

1.6 The Act ensures that any person included in the PoCA List is also barred from working in a child care position in the education sector i.e. the persons name will also be included in List 99 - the list maintained by the Department which prevents individuals from carrying out work to which Section 142 of the Education Act 2002 applies.

1.7 The definition of employment is wide so that a child care position refers to work with children in all sectors irrespective of whether the work is paid or unpaid, and whether or not it is under a contract.

2. The Application of the Act to Your Organisation

2.1 Section 1 of the Act imposes a duty on the Secretary of State to maintain a list of people considered unsuitable to work with children. This List is known as the **Protection of Children Act (PoCA) List**. The Secretary of State has the discretion to remove an individual from the List if she is satisfied that they should not have been included on it.

2.2 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).

2.3 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 qualify as a “child care organisation” for the purposes of the Act conditions (a) and (b) must be fulfilled (at the time of writing no other conditions have been prescribed). The condition in (a) is self-explanatory. With regard to (b) Regulations have been made which prescribe the enactments for these purposes. The prescribed enactments are listed in the Protection of Children (Child Care Organisations) Regulations 2000 and include Schedule 5A to the National Health Service Act 1977, which concerns Primary Care Trusts. 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)

2.4 What it means if you are a “child care organisation”

All “child care organisations” have a **statutory duty** placed on them by the Act:

- (a) to refer names to the Secretary of State in certain specified circumstances for possible inclusion on the PoCA List;
- (b) when they propose to offer someone employment in a child care position, to check, through the Criminal Records Bureau, whether an individual is included on the PoCA List or List 99;
- (c) not to employ a person in a child care position if that person is included on the PoCA List or List 99;
- (d) to cease to employ someone in a child care position if it is discovered that the individual is included in the PoCA List or List 99.

2.5 “Other organisations”

There are many other organisations outside of the “regulated” sectors, as set out above, that also “care” for children in one way or another. These organisations include:

- voluntary organisations through the “uniformed” youth activities (Scouts, Guides, Cadet Forces etc);
- national and local youth clubs;
- religious organisations;
- sporting and leisure groups where activities are undertaken by children.

2.6 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 make referrals to the scheme. This is 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 and List 99 when proposing to appoint

people to work, whether for payment or voluntarily, with children.

2.7 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 that provide services to children which fall within the definition of “child care organisations” 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 / counselling services. Whilst within both sectors there are likely to be people occupying child care positions (paid or unpaid) which meet the definition 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.

2.8 The National Health Service

The Protection of Children Act 1999 extends to all NHS statutory bodies and therefore covers staff employed in child care positions by all NHS Trusts, Health Authorities and Primary Care Trusts. GPs as good practice should also check new staff against the PoCA List and make referrals where appropriate. Staff employed to work in a child care position should be checked against the PoCA List and List 99 prior to appointment. Under these provisions it will be necessary to check all staff that have “regular” contact with children in the course of their 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 they do 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 they have regular contact with children.

2.9 If a situation arose where it was deemed appropriate to refer an individual to the PoCA 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.

2.10 Independent Health Care

The Protection of Children Act 1999 places a **statutory duty** as outlined at paragraph 2.4 above, on independent sector organisations that provide health care services for children to: refer names for possible inclusion on the PoCA List; check against the List; and not employ someone in a child care position if they are on the List or List 99.

2.11 As with NHS statutory bodies, this will mean in practice that staff employed to work in a child care position should be checked against the PoCA List prior to appointment. It will be necessary to check all staff that have “regular” contact with children in the course of their duties. It will be important for each organisation to consider the (relevant) areas and posts that would fall under this definition.

2.12 Employment Agencies and Employment Businesses

“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.

2.13 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 position has 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.

2.14 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 her to consider inclusion in the PoCA List.

3. What is a “Regulated Position”?

3.1 A reference to a child care position for the purpose of the Protection of Children Act 1999, with certain specific exceptions, carries the same meaning as a “regulated” position, as defined by the Criminal Justice and Court Services Act 2000.(see section 36 of that Act). There are eight basic categories of regulated position, some of which are broad and comprehensive, covering particular roles in all organisations, others of which are aimed at particular functions, specific places of work or areas of concern.

3.2 The eight basic sets of regulated positions are:

1. Primary or secondary carers, or ancillary staff, whose normal duties involve carrying out work of any sort in establishments exclusively or mainly for children;
2. where normal duties include work on day care premises;
3. where normal duties include caring for, training, supervising or being in sole charge of children;
4. where normal duties involve unsupervised contact with children under arrangements made by a responsible person (for example, a parent, guardian, or primary carer);
5. where normal duties include caring for children under the age of 16 in the course of the children’s employment;
6. where a substantial part of the normal duties include supervising or training children under the age of 16 in the course of the children’s employment;
7. ‘The great and the good’: individuals who, by virtue of the authority and responsibility inherent in the posts they hold, might be expected to be positively suitable to work with children;
8. where normal duties include supervising or managing an individual in his work in a regulated position.

3.3 The majority of the regulated positions are expanded upon and clarified in the Criminal Justice and Court Services Act

2000, so it is easier to understand each category. It is perhaps harder to understand the various references to 'normal duties'. The intention is to exclude the one-off work. Thus if a parent rings a mini cab firm and arranges for a driver to take their child to some activity on a one-off basis, the driver's position would not be regulated. But if a mini-cab firm offers an ongoing service to parents for driving unaccompanied children, such work would form a normal part of the duties of such drivers and would be regulated.

3.4 There is one exception to the 'normal duties' rule, that is number 7 above ('the great and the good'). These are positions that are considered to grant those who hold them the kind of access to children, or the kind of influence and position which, if the holder of the position were unsuitable to work with children, could place children at risk. These include, for example, trustees of a children's charity, relevant local government bodies (with certain specific social services and education functions), members of the Youth Justice Board, and the Children's Commissioner for Wales. Such positions may provide privileged access to children and are therefore included even if contact with children is not a regular part of the position.

3.5 A "child care organisation" **MUST** make referrals to the PoCA List in respect of persons who occupied regulated positions in circumstances described in Section 6 below and seek checks on persons they propose to appoint to such positions. Other organisations **MAY** make referrals and are encouraged to seek checks on individuals they intend to appoint to regulated positions. Only posts which meet the definition of a regulated position come within the scope of the Act.

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

3.7 For the purposes of the Act it makes no difference if the regulated 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 his position meets the broad and comprehensive definition of a 'regulated position'.

4. Checking Potential Employees / Volunteers for Child Care Positions

4.1 Child care organisations

Section 7(1) of the Act **requires** child care organisations to check both the PoCA List and 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 unsuitable to work with children, the child care organisation shall not offer the individual employment in the child care position.

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.

4.2 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.

4.3 Other organisations

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.

5. How checks against the PoCA List are made

5.1 The Criminal Records Bureau aims to help employers and voluntary organisations make safer recruitment decisions by providing information on candidates who may be unsuitable for certain work, especially work which involves children or vulnerable adults, through a service called Disclosure.

5.2 Checks against the PoCA List are obtained by asking a prospective employee or trainee to apply to the Criminal Records Bureau (CRB) for a Disclosure which will contain information about their criminal record.

5.3 The Bureau currently issues two types of Disclosure depending on the duties of the particular position or job involved:

Standard Disclosures which show spent and unspent convictions and cautions. These Disclosures are only available to applicants seeking paid or voluntary work or training in an occupation which is exempt from the Rehabilitation of Offenders Act 1974. This includes paid or voluntary work with children less than 18 years of age, and will also be relevant for people entering certain occupations such as the legal profession and accountants.

And

Enhanced Disclosures which show spent and unspent convictions and cautions. The police may also provide details of acquittals or other non-conviction information from data held on local police records (which are relevant to the job or voluntary position being sought). Enhanced Disclosures are only available to people seeking paid or voluntary work or training in a position whose normal duties include regularly caring for, training, supervising, or being in sole charge of children under 18 years of age or vulnerable adults, and are also relevant for people entering the medical profession, seeking judicial appointments and for certain statutory licensing purposes.

5.4 In addition to information about a person's criminal record. Standard and Enhanced Disclosures, supplied in connection with work with children will contain information about whether a person is:

- subject to a direction under section 142 of the 2002

Education Act (i.e. included on List 99);

- included on the PoCA List;
- subject to a disqualification order from the court, disqualifying them from working with children under section 35 of the Criminal Justice and Court Services Act 2000.

If an individual has regular contact with vulnerable adults the disclosure will also contain information about whether a person is included on the Protection of Vulnerable Adults (PoVA) List.

5.5 Further information about the Criminal Records Bureau may be found on its website at www.crb.gov.uk Information about the Disclosures service is at www.disclosure.gov.uk The Bureau's information line number is 0870 90 90 811.

6. Referring names to the Secretary of State

6.1 The Act sets out the circumstances where a child care organisation **must**, and other organisations **may**, refer names to the Secretary for State for consideration of inclusion in the PoCA 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, or

(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, or

(c) that the organisation has, on such grounds, transferred the individual to a position within the organisation which is not a child care position, or

(d) that the organisation has, on such grounds, suspended the individual or provisionally transferred him (to a position) as in (c) above, but has not yet decided whether to dismiss him or to confirm the transfer (e.g. the organisation may have suspended or transferred on a neutral basis whilst an investigation is undertaken).

6.2 Power of certain authorities to refer

The Commission for Social Care Inspection, National Assembly for Wales and Her Majesty's Chief Inspector of Schools in England all have the statutory power to refer individuals to the Secretary of State for inclusion on the PoCA List. They may make referrals to the PoCA List when they come across evidence of misconduct that has not been referred to the Secretary of State by the employer.

6.3 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 an individual has resigned, retired or transferred to a position within the organisation which is not a child care position where information not available to the organisation at the time has since become available. On the basis of that new information the organisation has formed the opinion that had the

information been available at the time and the individual had not resigned, retired or transferred the organisation **would have dismissed**, or **would have considered dismissing** him on the grounds of misconduct which harmed a child or placed a child at risk of harm.

6.4 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 committed after the individual has resigned, retired or been dismissed from his position is never relevant for this purpose; because once he had left the post he could not have been dismissed.

6.5 What constitutes “misconduct”?

During the passage of the Act Members of Parliament 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. Acts of omission and commission should both be considered.

6.6 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 consistently poor child care practices in contravention of organisational codes of conduct which resulted in harm or risk of harm to children.

6.7 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 in the PoCA List. The circumstances under which a referral must be made / may be made are set out in 6.1 above.

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

- Full name, address, date of birth and National Insurance number of the individual;
- Confirmation that the individual occupied a child care position – 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 (e.g. 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 e.g. 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.

6.9 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.*

6.10 The Secretary of State will initially examine the quality of the information submitted with a referral. She 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.

6.11 The Secretary of State will be looking to make decisions about the provisional listing of individuals as quickly as is reasonably possible. Should she require more information from the referring organisation she will expect her 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.

6.12 *Having satisfied herself 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.*

6.13 Action following provisional listing of an individual

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 their name should not be retained on the PoCA List. The Secretary of State will provide the individual with a copy of the information submitted by the referring organisation.

6.14 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.

6.15 *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 their appointment to a post which involves contact with children.*

6.16 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 copy to the individual all responses submitted to her from the referring organisation.

6.17 This process of information gathering and exchange will continue for as long as it takes for the Secretary of State to be satisfied that she has sufficient information to enable her to come to the opinion she is required to reach.

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

6.19 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 her opinion about confirming the name on the List until the organisation has dismissed the individual, or has confirmed their 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 in Section 7 below.

6.20 Where referrals are to be sent

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

The Manager
Children's Safeguarding Operations Unit (PoCA)
Ground Floor Area E
Mowden Hall
Staindrop Road
Darlington
DL3 9BG

7. Rights of the Person Referred

7.1 Any individual provisionally included in the PoCA List will have the right to make representations to the Secretary of State as to why their name should not be retained in the List. (See Paragraph 6.14).

7.2 Persons who have been provisionally included in the PoCA List for more than nine months may, with leave of the Care Standards Tribunal, have the issue of their inclusion in the List determined by the Tribunal instead of by the Secretary of State. However, if the person who is under consideration 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 period before applying has to be extended.

7.3 Individuals who are confirmed on the PoCA List, following provisional listing, will have the right of appeal to the Tribunal if they do so within 3 months of the date of that decision. This is an independent Tribunal and its decision about the facts of individual cases is binding and final. However, appeals may be made to the High Court on points of law.

7.4 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 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 their name after consideration in such cases.

7.5 The Tribunal has produced guidance about its operation for potential appellants. Copies are available, free of charge, from the Tribunal at the following address:

Care Standards Tribunal
18 Pocock St
London
SE1 OBW
General enquiry line 020 7960 0660
Fax number 020 7960 0661 or 0662
E-mail CST@CST.gsi.gov.uk

8. 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.

9. The Definition of “Harm”

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

“harm” means ill treatment or the impairment of health or development [including, for example, impairment suffered from seeing or hearing the ill treatment of another];

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

“health” means physical or mental health; and

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

10. Some further Questions and Answers

1. *Is there a charge made by the Criminal Records Bureau for carrying out a check?*

Yes, a fee is charged for each Disclosure although the Bureau will issue Standard and Enhanced Disclosures free of charge for volunteers. Information about the Disclosures service is at www.disclosure.gov.uk The Bureau's information line number is 0870 90 90 811.

2. *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.

3. *Is it necessary to check all staff already occupying child care positions?*

No, this is not necessary.

4. *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 List it should cease to employ them in that position – they may be suspended or transferred to a position which is not a child care position.

5. *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 PoCA 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).

6. *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.

7. *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.

8. *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.

9. *I am a volunteer in Scouting; if one of my volunteer assistants is dismissed for misconduct which harmed a child, may I refer them 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.

10. *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.

11. 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.

12. Does the Protection of Children Act also cover vulnerable adults?

No. The Secretary of State for Health keeps a separate list of individuals who are considered unsuitable to work with vulnerable adults. This is known as the PoVA List. It is possible for an individual to be included in the PoVA List following a referral from the PoCA List if they are also deemed to be unsuitable to work with vulnerable adults. A person could also be included on the PoCA List following a referral from the PoVA List where they are deemed unsuitable to work with children.

13. What is the relationship between the Protection of Children Act legislation and the Disqualification for Caring for Children Regulations and the Protection from Offenders Regulations?

The Protection of Children Act 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 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 disqualifies such people from being able to work in children’s homes.

11. Contact point

Children's Safeguarding Operations Unit (PoCA)
Department for Education and Skills
Ground Floor Area E
Mowden Hall
Staindrop Road
Darlington
Co. Durham
DL3 9BG

Tel: 01325 392030

Fax: 01325 392178

Email: mailbox.poca@dfes.gsi.gov.uk

Please note that this is a general enquiry line and you will be asked to leave a brief message explaining the nature of your query. A member of the PoCA Team will return your call as soon as they are able.