

Health Service Circular

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Category: Human Resources
Status: Direction

The Secretary of State has powers under a number of provisions in the primary legislation relating to the NHS to give directions to Health Authorities, NHS Trusts, Special Health Authorities and Primary Care Trusts. These are legally binding and must be complied with by the recipient. They may be addressed to only one body, or a number of bodies, or all bodies falling within a particular category (such as all Health Authorities).

PRE AND POST APPOINTMENT CHECKS FOR ALL PERSONS WORKING IN THE NHS IN ENGLAND

To: Health Authorities (England) - Chief Executive
NHS Trusts - Chief Executives
Special Health Authorities
Primary Care Trusts

Cc: Community Health Councils, Chief Officers
Post Graduate Deans
Regional Directors of Public Health
NHS Trusts - Directors of Personnel
NHS Trusts Medical Directors

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It is also available on the Department of Health web site at

<http://www.doh.gov.uk/publications/coinh.html>

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PRE AND POST APPOINTMENT CHECKS FOR ALL PERSONS WORKING IN THE NHS IN ENGLAND

Summary

Recent cases have highlighted the need to strengthen current recruitment and selection procedures, and this Circular reflects the commitment given by Nigel Crisp in his capacity as Accounting Officer to the NHS at the Public Accounts Committee hearing on 14th January 2002 concerning the use and availability of references.

This Circular brings together various elements of good practice relating to the checks required before an NHS body appoints a person, whether as an employee, volunteer or by hiring a person's services, and should be seen as complementing good appointment practice, and as one part of that overall process. The Department of Health has issued separate guidance concerning the Criminal Records Bureau, which can be found on the DoH web site at www.doh.gov.uk/publications/pointh.html.

The Circular is intended to supplement those checks and enquiries that NHS bodies are required to undertake by law. NHS bodies are responsible for ensuring that they comply with their legal obligations, including any prohibition on offering an appointment, and with any requirements stipulated by regulatory bodies.

It is essential that all persons working in the NHS are trustworthy and reliable. Many problems can be avoided if thorough pre-appointment checks are undertaken before a position is filled. Failure by an employee to provide accurate and truthful information at the time of applying for their position must be considered a disciplinary matter. Where it is found that an employee intentionally or recklessly provided inaccurate information or withheld information that is relevant to their appointment, they can be dismissed.

The Circular also incorporates post appointment checks that NHS bodies are required to undertake in relation to persons who have already been appointed, including checks where a person working in an NHS body changes duties, and checks that are required when a person leaves an NHS body before an investigation relevant to his or her appointment has been completed.

The attached schedule covers procedures for the appointment of all persons working in an NHS body, whether they are employees, volunteers or their services are hired, and must apply to all applicants from and including 1st July 2002.

All these checks must be made prior to an appointment being made in relation to an NHS body. There is a need to prevent persons from working in the NHS without an NHS body's prior knowledge or approval where they are:

- charged with a criminal offence in the UK or in another country before taking up a position offered to them where criminal record information has been obtained prior to their appointment;
- bound over or have a criminal conviction in the UK or in another country that they can lawfully be asked to declare, if this is relevant to their position;

and in the case of positions exempted from the Rehabilitation of Offenders Act 1974 have;

- received a police caution, final warning or reprimand;

and where such a position will involve regularly caring for, training, supervising, or being in sole charge of persons aged under 18 or vulnerable adults;

- are currently the subject of any police investigation, whether in the UK or in any other country, or have been dismissed by reason of misconduct from any previous employment, office or other position;

There is a need to prevent health professionals from working or practising without an NHS body's prior knowledge or approval where they:

- are currently the subject of a fitness to practise investigation or proceedings by a licensing or regulatory body in the UK or in any other country; and/or
- have been removed from the register or conditions made on their registration by the fitness to practise committee of a licensing or regulatory body in the UK or in any other country.

NHS bodies need to ensure that prior to making an unconditional appointment they have information about any pending proceedings and action by regulatory or law enforcement bodies where this is necessary in order to safeguard patient safety.

In addition, there is a need to prevent persons working in the NHS without an occupational health and/or risk assessment being carried out to ensure that:

- they are capable of carrying out the work to which their prospective appointment relates, taking into account any current or previous illnesses and the obligations imposed by equal opportunities legislation; and/or
- anyone likely to be at risk of developing work-related diseases from hazardous agents present in the workplace is identified.

Where, in the normal course of their duties, successful applicants will have access to persons in receipt of health services, it is important that persons whose services are hired by an NHS body and who are not employees of the NHS body e.g. agency staff, and persons holding honorary contracts and locum appointments are subject to checks that are no less rigorous than for substantive employees. It will be for the NHS body in partnership with others to ensure either that the NHS body carries out these checks themselves or takes action to satisfy themselves that the other party carries out the necessary checks, where it is appropriate for that party to do so.

This circular replaces HSC2000/019, "Appointment Procedures for Hospital and Community Medical and Dental Staff".

Action

From and including **1st July 2002** when appointing a person, whether as an employee, volunteer, or by hiring a person's services, NHS bodies must have procedures in place to ensure that they comply with the checks specified in the Schedule to the NHS Pre and Post Appointment Checks Directions 2002.

NHS bodies are expected to select applicants on merit, and in particular, to implement the procedures referred to in the Schedule to those Directions in compliance with the **Disability Discrimination Act 1995** and health and safety legislation.

Procedures should be in place to enable applicants having disabilities who are short-listed for interview to indicate whether they have any specific requirements in the interview or selection process, or require any adjustments in connection with the position.

NHS bodies are also expected to implement the pre-and post appointment checks specified in the attached Directions in compliance with the **Data Protection Act 1998**, and with due regard for confidentiality.

Information relating to an applicant's criminal record, health or professional status **must not** be routinely sought from every applicant who applies for a position. NHS bodies need to consider the best way to discharge their duty of care to patients and others. It may be that this can be met by obtaining such information from only the successful applicant prior to making an unconditional offer of appointment.

If other applicants who are not ultimately offered a position are asked by an NHS body to provide such information, the NHS body may need to justify why it was necessary, for example in order to protect patients or staff, to make the request at an earlier stage in the appointment process.

Any relevant information declared should be explored with the applicant prior to final selection. It is for the NHS body to decide whether to offer an applicant a position based on a full and fair assessment of the applicant's circumstances and the risks associated with the position. A criminal conviction should not automatically bar an applicant from an appointment. However, when selecting applicants, NHS bodies need to be fully aware of their legal responsibilities and any requirements stipulated by regulatory bodies.

The requirements embodied in this Circular must be incorporated into NHS bodies' procedures if they do not already form part of their current practices.

For the purpose of the attached Directions:

- "conviction" or "convicted" shall exclude reference to parking offences;
- "vulnerable adult" shall have the meaning given to it by The Police Act 1997 (Enhanced Criminal Record Certificates) (Protection of Vulnerable Adults) Regulations 2002;
- "the 1998 Act" means the Data Protection Act 1998;
- "the 1974 Act" means the Rehabilitation of Offenders Act 1974;
- references to statutory provisions include all modifications, amendments and re-enactments.

Model declarations and a supporting policy statement can be found on the DoH Web at www.doh.gov.uk/hrinthenhs/preandpostemploymentchecks.htm and must be read in conjunction with this Circular.

This Circular has been issued by:

A handwritten signature in black ink, appearing to be 'Paul H. H.', is positioned above the title 'Director of Human Resources'.

Director of Human Resources

NATIONAL HEALTH SERVICE ACT 1977**NATIONAL HEALTH SERVICE AND COMMUNITY CARE ACT 1990****The NHS
Pre and Post Appointment Checks Directions 2002**

The Secretary of State for Health, in exercise of the powers conferred on him by section 17, paragraph 10(1) of Schedule 5, and paragraph 8(3) of Schedule 5A to the National Health Service Act 1977^(a), and paragraph 16(5) of Schedule 2 to the National Health Service and Community Care Act 1990^(b), hereby gives the following Directions:

Application, commencement, citation and interpretation

1. (1) These Directions apply to all NHS bodies in England and shall come into force on **1st July 2002**.

(2) These Directions shall be referred to as The NHS Pre and Post Appointment Checks Directions 2002

(3) In these Directions "NHS bodies" means:
 - (i) Health Authorities;
 - (ii) Special Health Authorities;
 - (iii) NHS Trusts;
 - (iv) Primary Care Trusts.

Pre and Post appointment checks to be made by NHS bodies

2. NHS bodies shall comply with the requirements that are set out in the Schedule to these Directions.

Effect of Direction 2

3. The fact of compliance or non-compliance with Direction 2 shall in itself have no effect on the validity or enforceability of a contract entered into by an NHS body to which these Directions apply.

Signed on behalf of the Secretary of State for Health



Martin Sturges
Member of the Senior Civil Service
28th May 2002

^(a) 1977 c.49

^(b) 1990 c.19

SCHEDULE TO THE NHS PRE AND POST APPOINTMENT CHECKS DIRECTIONS 2002

Pre-appointment checks - Requirements to be complied with by an NHS body before an appointment is made:

- 1 Prior to making an unconditional offer to appoint a person to a position to which the 1974 Act applies, an NHS body must determine whether the nature of the position makes it necessary, and if so to what extent, to obtain details of current “bind overs” or “unspent” convictions for the purpose of assessing an applicant’s suitability. Where an NHS body determines that it is necessary to obtain such information, the NHS body must obtain a declaration from the applicant that is sufficient for this purpose. Nothing in this provision shall authorise or require an NHS body to do or to refrain from doing any act in contravention of the 1998 Act.
- 2 Prior to making an unconditional offer to appoint a person to a position exempted from the 1974 Act, a declaration must be obtained from the applicant stating whether that applicant:
 - is bound over or has ever been convicted of a criminal offence in the UK or in any other country;
 - is charged with a criminal offence, whether in the UK or another country, that is not yet disposed of;
 - has received a police caution, final warning or reprimand;
 - is currently the subject of any investigation or proceedings by any body having regulatory functions relating to health/social care professionals including such a body in another country;
 - has ever been disqualified from the practice of a profession or required to practise it subject to specified limitations following fitness to practise proceedings by a regulatory body in the UK or in another country;

and where such a position involves regularly caring for, training, supervising or being in sole charge of persons aged under 18 or vulnerable adults, also stating whether the applicant:

- is to their knowledge currently the subject of any police investigation, whether in the UK or in any other country;
- has previously been dismissed from any employment, office or other position by reason of misconduct.

Any relevant information declared by an applicant should be explored with that person before final selection.

- 3 NHS bodies are required to obtain an occupational health questionnaire completed by the applicant prior to making an unconditional offer of appointment.
- 4 Qualifications relevant to the position applied for must be verified by the validation of certificates at interview.

- 5 The identity of the applicant must be reliably verified before an appointment is made, such as through the presentation of a valid full birth certificate, with either a current passport or a photo driving licence.
- 6 The validity of work permits must be verified and their status clarified.
- 7 NHS bodies must obtain references before making an unconditional offer to appoint a successful applicant. If an applicant is or has been employed, references should be obtained from the two most recent employers. If an applicant has worked only as a volunteer, references should be obtained from the two most recent bodies for whom they have worked. References must be obtained from a person in a position of responsibility relative to the applicant, such as from a person having management responsibility. References for health professionals should be obtained from the applicant's clinical line manager and Medical Director or Chief Executive, as appropriate. Referees should be asked to comment on work or professional competence and personal qualities. Explanations must be sought in relation to any gaps in employment.
- 8 Before an NHS body appoints a health/social care professional, the NHS body must request the relevant regulatory/licensing body to specify whether the applicant is appropriately registered; whether that registration covers the duties to be undertaken; whether the registration is subject to any current restrictions and whether the applicant is the subject of any fitness to practice investigations which the regulatory/licensing body has a duty to disclose.
- 9 Where the position is a "regulated position" under the terms of the Protection of Children Act 1999 (as amended by the Criminal Justice and Court Services Act 2000), checks must be carried out in accordance with the Protection of Children Act 1999 by which anyone whose name is on the list is barred from working with children. **It is an offence for an individual knowingly to offer work to or procure work for such a person.** A check should also be made against police records. The Criminal Records Bureau (CRB) carries out these checks. Further guidance on the use of the CRB is available from the CRB.
- 10 Before an NHS body makes an unconditional offer to employ or hire the service of a successful applicant, that person must have a pre-appointment health assessment carried out and determined fairly, objectively and in accordance with equal opportunities legislation and good occupational health practice in accordance with current Department of Health guidance (HSC 1998/064 Management of Health, Safety and Welfare Issues for NHS Staff).
- 11 A suitable and sufficient risk assessment should be made of the duties to be performed by prospective volunteers.
- 12 If pre-appointment checks are delegated to an agency, NHS bodies must satisfy themselves those checks are carried out. If pre-appointment checks are delegated to some other body, except for the checks specified in paragraph 10 which will need to be conducted by the NHS body, mechanisms must be in place to ensure that they are carried out. The Department has also issued guidance on the appointment of locums, under the title "Code of Practice – In the Appointment and Employment of HCHS Locum Doctors".
- 13 NHS bodies must stipulate that applicants who are required to declare criminal record information prior to appointment must inform the appointing NHS body if, before taking up any position that is offered to them they are charged with a criminal offence in the UK or in any other country.

Post-appointment checks - Requirements to be complied with by an NHS Body after an appointment is made:

- 14 A suitable and sufficient occupational health and risk assessment must be undertaken before a person employed by an NHS body transfers to a new position involving a significant change of duties to ensure that the person is capable of carrying out the work proposed. Account is to be taken of any current or previous illnesses and the duties imposed by the Disability Discrimination Act 1995 (see HSC 1998/064 Management of Health, Safety and Welfare Issues for NHS Staff).
- 15 All references must be written by a person with management responsibility, be honest, accurate, fair, made with reasonable care and include an assessment of job related competency and personal qualities. Policies must be in place to designate managers who are authorised to write references on behalf of the NHS body.
- 16 Where disciplinary procedures have been instigated against an employee, the employing NHS body must conduct a reasonable investigation in all cases and must form a genuinely held judgement based on reasonable grounds whether the allegations have foundation. Where there is such a finding this must be reflected in any future work or professional references.
- 17 If an NHS body has serious concerns about the safety of patients or staff, consideration must be given to requesting the Regional Director of Public Health to issue an alert letter in accordance with current Department of Health guidance.
- 18 If an NHS body judges that the fitness to practise of a health professional is called into question, the NHS body must inform the appropriate regulatory body and give notice in writing to the person who is the subject of the referral of the decision to refer.
- 19 NHS bodies must regularly confirm that the registration of a health/social care professional whose registration is subject to periodic renewal remains effective, and must have policies for dealing with lapsed registrants.

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EXAMPLE
General Statement of Policy

**General Statement of Policy regarding fitness to practise proceedings by a
licensing/regulatory body and relating to criminal records.**

Registration with the professional body imposes a duty on health care professionals to provide a good standard of medical care for, and behave appropriately towards, patients. NHS employers also have a duty to ensure that patients receive a good standard of medical care and to take all practicable steps to ensure the safety of patients and staff.

In order to assess job related risks, we [**name of organisation**] need to establish if applicants who may be offered certain positions have a criminal record in the UK or in another country that they can lawfully be required to disclose.

When recruiting, we [**name of organisation**] inform applicants if criminal record information will be requested from them as part of the appointment process. This will enable applicants to decide whether they wish to apply for the position.

As part of the appointment process, applicants will be asked to complete a declaration for this purpose.

If such information is requested, we will inform applicants whether the nature of the position for which they intend to apply means that they will be asked to disclose convictions that would otherwise be “spent” under the provisions of the Rehabilitation of Offenders Act 1974. This will also help applicants to decide whether or not they wish to apply for the position

Applicants for certain professions and positions concerned with the provision of health services (including but not limited to: medical practitioners, dentists, nurses, and midwives) are exempted from the Rehabilitation of Offenders Act 1974, and can therefore be asked to disclose “spent” convictions that they would otherwise not have to declare.

Applicants for such positions will also be asked if they are “bound over”, have received a police caution, warning or reprimand and whether they have been charged with a criminal offence that is not yet disposed of.

Prior to making such an appointment, we [**name of organisation**] also need to establish if applicants for such positions have ever been disqualified from the practice of a profession or required to practise it subject to specified limitations following fitness to practise proceedings by a regulatory body in the UK or in another country, and whether they are currently the subject of any investigation or proceedings by any body having regulatory functions in relation to health/social care professionals, including such a regulatory body in another country. This is also reflected in the declaration.

Where such a position involves regular care, training, supervision or sole charge of persons aged under 18 or vulnerable adults (as defined by The Police Act 1997 (Enhanced Criminal Record Certificates)(Protection of Vulnerable Adults) Regulations 2002), applicants will also be asked whether they are currently the subject of any police investigation in the UK or any

other country of which they are aware.

Where the position is a “regulated position” under the terms of the Protection of Children Act 1999 (as amended by the Criminal Justice and Court Services Act 2000), checks will be carried out in accordance with the Protection of Children Act 1999. Anyone whose name is on the list is legally barred from working with children. It is an offence for such a person to knowingly apply for, offer to do, accept or to do such work. A check will also be made against police records in accordance with best practice procedures. From 11 March 2002, these checks will be carried out by the Criminal Records Bureau (CRB).

If a Disclosure is to be sought from the Criminal Records Bureau, prospective applicants will be informed at the outset. We **[name of organisation]** have a separate more detailed **Code of Practice** that meets the standards specified by the Criminal Records Bureau relating to the fair use of criminal record information and the appointment of persons having a criminal record. A copy of **[name of organisation’s]** Code can be obtained from **[insert details]**.

Applicants are encouraged to declare criminal conviction information and any other matters that are, or that might be, relevant the position for which they are applying at an early stage in the appointment process.

In cases where criminal record information is deemed necessary to assess a person’s suitability for the position, all applicants are also expected to inform **[name of organisation]** if, before taking up any position offered to them, they are charged with a criminal offence in the UK or another country.

We **[name of organisation]** are an equal opportunities employer, and all applications will be decided fairly and on merit. Information declared will be used to consider the applicant’s suitability for the position. Information supplied will be treated in confidence and will not be used as the sole criteria to decide an applicant’s fitness for the position.

Unless an appointment is prohibited by law, a criminal conviction will not automatically debar the applicant from appointment. Applicants will be given an opportunity to discuss any information supplied before a final decision is taken regarding their appointment.

However, an applicant may not be selected if the selection panel considers that the information declared renders that person unsuitable for the position for which they have applied. In reaching such a decision we **[name of organisation]** will consider the nature of the record/action, its relevance to the position applied for, and any other information the applicant wishes to provide.

The information declared will be treated in compliance with the Data Protection Act 1998.

NOTE: Failure by an applicant to provide accurate and truthful information is considered to be a serious matter.

Where it is found that a person has intentionally or recklessly provided inaccurate information or withheld information relevant to their position, this may disqualify them from appointment. It may also result in dismissal or disciplinary action and referral to the appropriate professional regulatory body.

If you would like to discuss what effect any criminal record or fitness to practise proceedings might have on your application, you may telephone: **[insert details]** in the HR department, in confidence, for advice.

MODEL DECLARATION FORM A

*Notes to Health Bodies: this Model Declaration is intended for use **only** in connection with positions that are exempted from the Rehabilitation of Offenders Act 1974 **and** which are of a kind for which an Enhanced Disclosure may be sought under the provisions of Section 115 of the Police Act 1997.*

The use of this Model Declaration should be seen as complementing existing good recruitment practice, and as one part of the overall selection process. The Model Declaration is not a substitute for the full range of pre-appointment checks that are required by law or that are available to health bodies. It should be remembered that appointing persons on the basis of information that applicants have themselves provided can never be risk free.

The Department of Health has published guidance concerning the Criminal Records Bureau on the DoH website at www.doh.gov.uk/publication/pointh/html.

Health bodies are expected to comply with the Data Protection Act 1998 when processing applications. For the purpose of this Model, it is presumed that NHS bodies provide applicants with separate information [referred to for the purpose of this Model Declaration as "Guidance Notes for Applicants"] that reflects local procedures to ensure that they deliver compliance.

The Secretary of State accepts no liability for any decisions that are based on this Model Declaration Form.

** include this question where the position involves regular contact with children in the normal course of the post holder's duties or is a "regulated position" under the provisions of the Protection of Children Act 1999 (as amended)*

CONFIDENTIAL

Before you can be considered for appointment in a position of trust with **[organisation]** we need to be satisfied about your character and suitability.

Please read the following notes carefully before completing this Declaration Form. If you require further information, please contact **[insert details]** All enquiries will be treated in confidence.

[organisation] aims to promote equality of opportunity and is committed to treating all applicants for positions fairly and on merit regardless of race, gender, marital status, religion, disability, sexual orientation, age, or offending history. We undertake not to discriminate unfairly against applicants on the basis of criminal conviction or other information declared.

Prior to making a final decision concerning your application, we shall discuss with you any information declared by you that we believe has a bearing on your suitability for the position. If we do not raise this information with you, this is because we do not believe that it should be taken into account. In that event, you remain free to discuss any of that information or any other matter that you wish to raise. As part of assessing your application, we will only take into account relevant criminal record and other information declared.

The Data Protection Act 1998 requires us to provide you with certain information and to obtain your consent before processing sensitive data about you. Processing includes: obtaining, recording, holding, disclosing destruction and retaining information. Sensitive personal data includes any of the following information: criminal offences, criminal convictions, criminal proceedings, disposal or sentence.

The information that you provide in this Declaration Form will be processed in accordance with the Data Protection Act 1998, and will only be used for the purpose of determining your application for this position. Once a decision has been made concerning your appointment, we will not retain this Declaration Form longer than is necessary.

This Declaration Form will be kept in securely and in confidence, and access to it will be restricted to designated persons within [insert details] and other persons who need to see it as part of the selection process and who are authorised to do so.

Please ensure that you read the "Guidance Notes for Applicants" that accompanied your application form carefully before completing this Declaration Form. They provide you with further and more detailed information concerning how your application will be processed, and include details of purposes for which information about you will be processed, the persons to whom it will be disclosed, and the checks that will be undertaken to verify the information provided before you are offered a position if your application is successful.

Please will you answer **all** of the following questions. If you answer "Yes" to any of the questions, please provide full details in the space indicated. Please also use the space below to provide any other information that may have a bearing on your suitability for the position for which you are applying. You may continue on a separate sheet if necessary, and you may attach supplementary comments should you wish to do so.

The position for which you have applied is exempted from the Rehabilitation of Offenders Act 1974. This means that you must declare all criminal convictions, including those that would otherwise be considered "spent".

[With the exception of question 8*] answering 'Yes' to any of the questions below will not necessarily bar you from appointment. This will depend on the nature of the position for which you are applying and the particular circumstances.

-
1. Are you currently bound over or have you ever been convicted of any offence by a Court or Court-Martial in the United Kingdom or in any other country?

Note: You do not need to tell us about parking offences.

NO

YES

If **YES**, please include details of the order binding you over and/or the nature of the offence, the penalty, sentence or order of the Court, and the date and place of the Court hearing.

2. Have you ever received a police caution, reprimand or final warning?

NO

YES

If **YES**, please include details of the caution, reprimand or final warning, including the date and reason administered.

3. Have you been charged with any offence in the United Kingdom or in any other country that has not yet been disposed of?

Please note: you must inform us immediately if you are charged with any offence in the United Kingdom or in any other country after you complete this form and before taking up any position offered to you. You do not need to tell us if you are charged with a parking offence.

NO

YES

If **YES**, please include details of the nature of the offence with which you are charged, date on which you were charged, and details of any on-going proceedings by a prosecuting body.

4. Are you aware of any current police investigation in the United Kingdom or in any other country following allegations made against you?

NO

YES

If **YES**, please include details of the nature of the allegations made against you, and if known to you, any action to be taken against you by the police.

5. Have you ever been dismissed by reason of misconduct from any employment, office or other position previously held by you?

NO

YES

If **YES**, please include details of the employment, office or position held, the date that you were dismissed and the nature of allegations of misconduct made against you.

6. Have you ever been disqualified from the practice of a profession or required to practice subject to specified limitations following fitness to practice proceedings by a regulatory or licensing body in the United Kingdom or in any other country?

NO

YES

If **YES**, please include details of the nature of the disqualification, limitation or restriction, the date, and the name and address of the licensing or regulatory body concerned.

7. Are you currently the subject of any investigation or fitness to practise proceedings by any licensing or regulatory body in the United Kingdom or any in other country?

NO

YES

If **YES**, please include details of the reason given for the investigation and/or proceedings undertaken, the date, details of any limitation or restriction to which you are currently subject, and the name and address of the licensing or regulatory body concerned.

8. Are you subject to any other prohibition, limitation, or restriction that means we are unable to consider you for the position for which you are applying* ?

NO

YES

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If **YES**, please include details of the nature of the prohibition, restriction, or limitation, when and by whom it was made.

If you have answered "yes" to **any** of the questions above, please use this space to provide details. Please indicate **clearly** the number(s) of the question that you are answering:

DECLARATION

I have read the "Guidance Notes for Applicants" that accompanied my application form, and I consent to the information provided in this Declaration Form being used by **[organisation]** for the purpose of assessing my application.

I confirm that the information that I have provided in this Declaration Form is correct and complete. I understand and accept that if I withhold information or provide false or misleading information this may result in my application being rejected, or if I am appointed, in my dismissal.

Please sign and date this form.

SIGNATURE.....

NAME (in block capitals)

.....

DATE.....

Note: if you wish to withdraw your consent at any time after completing this Declaration Form, please contact **[insert details]**

MODEL DECLARATION FORM B

*Notes to Health Bodies: this Model Declaration is intended for use **only** in connection with positions that are exempted from the Rehabilitation of Offenders Act 1974.*

The use of this Model Declaration should be seen as complementing existing good recruitment practice, and as one part of the overall selection process. The Model Declaration is not a substitute for the full range of pre-appointment checks that are required by law or that are available to health bodies. It should be remembered that appointing persons on the basis of information that applicants have themselves provided can never be risk free.

The Department of Health has published guidance concerning the Criminal Records Bureau on the DoH website at www.doh.gov.uk/publication/pointh.html.

Health bodies are expected to comply with the Data Protection Act 1998 when processing applications. For the purpose of this Model, it is presumed that NHS bodies provide applicants with separate information [referred to for the purpose of this Model Declaration as "Guidance Notes for Applicants"] that reflects local procedures to ensure that they deliver compliance.

The Secretary of State accepts no liability for any decisions that are based on this Model Declaration Form.

** include this question where the position involves regular contact with children in the normal course of the post holder's duties or is a "regulated position" under the provisions of the Protection of Children Act 1999 (as amended)*

CONFIDENTIAL

Before you can be considered for appointment in a position of trust with **[organisation]** we need to be satisfied about your character and suitability.

Please read the following notes carefully before completing this Declaration Form. If you require further information, please contact **[insert details]** All enquiries will be treated in confidence.

[organisation] aims to promote equality of opportunity and is committed to treating all applicants for positions fairly and on merit regardless of race, gender, marital status, religion, disability, sexual orientation, age, or offending history. We undertake not to discriminate unfairly against applicants on the basis of criminal conviction or other information declared.

Prior to making a final decision concerning your application we shall discuss with you any information declared by you that we believe has a bearing on your suitability for the position. If we do not raise this information with you, this is because we do not believe that it should be taken into account. In that event, you remain free to discuss any of that information or any other matter that you wish to raise. As part of assessing your application, we will only take into account relevant criminal record and other information declared.

The Data Protection Act 1998 requires us to provide you with certain information and to obtain your consent before processing sensitive data about you. Processing includes: obtaining, recording, holding, disclosing destruction and retaining information. Sensitive personal data includes any of the following information: criminal offences, criminal convictions, criminal proceedings, disposal or sentence.

The information that you provide in this Declaration Form will be processed in accordance with the Data Protection Act 1998, and will only be used for the purpose of determining your application for this position. Once a decision has been made concerning your appointment, we will not retain this Declaration Form longer than is necessary.

This Declaration Form will be kept in securely and in confidence, and access to it will be restricted to designated persons within [insert details] and other persons who need to see it as part of the selection process and who are authorised to do so.

Please ensure that you read the “Guidance Notes for Applicants” that accompanied your application form carefully before completing this Declaration Form. They provide you with further and more detailed information concerning how your application will be processed, and include details of purposes for which information about you will be processed, the persons to whom it will be disclosed, and the checks that will be undertaken to verify the information provided before you are offered a position if your application is successful.

Please will you answer **all** of the following questions. If you answer "Yes" to any of the questions, please provide full details in the space indicated. Please also use the space below to provide any other information that may have a bearing on your suitability for the position for which you are applying. You may continue on a separate sheet if necessary, and you may attach supplementary comments should you wish to do so.

The position for which you have applied is exempted from the Rehabilitation of Offenders Act 1974. This means that you must declare all criminal convictions, including those that would otherwise be considered "spent".

[With the exception of question 6*] answering ‘Yes’ to any of the questions below will not necessarily bar you from appointment. This will depend on the nature of the position for which you are applying and the particular circumstances.

-
1. Are you currently bound over or have you ever been convicted of any offence by a Court or Court-Martial in the United Kingdom or in any other country?

Note: You do not need to tell us about parking offences.

NO

YES

If **YES**, please include details of the order binding you over and/or the nature of the offence, the penalty, sentence or order of the Court, and the date and place of the Court hearing.

2. Have you ever received a police caution, reprimand or final warning?

NO

YES

If **YES**, please include details of the caution, reprimand or final warning, including the date and reason administered.

3. Have you been charged with any offence in the United Kingdom or in any other country that has not yet been disposed of?

Please note: you must inform us immediately if you are charged with any offence in the United Kingdom or in any other country after you complete this form and before taking up any position offered to you. You do not need to tell us if you are charged with a parking offence.

NO

YES

If **YES**, please include details of the nature of the offence with which you are charged, date on which you were charged, and details of any on-going proceedings by a prosecuting body.

4. Have you ever been disqualified from the practice of a profession or required to practice subject to specified limitations following fitness to practice proceedings by a regulatory or licensing body in the United Kingdom or in any other country?

NO

YES

If **YES**, please include details of the nature of the disqualification, limitation or restriction, the date, and the name and address of the licensing or regulatory body concerned.

5. Are you currently the subject of any investigation or fitness to practise

proceedings by any licensing or regulatory body in the United Kingdom or any in other country?

NO

YES

If **YES**, please include details of the reason given for the investigation and/or proceedings undertaken, the date, details of any limitation or restriction to which you are currently subject, and the name and address of the licensing or regulatory body concerned.

6. Are you subject to any other prohibition, limitation, or restriction that means we are unable to consider you for the position for which you are applying* ?

NO

YES

If **YES**, please include details of the nature of the prohibition, restriction, or limitation, when and by whom it was made.

If you have answered "yes" to **any** of the questions above, please use this space to provide details. Please indicate **clearly** the number(s) of the question that you are answering:

| |
|--|
| |
|--|

DECLARATION

I have read the “Guidance Notes for Applicants” that accompanied my application form, and I consent to the information provided in this Declaration Form being used by [**organisation**] for the purpose of assessing my application.

I confirm that the information that I have provided in this Declaration Form is correct and complete. I understand and accept that if I withhold information or provide false or misleading information this may result in my application being rejected, or if I am appointed, in my dismissal.

Please sign and date this form.

SIGNATURE.....

NAME (in block capitals)

.....

DATE.....

Note: if you wish to withdraw your consent at any time after completing this Declaration Form, please contact [**insert details**]

CRB Disclosures in the NHS

– new guidance

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Criminal Records Bureau

The Criminal Records Bureau (CRB) launched its Disclosure service in March 2002, which now means that information about criminal convictions and other police records are more widely available than before.

This guidance will give you an overview of:

- the different types of Disclosures
- what level of Disclosure is required for different posts
- where to find out more information
- the help and support that NHS Employers can provide.

We would recommend that this document should be used alongside the CRB's own guidance which can be found on their website (www.crb.gov.uk) and in their newsletters.

Levels of Disclosure and access

The CRB currently issues two levels of Disclosure – Standard and Enhanced. We are aware that there have been initial discussions about Basic Disclosures but there are no plans to introduce them in the near future.

| Type of disclosure | What it covers | How to access it |
|-----------------------------|---|---|
| Standard Disclosures | Lists all convictions (spent and unspent), cautions, reprimands or warnings, and in relevant cases reveals if an individual is on any lists held by the Department of Health or the Department for Education and Skills and is unsuitable to work with children or vulnerable adults. | The gateway to both Standard and Enhanced Disclosures is the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, which outlines the positions/posts where employees can be asked about spent convictions. |
| Enhanced Disclosures | Includes all the information revealed on a Standard Disclosure, as well as any relevant additional non-conviction information held locally by the police. | As above. |

Use of Disclosures

Disclosures are an important tool in helping safer recruitment practices and patient safety. Although a criminal conviction does not prevent anyone from working in the NHS, some types of offences, for example involving violence or sexual abuse, may indicate that an applicant is unsuitable to have access to patients and should not be employed.

The Disclosure is just one element in the pre- and post-employment checks required by HSC 2002/008. It should be considered in the light of all relevant circumstances, including:

- the nature of the offence
- the age of the applicant at the time the offence was committed
- the applicant's subsequent record
- how relevant the offence is to the post applied for.

Guidance on the use of information about criminal records by employers has been issued by the Chartered Institute of Personnel and Development and may be accessed at www.crb.gov.uk or www.cipd.co.uk

Eligibility

Eligibility for Standard Disclosures

As a recruiter, when asking a prospective candidate to apply for a Disclosure you will be responsible for identifying the level of Disclosure that is required for the position, balancing the need to prevent unsuitable people from working in sensitive posts, against the threat of discrimination against ex-offenders who are rehabilitated.

For positions in NHS hospitals, they can be obtained for:

‘Any employment or other work which is concerned with the provision of health services and which is of such a kind as to enable the holder of that employment or the person engaged in that work to have access to persons in receipt of such services in the course of his normal duties.’

Only the courts can provide an authoritative legal interpretation of this provision, but following consultation with the Department of Health and the Home Office our guidance would be:

- anyone employed by a hospital (directly, or under contract) concerned with the provision of health service(s)
- and where their employment enable(s) the holder to have access to patients... in the course of normal duties, for example a porter who wheels patients between wards or departments, or cleaners who spend significant time on a ward, as well as medical, nursing or clinical personnel who are directly treating patients.

It is not possible to issue precise guidance on eligibility and employers should consider each post individually when trying to determine the need for a Disclosure. Overall, we would suggest that a very large proportion of staff working in hospitals would satisfy this test.

In addition to directly-employed staff, employers will need to consider vetting for contract staff such as electricians and plumbers and, if required, the most appropriate level of Disclosure.

This guidance includes some example scenarios to help employers decide whether a Disclosure is required, and if it is, at what level.

Posts unlikely to require a Disclosure

Posts that may not pass the 'access test' include:

- administrative staff who normally work in a separate administrative block
- maintenance staff whose normal duties do not take them onto wards or into other situations where they have access to patients
- scientific and technical staff such as laboratory technicians
- laundry staff
- catering staff who do not deliver food to patients.

Eligibility for Enhanced Disclosures

To qualify for the highest level of Disclosure – Enhanced – the post must also meet one of the criteria set out in Section 115 of the Police Act 1997, or in regulations made under Section 115. There is an additional requirement that the 'care' position must regularly involve caring for, training, supervising or being in sole charge of:

- a person aged under 18
- or a person aged 18 or over who is a vulnerable adult as outlined by the Police Act 1997 (Enhanced Criminal Record Certificates; Protection of Vulnerable Adults) Regulations 2002.

In these regulations a 'vulnerable adult' means a person aged 18 or over who is:

- receiving one of the following services:
 - a) accommodation and nursing or personal care in a care home
 - b) personal care or nursing or support to live independently in his own home
 - c) any services provided by an independent hospital, independent clinic, independent medical agency or National Health Service body

- d) social care services
 - e) any services provided in an establishment catering for a person with learning difficulties
- as a result of one of the following conditions:
 - a) a learning or physical disability
 - b) a physical or mental illness, chronic or otherwise, including an addiction to alcohol or drugs
 - c) a reduction in physical or mental capacity
- has one of the following disabilities:
 - a) a dependency upon others in the performance of, or a requirement for assistance in the performance of, basic physical functions
 - b) severe impairment in the ability to communicate with others
 - c) impairment in a person's ability to protect himself from assault, abuse or neglect.

In this regulation, 'care home', 'independent clinic', 'independent hospital', 'independent medical agency' and 'National Health Service body' have the same meanings as in the Care Standards Act 2000.

Each vulnerable adult care post should be considered to see whether the criteria are met, in terms of both the definition of a 'care position' and the definition of a 'vulnerable adult'. It is impossible to specify every post requiring an Enhanced Disclosure under these provisions but posts specialising in the care of the very frail and chronically disabled would be included.

Mandatory CRB checks for NHS staff

From 14 February 2005, CRB checks will become a mandatory part of NHS recruitment and will apply to every new recruit who has access to patients as part of their normal duties. (There are special provisions for students, trainees and junior doctors and certain other groups of staff.)

These checks are part of the Secretary of State's *Standards for better health*, which covers all NHS organisations, including NHS foundation trusts. For more information on *Standards for better health*, visit www.dh.gov.uk

Mandatory checks will include all medical, nursing and other staff with direct patient contact, as well as staff whose work provides access to patients in the course of their normal duties, such as cleaners and maintenance staff.

The checks will trawl information held on the Police National Computer (PNC) and the records held by the Department for Education and Skills (DFES) to help NHS employers assess the suitability of candidates.

NHS employers will still make the decision on whether to appoint a person. This measure ensures they will do it in the context of all the relevant information. A criminal conviction should not debar a person from NHS employment. The weight given to the conviction will depend on the nature of the offence, the age at which it was committed, and its relevance to the post.

CRB checks on general practitioners

This group is exempt from the Rehabilitation of Offenders Act (Exceptions Order) under the provisions set out above.

In these cases, the additional power required to obtain an Enhanced Disclosure is not via sections of the Police Act covering children or vulnerable adults. Section 19 of the Health and Social Care Act 2001 further amended Section 115 of the Police Act to allow primary care trusts (PCT's) access to Enhanced Disclosures when considering applications from GPs to join PCT lists.

From 3 November 2003, the Department of Health requires a listed doctor to provide his/her PCT with an Enhanced Disclosure, if the PCT asks for one with reasonable cause. This requirement will cover a small number of individual cases where the PCT has information that calls into question the declarations that doctors provided about their history.

From 1 April 2004, all GPs applying to join a PCT's medical performers list have to provide an Enhanced Disclosure as part of their application.

The special exercise to obtain Enhanced Disclosures for all primary medical performers who have not provided them to the PCT on whose list their names appear, started on 1 November 2004 and should be completed by 1 February 2005.

Guidance for applicants is available in *An applicant's guide to completing the Disclosure application form* and *Guidance for Disclosure applicants*. Both of these documents can be found at www.disclosure.gov.uk. This site also provides guidance for application counter-signatories in *Dealing with Disclosure application forms*.

CRB checks on students

It may be helpful to bear in mind the following points in relation to CRB checks on students:

- CRB Disclosures may be requested by higher educational institutions (HEI's) as part of their admissions procedure for healthcare students where a training

placement has been arranged; a Disclosure should only be requested for applicants who have been provisionally accepted.

- The level of Disclosure (Standard or Enhanced) should be agreed with the host trust. As students will normally be supervised, a Standard Disclosure will probably be all that is required in most cases, apart from posts 'whose normal duties include regularly caring for, training, supervising or being in sole charge of children of children or vulnerable adults' (Police Act). The host trust should advise on any placement that meets this criterion.
- NHS Employers recommends that healthcare trainees are CRB checked at the start of their training course and then when they start working in the NHS.
- Although it is not currently a legal requirement to obtain a CRB Disclosure before a student/trainee starts their placement, it is obviously better if it is in place for patient care and safety. Where there has been a delay in processing a Disclosure, students can start their placement if they are supervised and patients are not being exposed to unacceptable risks.

The exception is where a student is working in a post covered by the Protection of Children Act (for example, possibly some midwifery students and paediatric nursing trainees). In these cases, a check against the Protection of Children Act list is legally required before the student starts the placement.

To speed up the process, the CRB is 'fast tracking' checks covered by the Protection of Children Act to ensure it is completed within five working days, with the criminal record part of the Disclosure being carried out subsequently. If employers are satisfied that patients are not being put at risk, the student can start the placement when they have their PoCA check but before they have their full Disclosure.

- Some students or trainees might require a Protection of Vulnerable Adults (PoVA) check – see 'Students in relation to PoVA' below.

Working with the CRB

The CRB is now consistently meeting its service standards for issuing Disclosures, which are 90 per cent of Enhanced Disclosures within four weeks and 90 per cent of Standard Disclosures within two weeks.

New applications for Disclosures to the CRB can be made by telephone or by completing a blank application form provided by the employer.

NHS Employers offers help with any issues in dealing with the CRB that cannot be resolved by contacting the CRB. Please contact:

- Adele Bunch – tel 0113 254 6589, e-mail Adele.Bunch@nhsemployers.org
- or Gordon Fleck – tel 0113 254 6575, e-mail Gordon.Fleck@nhsemployers.org

HSC 2002/008, *Pre- and post-appointment checks for NHS staff*

Although currently under review, employers should continue to follow the requirements specified in HSC 2002/008, *Pre- and post-appointment checks for NHS staff*. This means that, apart from staff working with children, staff can be appointed based on a self-declaration concerning any criminal record, following satisfactory completion of other relevant checks. Where criminal record information may be obtained from the CRB, employers are advised to obtain a Disclosure although an appointment may be made pending the outcome of the Disclosure information.

From 14 February 2005, CRB checks will be mandatory for all eligible new staff.

Employers should carry out a risk assessment when appointing staff before or without a full CRB Disclosure in line with HSC 2002/008 and other good appointment guidance. As part of this, employers should consider if, and what level of, supervision is required for staff employed on this basis.

Protection of Children Act (PoCA)

Guidance on the application of the Protection of Children Act (PoCA) is available on the Department of Health website at www.doh.gsi.gov.uk/scg/childprotect

PoCA is a statutory scheme. Where the criteria in the Act are satisfied, the employer is legally required to carry out a PoCA check before a person can be appointed. A PoCA check can, however, only be carried out by the CRB as part of a Disclosure including a criminal record check.

To require a PoCA check, the post must fit one of the criteria for a 'regulated position' and can be requested with either a Standard or an Enhanced Disclosure, providing the precise definition of a regulated position is satisfied:

'A position whose normal duties include caring for, training, supervising or being in sole charge of children' (Section 36 1 c Criminal Justice and Court Services Act)

Posts that satisfy the definition will normally be specialist childcare positions.

The Criminal Justice and Court Services Act 2000 makes it a criminal offence for:

- anyone to seek or accept work in a regulated position knowing they are on the PoCA list
- an employer to offer work or to employ a person in a regulated position knowing that person is included on the PoCA list.

In many cases, a request for an Enhanced Disclosure for a childcare post will include a request for a PoCA check. In some cases, however, it will be appropriate to request a PoCA check with a Standard Disclosure, for example where the post is a regulated position because it involves the management or supervision of a post meeting the

definition outlined above. Thus, the criteria for a regulated position and a PoCA check will be met but the criteria for an Enhanced Disclosure will not.

GPs and other primary care practitioners do not generally fall within the provisions of the PoCA scheme.

PoCA first checks

The Department of Health has negotiated fast-track checking arrangements with the CRB where staff need to be recruited urgently (see 'Students' section). This procedure should only be used where delay in obtaining the check could risk the health and safety of children or lead to serious recruitment problems.

When a PoCA check is applied for with a Disclosure, the PoCA check will be processed immediately, and the result passed to the registered body, with the full Disclosure to follow.

To apply for this service, registered bodies should e-mail applicants' details to: interimpoca@crb.gsi.gov.uk, using the following words, which have been specified by the CRB:

'I enclose a list of individuals each of whom is seeking a position which qualifies for a check of the Protection of Children Act List. (name of applicant) has made a Disclosure application to the CRB in relation to this position and whose Disclosure application has not yet been determined. Under the arrangements announced in Chief Executives Bulletin of 18 July, I request that the CRB undertake an initial check of the PoCA List in respect of each person named.'

The e-mail should include the following information:

Surname (in capitals)
Forename
Date of birth
Gender
Previous/maiden name
Signed
Counter signatory number
Counter signatory name
Registered body name
Registered body number

PoCA first timescale

In the vast majority of cases, the CRB will be able to process this check within five working days of receiving the request. The result of the check will be sent in letter form to the registered body, stating either that the applicant is not on the POCA list or that the

registered body should wait until they have the full Disclosure before allowing the individual to start work.

PoCA first checks/Disclosure application form

Registered bodies should still send the full Disclosure application form to the CRB at the usual address. If registered bodies have already sent a Disclosure application with a request for a PoCA check to the CRB, they can still make use of the fast-track service at no extra cost.

Please note that the CRB will make random checks to ensure that registered bodies are submitting the Disclosure applications. The CRB may withdraw this service from those organisations who are not complying with these instructions.

In exceptional circumstances the CRB will accept requests via e-mail in the same format as the postal request and will return the result by post. If you need to use this facility, please contact the POCA check clerk at the CRB on 0151 676 1444.

For general enquiries regarding Disclosures, telephone the CRB on 0870 90 90 811.

For further information on the above, contact Adele Bunch at NHS Employers, tel 0113 254 6589 or e-mail Adele.Bunch@nhsemployers.org

These fast-track arrangements only apply to PoCA list checks. The criminal record part of the Disclosure is completed subsequently. HSC 2002/008 requires a full Disclosure to be obtained before an appointment to a childcare position ('regulated position' in terms of the Act) can be confirmed. In these circumstances – following the outcome of the PoCA check but prior to the completion of the full Disclosure – NHS employers will need to consider whether it is appropriate to offer an applicant a provisional appointment.

Where a provisional appointment is made, employers will need to ensure that these staff are appropriately supervised and whether it is appropriate to allow unsupervised access to children during this period.

Protection of Vulnerable Adults (PoVA) Scheme

The Care Standards Act 2000 provides for a scheme for the protection of vulnerable adults (PoVA), similar to the PoCA scheme. Although it has not been implemented in the NHS yet, care should be taken when recruiting staff to sensitive positions which involve the care of the most vulnerable adult patients. Each post should be considered against the criteria for an Enhanced Disclosure.

In all other cases where there is access to particularly vulnerable patients, a Standard Disclosure should be obtained.

A PoVA check is obtained through a Criminal Records Bureau Disclosure. Section Y on the CRB Disclosure form asks if the post involves working with vulnerable adults.

However, this box applies to those in social care and not to staff in the NHS. By marking this box, an NHS employer will indirectly request a PoVA check illegally. Where the position involves contact with children, NHS employers may tick the relevant 'The position involves working with children' box.

Students in relation to PoVA

Although PoVA has not yet been implemented in the NHS, some trainees may still require a PoVA check which will be funded by the NHS. This may be where the trainee undertakes a training placement in a social care setting, for example a care home for the elderly.

For further information, please contact Gordon Fleck at NHS Employers, tel 0113 254 6575 or e-mail Gordon.Fleck@nhsemployers.org

Code of Practice

All registered bodies are required to comply fully with the CRB Code of Practice which is intended to ensure that the information released will be used fairly and handled, and stored, appropriately. All registered bodies will have their own copies of the Code of Practice.

In particular, registered bodies are required to:

- treat all applicants with a criminal record fairly and not to discriminate unfairly against the subject of a Disclosure, on the basis of conviction or other information revealed
- have a written policy on the recruitment of ex-offenders which can be given to all applicants for a position where a Disclosure is requested – to help registered bodies to meet this requirement, the CRB has produced a sample policy statement which can be used or adapted for this purpose; it can be found on the CRB website at www.crb.gov.uk
- have a written policy on the correct handling and safekeeping of Disclosure information – again, the CRB has provided a sample policy statement which can be found on their website.

Portability

Sometimes there are instances where a Disclosure issued for one position may be used for another job or voluntary position. The CRB have produced guidance at www.crb.gov.uk to help registered bodies decide when this is the case. Key points are:

- A Disclosure carries no period of validity. This is because Disclosures are for use immediately after issue. Standard and Enhanced Disclosures are designed to be

used at the point of recruitment for a particular position and will be of most use close to the date of issue.

- Information may only be shared between recruiters with the consent of the Disclosure applicant.
- Special considerations arise when sharing information in Enhanced Disclosures. Again, the CRB website provides further guidance on this.
- If a previously issued Disclosure does not contain a PoVA or PoCA check and you need either of these, you must apply for a new Disclosure.

NHS Employers recommends using a previous CRB Disclosure if an employee is moving to a new post, if the Disclosure has been issued within the last six months and the post does not come under PoCA or PoVA.

If a recruiter decides that the position to be filled warrants a Standard or Enhanced Disclosure they need to consider whether the duties are compatible with those relating to the position for which the Disclosure was issued. Where a post involves working with children, the individual will be checked against lists held by the Department for Education and Skills (DFES) and the Department of Health (DH), of those considered unsuitable to work with children.

The CRB's 'portability service' will confirm whether, in the case of an Enhanced Disclosure, any information on the applicant was provided confidentially and not directly to the applicant. Where there was such information, a new Disclosure will need to be requested.

For further information on portability, please e-mail the CRB at Portability@crb.gsi.gov.uk or visit the Disclosure website at www.disclosure.gov.uk

Junior doctors

A junior doctor should not be required to provide a new Disclosure each time he/she moves to a new training post. In general, if a check has been carried out within the last three years, no further check should be required.

The date of the last check should be shown on the doctor's Smart Card.

Agency workers and locums

Agency workers, locums and other temporary highly mobile staff should be checked at least once a year. If they cannot produce evidence of such a check, a new check should be made when temporary staff are appointed.

Staff recruited from abroad

HSC 2002/008, *Pre- and post-appointment checks for all persons working in the NHS* can be found at www.dh.gov.uk/hrinthenhs/preandpostemploymentchecks.htm

It lists mandatory employment checks which must be carried out when recruiting staff to the NHS. This circular applies equally to all staff employed in the NHS whether they are recruited from the UK or overseas.

NHS employers who recruit staff from abroad should carry out the necessary police checks in line with that country's justice system and UK requirements. Whether staff are recruited from within or outside the UK, under PoCA there is a legal requirement in the NHS to carry out a check against the PoCA list before anyone is appointed to a childcare position.

Where the criteria are met for a Disclosure, a CRB check should be obtained as a matter of good practice.

The CRB offers advice for employers wanting information about obtaining, and the availability of, criminal record information in 16 countries, using a fax-back facility. It also explains how an individual can obtain a copy of his or her criminal record or certificate of good conduct from overseas.

To access the service, set your fax to polling mode and dial 090 655 550 followed by the number of the country (as listed below).

Employers recruiting staff from any of the 16 countries included within the fax-back service should use the facility when assessing an applicant's suitability for a post.

The codes for the countries currently covered by the scheme are:

| Country | Code | Country | Code |
|--------------------------|------|--------------|------|
| Denmark | 00 | Canada | 09 |
| France | 01 | Jamaica | 10 |
| Germany | 02 | South Africa | 11 |
| Irish Republic | 03 | Malaysia | 12 |
| Italy (exc Vatican City) | 04 | Phillippines | 13 |
| Netherlands | 05 | Australia | 14 |
| Spain | 06 | New Zealand | 15 |
| Sweden | 07 | Finland | 16 |
| Poland | | | |

For more information, visit www.crb.gov.uk or call the overseas information enquiry team on 0870 0100 450.

Please remember that the results of the criminal record check may be returned in a different language and the CRB does not provide a translation service. The fax-back technical help line is 0870 906 3434.

Further guidance including the *Code of Practice for NHS employers involved in the international recruitment of healthcare professionals* and the *International recruitment of consultants and general practitioners for the NHS in England: current initiatives and guidance to NHS employers on an infrastructure to support international recruitment* can be found at www.dh.gov.uk/international-recruitment

Disclosures in practice – scenarios

Scenario 1

Mary Smith applies for a job dealing with patient records in Anytown NHS Trust. The area of the hospital she will be working in is not accessible to patients, but she has to walk through several wards where patients are treated to get to her work area. Should a CRB disclosure be requested?

No.

Although Mary has access to patients, this is not in the course of her normal duties which involve patient contact. Her access to patient records is irrelevant.

Scenario 2

Peter Jones applies for a job in Anytown NHS Trust as a cleaner. He will clearly have access to patients in the course of his normal duties so is he eligible for a CRB disclosure? And if he is, should this be at Standard or Enhanced level?

Yes, Standard.

To qualify for an Enhanced Disclosure, a post must meet the criterion of ‘regularly caring for, training, supervising or being in sole charge of’ children or vulnerable adults. Work as a ward cleaner involves access to patients but not the degree of responsibility for patients required for an Enhanced Disclosure.

Scenario 3

Peter Jones leaves his job at Anytown NHS Trust after six months and applies for a job as a cleaner at Newtown NHS Foundation Trust. Does he require another CRB check?

The new trust has discretion over whether to request a new CRB check or to accept the previous check. CRB checks are ‘portable’ within certain limits but it might be risky to accept a previous CRB check which is more than six months old.

Scenario 4

Jill Jones applies for a job at Anytown NHS Trust as a health support worker. Does she require a Standard or Enhanced Disclosure?

Enhanced.

Her work as a health support worker will involve regularly caring for, training, supervising or being in sole charge of children or vulnerable adults. If her work is exclusively on children's wards, she will also require a Protection of Children Act check.

Scenario 5

Jill Jones leaves her job at Anytown NHS Trust after three months and applies for a job as a health support worker at Newtown NHS Foundation Trust. Will she require a new CRB check?

It depends on a number of factors.

If the new post requires a Protection of Children Act check, she will require a new Enhanced Disclosure because Protection of Children Act checks are not portable. Even if the new post does not require a Protection of Children Act check, a new Enhanced Disclosure may still be required. It will be necessary to check whether the previous Disclosure contained any confidential information disclosed to the employer but not to the applicant (and therefore not appearing on the applicant's copy of the Disclosure). This can be done either through the CRB's portability service or by contacting the previous employer – where, as here, the previous employer is an NHS trust, this may be the easiest option. If it is confirmed that there was confidential information, a new Enhanced Disclosure will be required – the previous employer is not permitted to do more than state the existence of such information.

Scenario 6

Dr Johnson, a senior house officer, moves as part of a rotational training programme from Anytown NHS Trust to Newtown NHS Foundation Trust. He was subject to an Enhanced Disclosure check at Anytown six months ago. Does he require a new Enhanced Disclosure?

Only if the new post requires a Protection of Children Act check.

The issue of portability does not arise here because a doctor in training requires a CRB check only once in three years.

Scenario 7

A trainee nurse, Sophie Gardener, does a training placement at Anytown NHS Trust. Does she require a CRB disclosure and at what level?

Yes, probably at Standard level.

A trainee nurse is unlikely to be in a position of trust requiring an Enhanced Disclosure.

Scenario 8

Sophie Gardener moves to a new training placement at Newtown NHS Foundation Trust, a year after finishing at Anytown. Does she require a new CRB check?

No.

Healthcare trainees require only one CRB check for the duration of training.

Useful contacts/websites

NHS Employers

Adele Bunch: tel 0113 254 6589, adele.bunch@nhsemployers.org

Gordon Fleck tel: 0113 254 6575, gordon.fleck@nhsemployers.org

Disclosures

www.disclosure.gov.uk

Standards for better health

www.dh.gov.uk

CRB guidance

www.crb.gov.uk

Guidance for disclosure applicants

www.disclosure.gov.uk

Guidance on Protection of Children Act

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The Protection of Children Act 1999

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



**Department of Health
NHS Executive**

The Protection of Children Act 1999

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all Organisations Working
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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 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
Ground Floor Area E
Mowden Hall
Staindrop Road
Darlington DL3 9BG

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 is 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

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London SE1 6XH.

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