

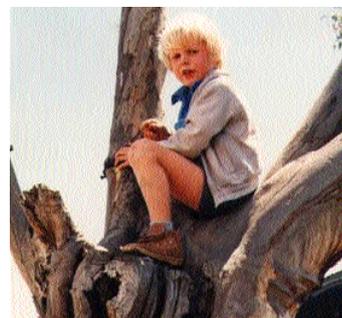


PlayAction Guide

The Protection of Children Act 1999

important: see end of this Guide for new arrangements from 2010

The above Act of Parliament is now in force, and it has very important consequences for all Fair Play member organisations, statutory, commercial or voluntary, which work with children and young people. It sets out to achieve a number of things:



Firstly, it imposes a duty on the Secretary of State for Health to establish a list of people considered to be unsuitable to work with children. This is **The Protection of Children (PoCA) List**.

Secondly it requires what are defined as regulated child care organisations to submit names of such people to the Secretary of State for inclusion on the list in defined circumstances, and also any such employer to check against the PoCA List when proposing to appoint someone to a child care position, paid or voluntary. **It is not lawful to employ someone whose name is included on the PoCA List in a regulated child care position.** If someone employed in such a child care position is found to be included in the PoCA List, it is not lawful to continue to employ them in that position.

The PoCA 1999 also provides for other organisations to be able to submit names to the Secretary of State and to use the PoCA List, if they wish, to check applicants wishing to work with children in non-child care positions.

It does have huge implications for many thousands of children's service, play and leisure organisations. Fair Play for Children recommends that everyone receiving this information and to whom this will apply consults their management at an early opportunity to ensure this matter is fully discussed, and appropriate action taken.

What sort of person would qualify for referral to the PoCA List? Someone who has been dismissed on the grounds of misconduct which harmed a child or placed a child at risk of harm. Also where an individual resigned or retired in such circumstances which would have led to such a dismissal or consideration of dismissal. It would cover where a person had been transferred to a non-child care position within the organisation, and also where someone was suspended on such grounds but not yet dismissed or transferred. It will also cover situations where someone is working with children but not in a defined child care position.

Is there an appeal against inclusion on the PoCA List? Yes, the person is contacted by the Secretary of State and informed s/he is proposed for inclusion and given time to make representations and to attend a hearing etc.

What is a 'regulated child care organisation'? One which is 'concerned with the provision of accommodation, social services or health care services to children or the supervision of children; whose activities are regulated by virtue of any prescribed enactment, and which fulfils such other conditions as may be prescribed' (by regulations issued by the Secretary of State). At this time, a regulated childcare organisation is one which has to be registered under Part XA of the Children ACT 1989.



Play Action Guide

What is a 'child care position'? One which is 'concerned with the provision of accommodation, social services or health care services to children or the supervision of children; and is such as to enable the holder to have regular contact with children in the course of his duties'.

Does it matter if the post is paid or not paid? No, if the position and the organisation are covered as above, then the employer MUST check against PoCA List - if not, and yet the position involves substantial contact with children, the employer MAY choose to check against the List.



What is a 'prescribed enactment'? One such would be registration under The Children Act 1989. We will be seeking further clarification on this aspect, and obtaining a list of current, relevant enactments.

Is a PoCA check the same as a criminal record (police) check? No, it is quite separate, and it may be used by organisations which currently cannot access such checks. It should be noted, by the way, that in due course, when the Criminal Records Bureau comes on line, there will be a One Stop Shop process for checking against PoCA List and CRB in one fell swoop. [More on all of that caper when we get details.]

If we are already getting criminal records (CRB) checks undertaken via Fair Play for Children or another Registered Body, what is the situation with the PoCA List? Aren't you lucky, because this process DOES already include a check against PoCA List and the DfEE List 99, so Responsible Officers in the Fair Play scheme can advise their managements that this requirement is covered so far as it concerns persons who have been submitted under the PoCA List.

It is now the case that PoCA checks can only be made via the Criminal Records Bureau.

If someone is employed in a non-child care position and transfers to a child care position, should s/he be checked against PoCA? Yes.



What constitutes 'misconduct' re: submission to the PoCA List? The guidance makes it clear that this is for the employer to decide. It also says that Parliament was not intending that it should include simple incompetence, nor what are termed "youthful indiscretions" (we have no idea what this means at this time!) Employers would be expected to make a referral from a child care position where any action, inaction on the part of an individual harmed a child or put a child at risk of harm, and this includes acts of omission and commission - examples given are serious sexual abuse, physical abuse (including intentional inappropriate restraint and/or poor child care practices in contravention of organisational codes of conduct. It is clear that one intention of this Act may be to empower organisations to refer conduct which for one reason or another did not or could not result in criminal prosecution or where a prosecution failed but the circumstances were such that there remained serious reasons for concern about the person's conduct.

Are there implications concerning the Human Rights Act 1998? Very much so! That Act provides that it is not lawful for organisations to do things which break Articles 1-12 and 14 of the European Convention on Human Rights. One of these Articles covers attacks on people's reputations; another is concerned with ensuring that people are protected when accused of crime or



Play Action Guide

offences with being able to be represented, of being told clearly what the offence is etc. Another deals with cruel, unusual or degrading treatment.

Should we check existing staff and volunteers? The official advice says you do not have to, whether your organisation is a child care type or not and whether the post is child care or not. However, it is clear that, whether or not "child care" organisation and/or position, you CAN if you wish. We would suggest that, if you have people working with children in paid or unpaid positions, existing or new, you should consider a check against the PoCA List - be they trustees, employees (full or part-time), or volunteers etc.



How should we organise a system for PoCA List Procedures? Fair Play would recommend that this new requirement is quickly incorporated into your existing or proposed child protection policies and good practice. Obviously, all such queries should be handled in confidence, with secure records and on a 'need to know' basis. We suggest one person is designated to undertake CRB and PoCA checks in the organisation. We also suggest that the person being checked sees the result when it comes back from the CRB, even though they get their own copy sent to their homes - this will ensure s/he is safeguarded against misattribution (i.e. "that's not me"), and that such clearances or otherwise are reported to management without specific details being given. For example, "I have checked Mr X against the CRB and the PoCA List, I have shown him the resulting return from DoH, and with his permission one another person from this organisation was present when I did this. His name is not included on the PoCA List and may be employed as ..." Or, "His name appears on the PoCA List, and thus he is debarred by law from working in the position under consideration" Or, "He is included on the PoCA List and as the post involves substantial access to children, or could lead to substantial contact with them outside this project, I consider he is not suitable to be employed in the position" etc.



Will Fair Play be able to advise etc in this matter? We will give advice through the free Information and Advice Service (phone number above). Training is available with this need fully in mind.

Summary

What types of organisation MUST submit and what kind MIGHT submit names, and HAVE or BE ABLE to check against the PoCA List?

MUST

Playgroup registered under Children Act

Out of School Club registered as above

Playscheme, registered



PlayAction Guide

Nursery, registered

Playbus, registered

MAY

Junior sports club

Out of School Club not registered (e.g. over-8's only)

Playscheme, not registered

Youth Club

Scout or Guide Group

Junior arts project.



These are all examples - they are only a few of the many cases which may apply. We will also try our best to help:

Telephone: [0845-330 7635](tel:0845-3307635) or: **[email national@fairplayforchildren.org](mailto:national@fairplayforchildren.org)**

For those working with vulnerable adults, the PoVA list performs a similar, though not identical function for concerned organisations. **[Web site information: htwww.csci.org.uk/information-for-service-providers/pova/default.htm](http://www.csci.org.uk/information-for-service-providers/pova/default.htm)** from the Commission for Social Care Inspection. [POVA is being taken over also by the new VBS from 2010 - see below]

Life Beyond PoCA

Following the publication of the Bichard Report in the wake of the Soham Murders, a new **Vetting and Barring Scheme** replaces the PoCA List from 2010. From that point the number of people required to register under the VBS will include most workers in any position with children where the activity is weekly or more. Employers of such people will be required to make checks to ensure that they are not employing people barred from working with children by the VBS.

Those on the current POCA List and List 99 will be transferred to the new VBS List. There will be an Independent Safeguarding Authority which will administer the List and a Vetting and Barring Board will in future make the decisions as to who is to be placed on the List.

PlayActions Guides are published in print, pdf (Adobe Acrobat) and web formats are designed as an extensive, basic list of publications on a wide range of play-related subjects. Fair Play for Children is a registered charity (no 292134) which exists to promote The Child's Right to Play:

32 Longford Road, Bognor Regis, West Sussex PO21 1AG
Tel: 0845-330 7635, e-mail: national@fairplayforchildren.org
www.fairplayforchildren.org