

HEALTH AND SOCIAL CARE (COMMUNITY HEALTH AND STANDARDS) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 - Miscellaneous

Appointments and employment

Section 189: Validity of clearance for employment in certain NHS posts

458. Section 7 of the Protection of Children Act 1999 requires that before a person can be appointed to a child-care position, a check must be made against the Protection of Children Act List. The list is maintained by the Secretary of State and checks against it are made through the Criminal Records Bureau, which will make a charge for such a check. These checks will include a check against the POCA list wherever appropriate.
459. The Act provides for an easement to this rule in cases where the person was supplied by an employment agency or business. In such cases, it is sufficient for the employer to satisfy himself that the List has been checked within the last 12 months by the employment agency or business. This provision was included to avoid the need for checks against the List for the same person to be repeated at very frequent intervals. Normally, once a check has been made on appointment to a child-care position, there is no requirement for it to be repeated while the person remains in that child-care position.
460. The majority of persons supplied for temporary work by agencies supplying staff in the health care sector are also employed permanently in the NHS - often in the same Trust where they do the agency work. Increasingly, temporary workers will be supplied by NHS Professionals, the NHS's own "in-house" agency, which is set to become the main provider of temporary staff of all kinds in the NHS. In circumstances where a person is supplied by an agency (which may include NHS Professionals) and has substantive employment with the NHS and has previously been checked against the List, it is felt that an annual check, while being a costly overhead on the operations of NHS Professionals and other agencies, will add nothing to the safety of children.
461. Thus *subsection (1)* of *section 189* inserts new *subsections (3A), (3B) and (3C)* into section 7 of the Protection of Children Act 1999 which have the effect of disapplying the requirement to check against the Protection of Children Act List where a person is offered employment in a child care position and certain conditions are met. These conditions are that at the time the offer of employment is made, the person concerned is already employed by an NHS body (as defined) and that NHS body (or another NHS body or an employment agency or business) has ascertained that he is not on the List. In addition, he must not have been placed on the list subsequently and, if he accepts the offer of employment, he must not be placed on the List for the duration of the employment to which the offer relates.

These notes refer to the Health and Social Care (Community Health and Standards) Act 2003 (c.43) which received Royal Assent on 20 November 2003

462. Part VII of the CSA 2000 provides for the Secretary of State to maintain a List of persons who are considered unsuitable to work with vulnerable adults (the POVA List). Once the POVA List is introduced, before a person can be appointed to a position caring for vulnerable adults, a check will need to be made against the POVA List. Checks against this POVA List will again be carried out through the mechanism of the CRB. The POVA List will (when it is introduced) work in a very similar way to the Protection of Children Act List referred to above. For this reason, the amendments made by *subsection (2)* to section 89 of the CSA 2000 mirror those made to the Protection of Children Act 1999.
463. *Subsection (3)* is a transitory provision and is needed because the amendments made to the Protection of Children Act 1999 by paragraph 121 of schedule 21 to the Education Act 2002 are not yet in force.
464. *Subsection (4)* is intended to put beyond doubt the ability to use the provisions of the Regulatory Reform Act 2001 in order to make an Order under section 1 of that Act which would further amend the provisions relating to checks against the POCA and POVA Lists in both the Protection of Children Act 1999 and the Care Standards Act 2000. Without such an amendment it might be argued that it is not possible to make such an Order until a period of 2 years had elapsed from the passing of this Act.