PROTECTION OF VULNERABLE ADULTS SCHEME

in England and Wales

for

adult placement schemes, domiciliary care agencies and care homes

A PRACTICAL GUIDE

Important note:

From 20th January 2009 there will be changes to the POVA scheme as part of the transition to the new Vetting and Barring Scheme. The Independent Safeguarding Authority (ISA) will make decisions on all referrals to POVA made after 20th January 2009. From this time, employers and others will have new duties to respond to the ISA's requests for further information. Employers duties to check against the POVA list before a person starts work remains unchanged. More information can be found via the following links www.ISA.gov.org.uk and www.scie.org.uk

This POVA guidance continues to apply from 20th January. It remains unchanged other than an amendment on page 17 about suspensions.

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THE PROTECTION OF VULNERABLE ADULTS SCHEME
A PRACTICAL GUIDE

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FOREWORD

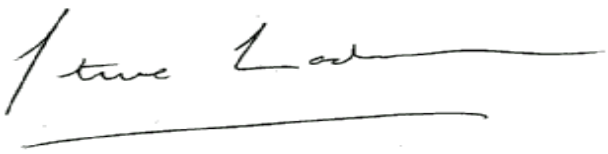
The Protection of Vulnerable Adults scheme will act as a workforce ban on those professionals who have harmed vulnerable adults in their care. It will add an extra layer of protection to the pre-employment processes, including Criminal Records Bureau checks, which already take place and stop known abusers from entering the care workforce.

Along with initiatives such as “No secrets” and “In safe hands” and other specific measures to prevent and tackle adult abuse, it will complement the Government’s drive to raise standards across health and social care. Raising standards is an end in itself, but it is also the best way to protect vulnerable adults who, when they are harmed, are usually harmed because of care professionals’ lack of knowledge or skill rather than out of malice.

The POVA scheme will involve additional paperwork and other administrative procedures for providers of care. It may mean that providers of care have to re-think offering care positions to certain individuals, which may in turn involve re-running recruitment exercises. However, when making referrals to, and checks against, the POVA list, providers of care – like the rest of us – should not lose sight of the reasons for the POVA scheme and the intended outcomes. It is to ensure that those individuals with a track record of poor practice, or who are intent on harming vulnerable adults, have no hiding place in the care workforce. Sadly, in recent years, there have been too many instances where vulnerable adults have been harmed in situations where they should have protected by either professionals or family members, in care setting or their own homes.

For their part, as the POVA scheme is implemented, councils with social services responsibilities and their local NHS and police force partners, should not under-estimate the important work they have done, and need to do, with regard to “No secrets” and “In safe hands”. In particular, they should ensure that the general public is made aware of adult abuse and what to do if they experience it or see it.

By working together, we can make sure that vulnerable adults get the respect and care that they deserve. I am sure that providers of care and other stakeholders will work hard to ensure that the POVA scheme is a success.



STEPHEN LADYMAN
Minister for Community Care
July 2004

SCHEME – BACKGROUND AND OVERVIEW OF IMPLEMENTATION

Introduction

1. The Protection of Vulnerable Adults (POVA) scheme, as set out in the Care Standards Act 2000, was implemented on a phased basis from 26 July 2004. At the heart of the scheme is the POVA list. Through referrals to, and checks against the list, care workers who have harmed a vulnerable adult, or placed a vulnerable adult at risk of harm, (whether or not in the course of their employment) will be banned from working in a care position with vulnerable adults. As a result, the POVA scheme will significantly enhance the level of protection for vulnerable adults. This guidance sets out what is required of providers of care, employment agencies and businesses and other stakeholders affected by implementation. It covers both England and Wales, and refers to the care of vulnerable adults aged 18 years or over.

2. The POVA scheme is currently implemented with regard to :
   - care workers employed by registered providers of care homes, including workers supplied by employment agencies and businesses to such providers, who are employed in care positions that enable them to have regular contact in the course of their duties with care home residents; and
   - care workers employed by registered providers who carry on domiciliary care agencies, including workers supplied by employment agencies and businesses to such providers, who are employed in care positions concerned with the provision of personal care in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.
   - adult placement carers.

3. The POVA scheme does not apply to care workers outside the scope of paragraph 2 above. This means that those who work with vulnerable adults in NHS or independent hospitals, clinics and other facilities, or through an independent medical agency, or educational facilities are excluded from the ambit of the POVA scheme.

4. Through sound pre-employment checks, fair and thorough recruitment practice and applications for Criminal Records Bureau (CRB) Disclosures, vulnerable adults can be afforded high levels of protection from known abusers entering the health care workforce. A list of pre-employment checks can be found at Annex B.

Definitions

<u>Section 80 of the Act</u>

5. The Care Standards Act 2000 (the "Act") contains definitions of "care worker" (see section 80(2)), "care position" (section 80(3)), "employment" (section 80(4)), "supply worker" (section 80(5)), "vulnerable adult" (section 80(6)), "care provider" (section 80(7)) and other terms. Providers of care, employment agencies and businesses and other interested parties are advised to acquaint themselves with these definitions.

Providers of care

6. In this guidance, the term "providers of care" is used to refer to both registered persons who carry on care homes and registered persons who carry on domiciliary care agencies. (Care homes include care homes with that provide nursing care, formerly known as "nursing homes". The term "carry on" means to manage and run.)

Harm

7. "Harm", as defined in section 121 of the Act :
   - in relation to an adult who is not mentally impaired, means ill treatment or the impairment of health; and
   - in relation to an adult who is mentally impaired, or a child, means ill treatment or the impairment of health or development.

   Paragraphs 49 and 50 below give more information on this definition.

Regular contact

8. The Act does not include definitions of "regular contact" and "personal care", which are fundamental to the way in which the POVA scheme will run.

9. The term "regular contact" will have its ordinary everyday meaning. Ultimately it will be up to the courts to decide what it means in the context of the Act. But, generally speaking, the term "regular contact" implies contact that has a constant or definite pattern, or which recurs at short uniform intervals or on several occasions during short periods of time such as a week. In deciding whether or not a prospective care worker must be checked against the POVA list before employment, a provider of care will need to decide whether the contact that the worker will have with care home residents will be "regular contact". This will be a question of fact, and providers of care should consider this carefully, having regard to this guidance and, if necessary, their own legal advice. It should also be noted that the key to deciding whether a person qualifies as a care worker is the amount of contact they have with vulnerable adults in performing their duties (whatever they might be) rather than their job title or their job description.

Personal care

10. As set out in the Domiciliary Care National Minimum Standards (Department of Health, 2003), the established, ordinary meaning of "personal care" includes four main types of care, which are :
    - assistance with bodily functions such as feeding, bathing and toileting;
    - care which falls just short of assistance with bodily functions, but still involving physical and intimate touching, including activities such as helping a person get out of a bath and helping them get dressed;
    - non-physical care, such as advice, encouragement and supervision relating to the foregoing, such as prompting a person to take a bath and supervising them during this;
    - emotional and psychological support, including the promotion of social functioning, behaviour management, and assistance with cognitive functions.

11. The Domiciliary Care National Minimum Standards (DH 2003) clearly states the Department's view that only the types of care set out in the first two bullet points above give rise to registration as a domiciliary care agency under the Care Standards Act 2000. This means that only those domiciliary care agencies (as defined in section 4(3) of the Act) that provide personal care and are registered, or in the process of registering, with the Commission for Social Care Inspection and the Care Standards Inspectorate for Wales need make referrals to, and checks, against the POVA list as set out in this guidance. "Cognitive functions" refer to the ability of vulnerable adults to think through personal, practical and other matters relevant to their needs and circumstances.

Overview

12. The POVA scheme is set out in the Care Standards Act 2000. It creates a list of people, held by the Secretary of State, who are considered unsuitable to work with vulnerable adults in England and Wales. From 26 July 2004, in certain circumstances, registered providers of care, in relation to adult placement schemes, care homes and domiciliary care agencies, and employment agencies and businesses who supply workers to these providers of care, may refer individuals described in paragraph 2 above for inclusion on the POVA list. From this same date, in certain circumstances, providers of care and employment agencies and businesses are able to request checks against the POVA list as part of an application for a Criminal Records Bureau (CRB) Disclosure with respect to individuals being considered for care positions. In this way, as is explained later in this guidance, providers of care are able to use these checks (together with other robust pre-employment procedures) to prevent unsuitable individuals from working with vulnerable adults. Please note that this guidance also explains easements to the requirement for CRB Disclosures prior to employment being offered and taken up.

13. This guidance does not aim to provide detailed or authoritative legal advice on every situation that might arise from implementation of the POVA scheme, and providers of care and employment agencies and businesses must take their own legal advice if they are unsure as to how this guidance might apply to them.

14. The POVA scheme applies to not only registered providers of adult placement schemes, care homes and domiciliary care agencies but also providers of adult placement schemes, care homes and domiciliary care who are in the process of registering with the Commission for Social Care Inspection or the Care Standards Inspectorate for Wales. (That is, a correct application has been received by these bodies, but formal registration is pending the successful conclusion of the necessary checks and inquiries.)

15. Throughout this guidance the word “he”, and related terms, are used for convenience.

16. deleted paragraph

The NHS and independent health care sectors

17. At present, the POVA scheme does not apply to those who work with vulnerable adults in NHS or independent hospitals, clinics and other facilities, or through an independent medical agency. Vulnerable adults obtaining help from these services will continue to be protected by rigorous employment practices. The Safeguarding Vulnerable Groups Act 2006 will extend coverage of the existing barring schemes to provide more comprehensive and consistent measure of protection for vulnerable groups across social care, the NHS and beyond. The new Vetting and Barring Scheme is planned to start to receive applications from 12 October 2009.

Role of councils

18. Please note that local councils with social services responsibilities (hereafter referred to as councils) may themselves be registered providers of adult placement schemes, care homes and domiciliary care agencies.

19. Councils in England and Wales took a leading role in the local implementation of multi-agency codes of practice aimed at preventing and tackling abuse of vulnerable adults based on the “No secrets” guidance published by the Department of Health and Home Office in November 2000 and the “In safe hands” guidance published by the National Assembly for Wales and the Home Office in July 2000.

20. Councils are encouraged to ensure that all providers of care who are independent of them, particularly those from whom councils commission services, and employment agencies and businesses who

supply workers to these providers of care, in their areas are made aware of the phased implementation of the POVA scheme, and copies of this guidance are made available to them. Over time, councils can reinforce the importance of good recruitment and selection practice and the importance of pre-employment checks when they contract for services from independent providers of care.

20a. As employers of staff in directly provided services, councils must have regard to this guidance for staff whose misconduct causes harm or risk of harm to vulnerable adults as defined in the Care Standards Act 2000. Human resources departments in councils should familiarise themselves with this guidance.

“No secrets” / “In safe hands”

21. Local councils and partner agencies are reminded that their local multi-agency policies and procedures to protect vulnerable adults from abuse based on “No secrets” and “In safe hands” should continue to provide the bedrock of local approaches to adult abuse. The POVA scheme, in both this context and the context of rigorous pre-employment checks including CRB Disclosures, significantly adds to the means by which local councils and other providers of care can protect vulnerable adults from harm. While councils and other stakeholders should ensure that they comply with the requirements of the POVA scheme, they should not lessen their efforts, through local codes based on “No secrets” and “In safe hands”, to prevent and tackle abuse. In doing so, they should :
   - review and strengthen, where necessary, the work of local Adult Protection Committees, and where such Committees are not in place actively consider establishing them;
   - ensure through local programmes for learning and development that staff who manage, develop or provide services for vulnerable adults are aware of local multi-agency policies and procedures; and
   - review and help to raise levels of awareness about abuse, and what to do if abuse is experienced or observed, among service users and the general public.

22. Local councils should also ensure all other local policies that affect the provision of services to vulnerable adults are informed by, and relate to, policies and procedures to protect vulnerable adults from harm. For example, in developing the single assessment process for older people (the “unified assessment process” in Wales), councils and their NHS partners should ensure that, at overview assessment, issues of safety - including harm from abuse and neglect - are discussed in private with service users or older people seeking help.

CHECKS AGAINST THE POVA LIST (The requirement is ongoing)

Who is checked?

23. From 26 July 2004, there is a statutory requirement on providers of care to check if an individual is included on the POVA list if they are about to offer an individual employment in a care position :
    - in a care home involving regular contact with residents; or
    - providing personal care in individuals' own homes
    - caring for a service user in an adult placement

    Please note that the definition of employment is wide and also that individuals supplied by employment agencies and businesses to providers of care to fill such care positions should be checked.

24. In relation to a care home, anyone who is employed in a care position that will enable them to have regular contact, in the carrying out of their duties, with vulnerable adults, will need to be checked against the POVA list prior to the commencement of their employment in such a position. See paragraph 9 above for an explanation of what the term "regular contact" might mean.

25. In relation to registered domiciliary care services, anyone who is employed in a care position concerned with the provision of personal care in their own homes for persons who, by reason of illness, infirmity or disability, are unable to provide it for themselves without assistance, will need to be checked against the POVA list prior to the commencement of their employment in such a position. See paragraph 10 above for an explanation of the ordinary meaning of "personal care".

Employment agencies and businesses

26. Where staff are being supplied by an employment agency or business, the legal duty to check the POVA list still rests with the provider of care. However, in these instances the provider of care may instead obtain written confirmation from the agency or business supplying the member of staff, that the agency or business has checked that the individual is not on the POVA list within the last 12 months. (That is, the 12 months immediately preceding the provider's of care request for written confirmation. Because people who are provided with employment by these routes are often employed for short-term contracts, it is recognised that it would place an unfair burden on the organisations, and the individuals, to require a check against the POVA list every time the individual was placed in a new care position.) Providers of care must take whatever steps they deem appropriate to ensure that the written confirmation provided by an agency or business is genuine. Where an individual is registered with more than one agency/business, it should be noted that a POVA check carried out by one agency/business is not "transferable" in relation to a supply of the worker by another agency/business. So, in effect, a POVA check must have been carried out by the agency/business supplying the worker if

the provider of care is to be able to rely on that check. Although there is no legal requirement in the Act for employment agencies and businesses to obtain POVA checks on individuals they supply to care providers, they may wish to do so for the effective running of their agency/business. Should providers of care wish to do so they may, in addition, carry out their own checks or could carry them out instead of the agency/business doing so.

Nurses agencies

27. Please note that nurses agencies are employment agencies or employment businesses (see the definition in section 4(5) of the Act) and are included within the scope of this guidance to the extent that they supply care workers to work for the registered providers of care homes and domiciliary care agencies.

When POVA checks should be made

28. The POVA check should be made prior to the appointment of the care worker to the care position. Employment in a care position must not be offered to an individual who is on the POVA list – see section 89(1) of the Act.

29. As from 26 July 2004, POVA checks must be carried out where an individual :
    - applies for a care position with a new employer; or
    - moves, or is transferred, from a non-care position to a care position within his current employment. (Please note that a check against the POVA list is required if an individual moves from a regulated child care position to a care position working with vulnerable adults within his current employment.)

30. Unlike the Protection of Children Act (POCA) scheme, the POVA scheme is not “permissive”. It does not permit checks against the POVA list being made on persons other than care workers, or prospective care workers, and does not permit bodies other than those specified as providers of care to request POVA checks directly or through a body registered by the CRB for such purposes. However, as indicated, the Act envisages that employment agencies and businesses may carry out a POVA check in relation to those supply workers who they are proposing to supply for care positions with a provider of care – see paragraph 29 above.

Individuals in care positions on 26 July 2004

31. It is important to note that POVA checks are not required for individuals already employed in care positions on 26 July 2004 and who remain in those same jobs thereafter, provided that a CRB Disclosure has been has been obtained on them. In other words, individuals employed in care positions immediately prior to 26 July 2004, irrespective of whether they were recruited directly by providers of care or supplied by

employment agencies and businesses, and who remain continuously employed in the same care positions, and who have been CRB checked, thereafter should not be checked against the POVA list. Care workers who return to work from different forms of leave, secondment or training on or after 26 July 2004 fall into this category as long as the care provider they are returning to remained their employer during their absence and a CRB Disclosure has been obtained on them. It should be also noted that POVA checks are not required for individuals who are promoted by their employer from one care position to another.

Employment

32. While most 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 of "employment" used in the Act is very wide and is intended to ensure that even the most informal of connections and voluntary work are covered by the provisions of the Act. Even where no money changes hands, voluntary, community-based and other organisations and individuals, working for providers of care in an agreed capacity that constitutes a care position, whether or not under the terms of a contract, will come within the scope of the POVA scheme. Likewise, self-employed individuals who work for providers of care in an agreed capacity that constitutes a care position come within the scope of the POVA scheme.

33. Annex B gives situations and selected examples of where POVA checks may be required. The examples are offered as a guide only. Providers of care must make a judgement (seeking legal advice where necessary) on the individual circumstances of every worker in order to decide if they are a "care worker" with the result that a check against the POVA list is necessary.

Making checks against the POVA list

34. Checks against the POVA list can only be made via the CRB as part of a Disclosure under the Police Act 1997. The check is requested by crossing the appropriate "POVA" box (Y4) on the CRB Disclosure Application Form. (Requests to the CRB for POVA*First* checks, as part of a Disclosure, are made separately – see paragraphs 37 to 46 below.) It will not be possible for providers of care to seek separate or individual checks against the list from either the Department of Health or the Department for Children Schools and Families.

CRB Disclosures

35. CRB Disclosures are made under the Police Act 1997. A Disclosure is a document containing information held by the police and Government departments. It can be used by employers and voluntary organisations to make safer recruitment decisions. Disclosures are provided by the CRB, an executive agency of the Home Office. There are currently two types of Disclosure - Standard and Enhanced - and a POVA check is

available with either. A Standard Disclosure gives details of criminal convictions, cautions, reprimands and warnings held on the Police National Computer. An Enhanced Disclosure may also include relevant information held by local police forces. For further information on how to make applications to the CRB for either Standard or Enhanced Disclosures, including how to apply to register with the CRB in order to be able to countersign applications for Disclosures, see the CRB website www.crb.gov.uk, or call the CRB information line on 0870 90 90 811.

36. Following receipt of a Disclosure application requesting a POVA check for a person seeking a care position, if the CRB discovers that the person is included on the POVA list (other than provisionally), the CRB will advise the care provider that the person may not be employed in a care position. The CRB will also inform the police that an offence may have been committed (see paragraph 74 below). Where a person is provisionally included on the POVA list, the care provider will again be informed that the person may not be employed, but the police will not be informed since it is not a criminal offence to seek work in a care position while provisionally listed on the POVA list.

Employment pending CRB Disclosure and POVA*First* checks

37. In the normal course of events, from 26 July 2004, providers of care must not employ people in care positions until satisfactory results from CRB Disclosures and POVA checks have been issued. However, regulatory changes came into force in England from 26 July 2004 so that, in very exceptional circumstances, where service users may be placed at risk because providers of care are having difficulty in recruiting sufficient staff, such providers may begin to employ people in care positions without having to wait for the full results of a CRB Disclosure. This is similar to the position that is already in place in Wales for care home and nurses agency workers.

38. In order to employ someone in a care position in England pending the results of a full CRB Disclosure, providers of care must have :
    - carried out the required rigorous pre-employment checks;
    - applied for a CRB Disclosure and requested a POVA check on the CRB Disclosure Application Form;
    - applied for, and received a satisfactory result from, a POVA*First* check (see paragraph 40 below); and
    - put in place stringent arrangements for the training and supervision of the employee in the interim.

39. In order for a provider of care to employ someone in a care position in a care home or nurses agency in Wales when a CRB Disclosure has been applied for but the outcome is pending, supervision must be provided.

40. The POVA*First* check is an optional CRB service for which there is an additional charge of £6. It checks whether the POVA list contains

details of a person with the same name and date of birth as the person being considered for the care position. If there is a match, or if the CRB needs to continue its enquiries, the CRB will advise the provider of care to wait for the full CRB Disclosure (that is, the provider must not employ the person for the time being). If there is no such match, the person may be employed pending the result of the full check. Once the remainder of the check including confirmation of the POVA*First* check has been received, the provider of care will need to satisfy himself that it is satisfactory. If it is, then he need do no more; but if it reveals matters that cause concern (for example, a criminal conviction or caution) then he will need to decide whether that conviction and so on is relevant to the person's employment in a care position. If, in his opinion, it is then he should cease to employ that individual in a care position. Of course, if the confirmatory POVA check reveals that the individual is, in fact, on the POVA list then the provider of care must immediately take steps to terminate his employment, or transfer him to another non-care position.

41. Where the provider of care is advised to wait for the full CRB Disclosure, the individual who is the subject of the check should be told that the POVA*First* check has proved inconclusive and does not necessarily mean that he is actually included on the POVA list.

42. So that service users are protected in the time between a person starting conditional employment and the full CRB Disclosure (and confirmation or otherwise of the POVA check) being issued, more stringent pre-employment checks and requirements for staff training and supervision are being introduced for these particular circumstances. These requirements, which are set out in Regulations, are summarised in Annex C.

43. Employers have a responsibility for ensuring that the full CRB Disclosure and confirmation of the POVA check is received within the shortest possible time period. This means ensuring that application forms are completed before the person starts work. It also means taking care to ensure the application is completed accurately to avoid unnecessary delays through omissions or errors on the form. (Guidance on completing CRB applications and POVA*First* requests is available on the Disclosure website www.crb.gov.uk. Please note that the submission of incomplete or inaccurate application forms is the largest single cause of delay in the issue of Disclosures.)

44. The CRB's service standards currently are to issue 93% of Standard checks within two weeks and 90% of Enhanced within 4 weeks. The performance of the CRB in relation to Standard checks has exceeded, and continues to exceed, its published service standard. Averaging over 99% issued within 2 weeks. For Enhanced, an additional check is required, carried out by the police. The CRB is reliant on the police carrying out their part of this check quickly and efficiently. Please note that these service standards start from when the CRB receive a full completed and accurate application form. If however, your application

remains outstanding after two weeks in the case of a Standard, or four weeks in the case of an Enhanced, you can ask your Registered Body to contact the CRB to find out the reason(s) for the delay - as it may not be caused by the CRB but as a result of someone not responding to a request from the CRB to provide further information. You are advised to keep records of your contact with the CRB or the Registered Body to demonstrate to the Commission for Social Care Inspection that you have taken the appropriate action in the event of CRB checks being delayed beyond the normal issue time.

45. Where contact with the CRB reveals evidence that the person may be deliberately prolonging the application process, employers should suspend or discontinue their employment in a care position until such time as a full Disclosure has been received. Any decision to re-employ the person in a care position will depend on a satisfactory CRB Disclosure and POVA check.

46. Finally, on this matter, it is stressed that providers of care must regard employment pending a full CRB Disclosure, and related requests for POVA*First* checks, as very exceptional measures to be used only when absolutely necessary. They are intended only to ensure that providers of care are able to recruit staff immediately where otherwise staffing levels do not meet statutory requirements. These provisions should not be used as a substitute for good workforce planning and management. The Commission for Social Care Inspection will take appropriate action if this provision is misused. The use of this provision will also be subject to other monitoring and review.

Flowchart

47. A flowchart of how checks of the POVA list should work is included separately on the Internet at the website address in paragraph 108 below.

REFERRING PERSONS FOR INCLUSION ON THE POVA LIST

Referral of individuals by providers

48. Since 26 July 2004, there has been a statutory requirement on providers of care and employment agencies and businesses that supply individuals to these providers, to refer care workers and individuals supplied to care positions, as defined in paragraph 2 above, to the Secretary of State in the circumstances, set out immediately below, for possible inclusion on the POVA list. Referrals to the POVA list from organisations and individuals other than those given above in this paragraph and, in certain circumstances, the Commission for Social Care Inspection, the Care Standards Inspectorate for Wales and the Secretary of State, are not allowed.

49. In deciding whether an individual should be referred to the Secretary of State for inclusion on the POVA list, providers of care and employment agencies and businesses must decide whether, in their view, the individual has been guilty of misconduct which harmed or placed at risk of harm a vulnerable adult. “Misconduct” is not defined in the Act and will therefore have its ordinary meaning; but “harm” is defined in section 121 of the Act – see paragraph 7 above.

50. The types of circumstances in which the Secretary of State would expect a referral to be made are where any action or inaction on the part of an individual harmed a vulnerable adult or placed a vulnerable adult at risk of harm. Providers of care and employment agencies and businesses may wish to refer to “No secrets” and “In safe hands” for a fuller discussion of harm and abuse, including a definition of abuse.

51. Phased implementation of the POVA scheme means that from 26 July 2004, referrals should only be considered where a care worker, as referred to in paragraph 2 above, harmed :
    - a resident of a care home carried on by a registered provider, or
    - an adult to whom personal care is provided in his own home under arrangements made by a domiciliary care agency carried on by a registered provider, or placed such a vulnerable adult at risk of harm.

<u>Current employees</u>

52. The circumstances in which a provider of care must refer a care worker to the Secretary of State for possible inclusion on the POVA list are as follows :
    - the provider has dismissed the worker on the grounds of misconduct (whether or not in the course of his employment) which harmed or placed at risk of harm a vulnerable adult as defined in subsections 80(6)(a) and 80(6)(b) of the Act;
    - the worker has resigned, retired or been made redundant in circumstances such that the provider would have dismissed him, or

would have considered dismissing him, on such grounds if he had not resigned, retired or been made redundant;

- the provider has, on such grounds, transferred the worker to a position which is not a care position; or
- the provider has, on such grounds, suspended the worker or provisionally transferred him to a position which is not a care position but has not yet decided whether to dismiss him or to confirm the transfer.

Suspensions

53. The Act makes it clear that individuals who have been suspended on the grounds of harm they have caused to vulnerable adults, but before decisions have been made to dismiss him or permanently transfer him to a non-care position, should be referred to the POVA list. Two points are important here. First, before a care worker is suspended, the provider of care should (so far as possible) take steps to establish, as quickly as possible, that the allegations of harm have some element of substance. A precipitate suspension and subsequent referral to the POVA list that later proves to be based on groundless allegations could cause significant upset and damage to the care worker and his working relationship with colleagues and vulnerable adults. Second, even if a care worker is immediately suspended because the allegations of harm are particularly serious, a referral to the POVA list should only be made if the provider of care is reasonably satisfied that the allegations have some substance. Please note that a person's name may be removed from the POVA list if the provider of care confirms to the POVA team that the allegations against the suspended worker have clearly and fairly shown to be groundless. In these situations, providers of care should act with urgency. "No secrets" and "In safe hands" provide further information on suspensions and other matters.

53a. Deleted Paragraph.

Former employees – those who leave a care position after the POVA scheme begins

54. Additionally, and very importantly, since the POVA scheme's inception on 26 July 2004, providers of care are also under a duty to refer to the Secretary of State care workers who leave their care positions on or after this date, and where it is only later that information of misconduct on the part of the ex-care worker comes to light. The conditions relating to this requirement are :

- the provider has dismissed the worker, he has resigned or retired or the provider has transferred him to a position which is not a care position;
- information not available to the provider at the time of the dismissal, resignation, retirement or transfer, has since become available; and
- the provider has formed the opinion that if that information had been available at that time and if (where applicable) the worker had not resigned or retired, the provider would have dismissed him, or

would have considered dismissing him on grounds of misconduct (whether or not in the course of his employment) which harmed or placed at risk of harm a vulnerable adult.

Would have dismissed / would have considered dismissing

55. When considering referrals of former employees who resigned or otherwise left their care positions after the coming into force of the POVA scheme on 26 July 2004, providers of care need to pay particular attention to the necessary criteria associated with the decisions about dismissal :

- **Would have dismissed**. This covers a situation where allegations of misconduct (which harmed a vulnerable adult or placed a vulnerable adult at risk of harm) are made against a care worker and where the individual has, for example, been suspended or moved to a non-care position whilst the matter is being investigated by the provider. As a result of the investigation the provider is satisfied that the care worker was guilty of the misconduct and that they should therefore be dismissed or moved to a non-care position, but, before this decision can be communicated to the care worker, resigns or retires.

  The point here is that the provider has reached the conclusion that dismissal was appropriate in the circumstances. The provider can only come to this conclusion because he has completed his/her enquiries into the allegations. Referrals should be made in these circumstances.

- **Would have considered dismissal**. In this situation the employer has not had the opportunity to complete his investigations into the allegations before the care worker retires/resigns. Until the provider has completed his investigations he cannot conclude, with any degree of certainty, that he would have dismissed the care worker. Whilst in such circumstances the provider should attempt to undertake all investigations open to him it may not be possible to conclude all enquiries. It might prove impossible to interview the care worker himself and therefore the provider may only have one side of the story. In such cases it would be difficult for the provider to conclude that he would have dismissed the care worker. The provider could only realistically conclude that he would have considered dismissing the care worker.

- It is important to note that the evidence upon which Secretary of State will rely to confirm individuals on the list, is largely contained within the investigation papers relating to disciplinary hearings. Where there is insufficient evidence for employers to conclude they would have dismissed, referrals will not be appropriate. Advice can be sought from the POVA team using any of the following contact details:

  - Safeguarding Operations Unit (PoVA)

DCSF
GF - E
Mowden Hall
Darlington
DL3 9BG

- POVA.mail@dcsf.gsi.gov.uk
- Telephone enquiries: 01325 39 13 28

Former employees – those who leave a care position before the POVA list begins

56. The Act makes clear that referrals are not required unless the dismissal, resignation or other departure of the care worker occurs after the POVA scheme came into existence on 26 July 2004. However, providers of care may consider referring care workers who leaves their care positions before this date for inclusion on the POVA list, if they consider that this course of action is in the interests of the protection of vulnerable adults.

57. It is important for providers to note here that they should not refer individuals when dismissal was not a serious option. For example, when it would only have been a passing consideration within a range of possible options but not a real possibility.

58. There may be circumstances where a provider has kept their own list of former employees who have been dismissed from care positions and would like to have these individuals added to the POVA list. To be able to refer the former employees, the provider must be able to meet the criteria set out in this guidance for each of the referrals and supply the necessary information. If the information is not available, the Secretary of State will be unable to consider the referral.

Employment agencies

59. Following the commencement of the POVA scheme, the conditions for referral where employment agencies are under a duty to refer supply workers to the Secretary of State for possible inclusion on the POVA list are :
    - that the agency has decided not to do any further business with the worker on grounds of misconduct (whether or not in the course of his employment) which harmed or placed at risk of harm a vulnerable adult;
    - that the agency has, on such grounds, decided not to find the worker further employment, or supply him for further employment, in a care position.

Employment businesses

60. The conditions for referral where employment businesses must refer supply workers to the Secretary of State for consideration of inclusion on the POVA list are that :
    - the business has dismissed the worker on the grounds of misconduct (whether or not in the course of his employment) which harmed or placed at risk of harm a vulnerable adult;
    - the worker has resigned or retired in circumstances such that the business would have dismissed him, or would have considered dismissing him, on such grounds if he had not resigned or retired; or
    - the business has, on such grounds, decided not to supply the worker for further employment in a care position.

61. Employment businesses will want to note the guidance set out above in relation to considerations about dismissal.

62. Employment agencies and employment businesses are allowed to refer supply workers who left their care positions before the POVA scheme began. The same considerations as set out in paragraphs 56 to 58 above apply. The only difference between the two types of referral is that agencies and businesses are required to refer where the appropriate conditions are met and where the supply worker left his care position after the POVA list commenced. But where the supply worker left before the POVA list commenced, agencies and businesses are not required to refer individuals to the POVA list. However, the Secretary of State asks that, in the interests of the protection of vulnerable adults, agencies and businesses carefully consider whether there are any such referrals that should be made.

Commission for Social Care Inspection and Care Standards Inspectorate for Wales

63. The Commission for Social Care Inspection and the Care Standards Inspectorate for Wales have the statutory power to refer individuals to the Secretary of State for inclusion on the POVA list. The relevant registration authority may make referrals to the POVA list when they come across evidence of misconduct that has not been referred to the Secretary of State by the employer. This might apply, for example, where registered persons themselves warrant referral for inclusion on the POVA list (for example, because the provider is directly concerned in care provision). However, providers of care (and employment agencies and businesses) are reminded that it is they, rather than the Commission for Social Care Inspection or the Care Standards Inspectorate for Wales, who have the primary duty under the Act for referring care workers to the POVA list as and when required. Failure to fulfil this statutory duty may be evidence of a lack of fitness, which could potentially lead to cancellation of the registration of providers of care.

Referral of individuals from certain inquiries

64. The Secretary of State will consider the inclusion on the POVA list of an individual named in a relevant inquiry and who is, or has been,

employed in a care position. Relevant inquiries are defined in subsection 85(7) of the Act. See Annex A for details.

65. The Secretary of State will consider such an inclusion where the person who held the inquiry found the individual was guilty of misconduct which harmed or placed at risk of harm a vulnerable adult (whether or not in the course of his employment) at a time when the individual was employed in a care position, and that the individual is unsuitable to work with vulnerable adults.

66. The individual shall be provisionally included on the list if :
    - a relevant inquiry has been held;
    - the report of the person who held the inquiry names an individual who is or has been employed in a care position; and
    - it appears to the Secretary of State from the report that :
        - the person who held the inquiry found that the individual was guilty of relevant misconduct;
        - the individual is unsuitable to work with vulnerable adults.

Referral following police charges

67. A referral to the Secretary of State should also be made in circumstances where a care worker has been suspended, dismissed or resigned after having been charged by the police with offences against vulnerable adults, and is awaiting the outcome of criminal investigation or trial.

Information to be provided with a referral

68. New paragraph: Guidance produced by the Social Care Institute for Excellence (SCIE) provides detailed advice on the information needed in order to make a referral. The guidance is available at www.scie.org.uk

    The key points to note are:

    - A referral form is required. This can be obtained at www.dh.gov.uk/POVA
    - The form must be sent with all relevant papers to:

      The Manager
      Safeguarding Operations Unit (PoVA)
      DCSF
      GF - E
      Mowden Hall
      Darlington
      DL3 9BG
    - Employers should also consider notifying the Police where a crime has occurred, the local authority adult protection co-ordinator, CSCI and where relevant the regulatory body for medical staff.

69. deleted paragraph

70. deleted paragraph

71. deleted paragraph

Procedures under "No secrets" and "In safe hands"

72. In each local council area, local councils together with NHS partners, police forces, local providers of care and other stakeholders have set up codes of practice to protect vulnerable adults from abuse, based on "No secrets" and "In safe hands". Your local authority will be able to advise how to contact the adult protection co-ordinator for your area. Where harm to vulnerable adults is suspected, alleged or proved, appropriate action should be taken in accordance with such local codes and associated disciplinary procedures. The provisions of the POVA scheme add an extra dimension not only to pre-employment checks but also to these local codes by requiring that care workers may be referred to the POVA list along with other appropriate actions.

    You wish to view these documents using the attached links:

    No Secrets

    In Safe Hands Update 2003

IMPLICATIONS OF INCLUSION ON THE POVA LIST

Implications for individuals

73. An individual who is included on the POVA list either as a confirmed or provisional listing (see later) may not be offered work in a care position. Phased implementation means, that from 26 July 2004, "care position" in this regard means :
    - a position that would enable care workers employed in care homes carried on by registered providers, including workers supplied to such homes by employment agencies and businesses, to have regular contact in the course of their duties with care home residents.
    - a position that would enable care workers employed by domiciliary care agencies carried on by registered providers, including workers supplied to such agencies by employment agencies and businesses, to provide personal care in their own homes to persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.
    - A position that would enable adult placement carers to provide personal care to persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.

74. It is a criminal offence for an individual confirmed on the POVA list to knowingly apply for, offer to do, accept or do any work in a care position as set out in paragraph 73 above. It is not a criminal offence for an individual who is provisionally listed to seek employment in such a position. Nevertheless a provider of care must not employ anyone in a care position (as set out in paragraph 73 above) who is either provisionally listed or confirmed on the list.

75. An individual who is charged with an offence of applying to work in a care position as set out in paragraph 73 above while on the POVA list will have a defence against the charge if he is able to prove that he did not know, and could not reasonably be expected to know, that he was confirmed on the POVA list. (See paragraphs 83 and 90 below for what individuals are told following referral to, and inclusion on, the POVA list.)

75a. If you are worried or concerned about what may be, or has been, revealed by your CRB check you can talk in confidence to the Nacro helpline. Nacro is a crime reduction charity that works with ex-offenders and is able to answer specific queries on good practice in relation to employment and offenders.
(T: **020 7840 6464** or Email helpline@nacro.org.uk).

Implications for providers of care

76. The Act requires providers of care to check the POVA list before offering any individual employment in a care position of the sort set out in paragraph 73 above. If they discover that the individual is included

on the list – either as a provisional or confirmed entry – the provider of care must not offer that individual employment in a care position.

77. Additionally where a provider of care discovers, through whatever means, that an individual already occupying a care position, as set out in paragraph 73 above, is included in the POVA list – either as a confirmed inclusion or a provisional inclusion – he must cease to employ him in a care position. A provider of care can, however, if he is able to do so, move the individual to a position which is not a care position, on the understanding that such a move does not continue to place vulnerable adults at risk of harm. If the provider has no positions other than care positions, then he is advised to take legal advice if his only recourse is to dismiss the worker.

PROVISIONAL LISTING

Provisional inclusion on the POVA list

78. The Secretary of State will initially examine the quality of the information submitted with a referral. He may decide not to proceed if the case is clearly not suitable for inclusion. (For example, the individual was clearly not in a care position as set out in paragraph 2 above or it is evident from the outset that no vulnerable adult was harmed or put at risk of harm by the actions of the individual). The Secretary of State may decide to seek more information from the provider before considering whether to proceed with a decision to provisionally include the individual on the POVA list.

79. 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.

80. Having satisfied himself that the information provided with the referral (either within the original referral letter or as a result of subsequent further correspondence) is complete, the Secretary of State will make a decision about provisional listing. If it appears from the information submitted that it may be appropriate for the individual to be included on the list the Secretary of State will provisionally include him.

Possible provisional inclusion on the Protection of Children Act (POCA) list

81. If the Secretary of State decides that the information provided with the referral makes it appropriate to provisionally include the individual on the POVA list, he will also consider if the nature of the alleged misconduct means that the individual may also be unsuitable to work with children. If he reaches that decision, he will also provisionally include the individual on the POCA list. Equally, if a person is referred for inclusion on the POCA list he may also be referred by the Secretary of State for provisional inclusion on the POVA list.

82. In reaching such decisions, the Secretary of State will be mindful that, in general, an individual who breaches the trust placed in him by harming a vulnerable person in his care, no matter the age of that vulnerable person, is not welcome within the care workforce.

Action following provisional listing

83. If an individual is provisionally included on the POVA list (and possibly also on the POCA list) 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 “Special Delivery”. The individual will then have the opportunity to make written representations direct to the Secretary of State as to why he should not be confirmed on the

POVA list (and the POCA list where it applies). 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.

84. The individual will be given 28 days in which to make written observations, or to indicate that he intends to make observations within a reasonable period. If observations are not received, the Secretary of State will make his decision based on all available evidence.

85. Individuals who are provisionally included in the POVA list may not be employed in a care position working with vulnerable adults as set out in paragraph 73. If the individual's name is also included provisionally in the POCA list he may not be employed by a child care organisation (as defined in the Protection of Children Act 1999) in a regulated position for the purposes of section 35 of the Criminal Justice and Court Services Act 2000.

86. Before an individual's name may be confirmed on the POVA 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 or placed at risk of harm a vulnerable adult, and that the individual is unsuitable to work with vulnerable adults. 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.

87. 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 opinions he is required to reach.

88. If the Secretary of State determines that the individual's name should not be confirmed on the POVA list he will immediately remove the provisional entry from that list and from the POCA list if his name has also been provisionally included on that list.

89. If the Secretary of State determines that the individual's name should be confirmed on the POVA list he will then decide, in the light of all information before him, if the individual is also unsuitable to work with children. If he decides that he is, then the individual's name will also be confirmed on the POCA list. If the information is such that there is no indication that the individual presents a risk to children, then his name will only be confirmed on the POVA list.

90. Immediately the Secretary of State has made his decision notice of it will be sent by "Special Delivery" to the individual and to the referring organisation. At the same time the individual will be either removed from, or confirmed on, the list.

Care workers suspended or temporarily moved to a non-care position

91. Where an individual has been provisionally included on the POVA list (and also possibly the POCA list) whilst suspended or provisionally transferred to a position within the organisation, which is not a care position as set out in paragraph 73, the Secretary of State will not form his opinion about confirming the individual 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 individual provisionally included on the POVA list will have a right of appeal as described below.

Appeals against provisional listing (Care Standards Tribunal)

92. An individual, who has been provisionally included in the POVA list for more than nine months, may seek leave of the Care Standards Tribunal (the Tribunal) to have the issue of his inclusion on the list determined by the Tribunal instead of by the Secretary of State. If the individual has also been provisionally included on the POCA list he may, if he so wishes, only seek leave of the Tribunal to determine his position on that list.

93. If the individual who is provisionally included on the POVA list is also the subject of any civil or criminal proceedings in connection with the allegations of misconduct he 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 to the Tribunal has to be extended.

94. The Tribunal has issued its own guidance for appellants in how to use its services and how to lodge appeals. Copies of this guidance are available from the Care Standards Tribunal Secretariat at 18 Pocock Street, London SE1 OBW. The guidance is also available on the Tribunal Website www.carestandardstribunal.gov.uk.

Regulatory bodies

95. As soon as a care worker is provisionally included on the POVA list, prompt referral to appropriate regulatory bodies such as the General Social Care Council and the Nursing and Midwifery Council should be considered by the person who made the referral to the POVA list. Where a worker is removed from the POVA list, the person who made the referral, if he is aware of the removal, should inform the regulatory body of the removal.

CONFIRMED LISTINGS – REMOVAL FROM THE POVA LIST

Introduction

96. There are three ways in which individuals may seek removal from the POVA list. (Similar provisions exist in relation to the POCA list.)

Secretary of State's power to remove an individual from the list

97. Any individual who is confirmed on the POVA list may ask the Secretary of State to exercise his powers under section 81(3) of the Act to remove him from the list. The Secretary of State may at any time remove an individual from the list if he is satisfied that the individual should not have been included on it.

98. The circumstances in which the Secretary of State would exercise his powers here include where there has been a clear miscarriage of justice. For example, if new evidence was presented that clearly showed the case to be one of mistaken identity, or where new evidence showed that the allegations of misconduct made against the individual had been falsely and maliciously made, or where a conviction has been quashed on appeal. In such circumstances the Secretary of State would remove the individual from the POVA list. If the individual had also been confirmed on the POCA list, he would also be removed from that list.

99. Should the Secretary of State decide not to remove a person from the list, an individual will have the right to seek the leave of the Tribunal to appeal to that Tribunal against the Secretary of State's decision.

Appeal to the Care Standards Tribunal

100. An individual who is confirmed on the POVA list has the right of appeal to the Tribunal. Decisions that the Tribunal makes about the facts of individual cases are binding and final. Appeals against decisions of the Tribunal may be made to the High Court on points of law only.

101. The Tribunal has issued its own guidance for appellants in how to use its services and how to lodge appeals. See paragraph 94.

102. An individual whose name has also been included on the POCA list following their referral to the POVA list may appeal to the Tribunal for his removal from both lists, or he may seek his removal only from the POCA list. Should the Tribunal allow his appeal in relation to the POVA listing, it will direct that the individual be also removed from the POCA list. However, where the individual only appeals against his entry on the POCA list and the Tribunal allows that appeal, the Tribunal would only direct his removal from the POCA list. The individual would remain on the POVA list.

103. Should the Secretary of State decide to be party to an appeal before the Tribunal it is likely that he will want to submit detailed witness statements and full background papers to the Tribunal. The Secretary of State will expect the full co-operation of all providers in this process.

Application for Review of inclusion on the POVA list

104. An individual included on the POVA list may make an application to the Tribunal for their removal from the list. On application the Tribunal will determine whether or not the individual should continue to be included on the list. If the Tribunal is satisfied that the individual is no longer unsuitable to work with vulnerable adults it shall direct the Secretary of State to remove the individual from the list. Otherwise it will dismiss the application and the individual will remain on the list. Similar provisions exist for review of inclusion on the POCA list.

105. The conditions for an application under this provision are that :
- an individual may only make an application with leave of the Tribunal;
- an individual who was under the age of 18 at the time he was included on the POVA list (otherwise than provisionally) must wait five years before applying for leave of the Tribunal. Only one application for leave may be made in any 5-year period; and
- an individual who was over the age of 18 at the time of his inclusion on the POVA list must have been included (otherwise than provisionally) in the POVA list for a continuous period of 10 years, before applying for leave of the Tribunal. Only one application for leave may be made in each 10-year period.

106. The Tribunal must not grant an application for review unless it considers that :
- the individual's circumstances have changed since he was included (otherwise than provisionally) in the list, or, as the case may be, since he last made an application under that section; and
- the change is such that leave to appeal should be granted.

107. The Tribunal is an independent judicial body established under the Protection of Children Act 1999. The legal and lay members of the Tribunal are all appointed by the Department for Constitutional Affairs (DCA). The Tribunal has a judicial head – 'The President', also appointed by the DCA, who has certain responsibilities in relation to the management of appeal cases. Tribunals are specifically convened to hear a particular appeal and each Tribunal consists of a legal member who acts as the chairman, and two lay members with expertise relevant to the appeal in hand.

COPIES AND ENQUIRIES

108. This guidance, and related material, can be accessed on the Internet at www.dh.gov.uk/POVA.

109. Delete paragraph

110. Queries about this guidance can be made to :

DHMail@dh.gsi.gov.uk

ANNEX A

DEFINITIONS

Introduction

The purpose of this annex is to set out the key definitions in section 80 of the Care Standards Act 2000 in relation to those parts of that section that came into force on 26 July 2004. The parts of section 80 that were not being commenced on this date were not referred to in this annex.

Key definitions and commencement

Care worker (section 80(2))

"Care worker" means -

a. an individual who is or has been employed in a position which is such as to enable him to have regular contact in the course of his duties with adults to whom accommodation is provided in a care home;
b. (not commenced)
c. an individual who is or has been employed in a position which is concerned with the provision of personal care in their own homes for a person who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.
d. an individual who has entered into an agreement with a person within subsection 7 (e) and is employed to provide support, care or accommodation to an adult (not being a relative of the individual) who is in need of it.

Care position (section 80(3))

"Care position", in relation to an individual, means any position such as is mentioned in subsection (2)(a) or (c).

Employment (section 80(4))

"Employment" has the same meaning as in the Protection of Children Act 1999; and references to an individual being employed shall be construed accordingly.

The Protection of Children Act 1999 defines "employment" as :

- any employment, whether paid or unpaid and whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract; and
- includes an office established by or by virtue of a prescribed enactment.

Supply worker (section 80(5))

"Supply worker" -

a. in relation to an employment agency, an individual supplied by the agency for employment in a care position or for whom the agency has found employment in a care position
b. in relation to an employment business, an individual supplied by the business for employment in a care position.

Vulnerable adult (section 80(6))

"Vulnerable adult" means :
a. an adult to whom accommodation and nursing or personal care are provided in a care home;
b. an adult to whom personal care is provided in their own home under arrangements made by a domiciliary care agency; or
c. (not commenced)

Providers (section 80(7))

The persons who provide care for vulnerable adults are :
a. any person who carries on a care home;
b. any person who carries on a domiciliary care agency;
c. (not commenced)
d. (not commenced)
e. any person who carries on a scheme under which an individual agrees with that person to provide support, care or accommodation to an adult who is in need of it.

Inquiries

The Secretary of State will consider the inclusion on the POVA list of an individual named in a relevant inquiry and who is, or has been, employed in a care position. Relevant inquiries are defined in subsection 85(7) of the Act as
(a) an inquiry held under –
(i) section 10 of the Act
(ii) section 35 of the Government of Wales Act 1998
(iii) section 81 of the Children Act 1989
(iv) section 84 of the National Health Service Act 1977
(v) section 7C of the Local Authority Social Services Act 1970
(b) an inquiry to which the Tribunals of Inquiry (Evidence) Act 1921 applies;
(c) any other inquiry or hearing designated for the purposes of [section 85(7)] by an order made by the Secretary of State.

ANNEX B

EXAMPLES OF WHERE CHECKS AGAINST THE POVA LIST WILL BE REQUIRED

Introduction

The situations, and selected examples, given below are intended as a guide only. They represent the Department's view. However, providers of care should make a judgement (seeking legal advice where necessary) on the individual circumstances of every worker to decide if a check against the POVA list is necessary. The situations given below are not comprehensive and again providers of care should exercise their informed judgement when considering which individuals come within the scope of the POVA scheme and which do not. In many cases it will be obvious that an individual is a care worker. For example, a care assistant in a care home whose job consists of caring for elderly residents is a care worker. ***The examples that follow are therefore intended to give guidance in relation to situations that may be less clear.***

Please note that the key to deciding whether a person qualifies as a care worker as set out in paragraph 2 of this guidance is the amount of contact they have with vulnerable adults in performing their duties (whatever they might be) rather than their job title or their formal job description.

It should also be noted that the definition of "employment" used in the Act is very wide and is intended to ensure that even the most informal of connections and voluntary work are covered by the provisions of the Act. Even where no money changes hands, voluntary, community-based and other organisations and individuals, working for providers of care in an agreed capacity that constitutes a care position, whether or not under the terms of a contract, will come within the scope of the POVA scheme.

Individuals employed by, or supplied by employment agencies and businesses to, the registered providers of adult placements, care homes and domiciliary care agencies

<u>Registered adult placements</u>

Adult placement (AP) carers offer a form of care which offer vulnerable people aged 18 and older an opportunity to live an ordinary domestic life with ordinary individuals or families in local communities.

- There is a legal duty to check such AP carers because they are living with or have regular contact in the course of their duties of caring for adult placement service users. (Note that registered managers will already have been POVA checked as part of the registration process with the Commission for Social Care Inspection / Care Standards Inspectorate for Wales since the coming into force of the POVA scheme.)

- The AP schemes should only approve AP support carers who have regular and unsupervised contact with service users following successful completion of CRB and POVA checks and satisfactory references as set out in the Adult Placement Schemes (England) Regulations 2004
- The families of an adult placement carer are not employees or prospective employees of an adult placement scheme and the scheme cannot, therefore, ask for them to be CRB checked.)

Registered care homes

The following individuals work in care homes. There will be a legal duty to check such individuals only if they have regular contact in the course of their duties with residents. Otherwise they should not be checked.

- Deputy and assistant managers. (Note that registered managers will already have been POVA checked as part of the registration process with the Commission for Social Care Inspection / Care Standards Inspectorate for Wales after the coming into force of the POVA scheme.)
- Administrative, finance, clerical and reception staff
- Care assistants
- Nurses in care homes with nursing on the premises
- Cooks
- Cleaners
- Maintenance workers, gardeners, handy-persons and so on.
- Volunteers (such as "Friends of the Care Home")
- Persons coming into the home to provide services under arrangements made with the home, such as chiropodists, hairdressers, priests or other religious leaders, persons providing library services, and so on.)

Examples :

A care home administrator, as an agreed part of his formal duties, daily assists at meal times to ensure that severely or frail disabled residents make their way to the dining room and are assisted in eating their food. It is likely that this would be considered to be "regular contact" with the result that a check will be necessary. (Note : in this example, the administrator has received appropriate training.)

Contrast this with an administrator who works in the care home's general office and, apart from fleeting contact with residents as he arrives and leaves the premises, only sees residents when they occasionally come to the office looking for the manager or for information. It is unlikely that this would constitute "regular contact" and as a result a check would not be necessary.

A cook not only runs the kitchen of a care home, orders food and prepares menus and meals but also pays weekly visits to

residents in their rooms to ascertain and check what meals are required and dietary requirements. The cook also helps severely disabled residents eat their food. It is likely that this would be considered to be "regular contact" with the result that a check will be necessary.

Contrast this with a cook who works in a care home's kitchen and has only fleeting contact with residents, as he arrives and leaves the premises. It is unlikely that this would constitute "regular contact" and as a result a check would not be necessary.

A volunteer is recruited by a care home to visit individual residents in private on a regular and frequent basis. It is likely that this would be considered to be "regular contact" with the result that a check will be necessary.

Domiciliary care agencies

The following individuals work in domiciliary care agencies. There is a legal duty to check such individuals only if they provide personal care in the homes of individuals who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance. Otherwise they should not be checked.

- Deputy and assistant managers including home care organisers. (Note that registered managers will already have been POVA checked as part of the registration process with the Commission for Social Care Inspection / Care Standards Inspectorate for Wales after the coming into force of the POVA scheme.)
- Administrative, finance and clerical staff
- Home care workers / domiciliary care worker [Note : the term "domiciliary care worker" is defined in the Domiciliary Care Agencies Regulations 2002 – in summary - as a person employed in a position which is concerned with the provision of personal care to individuals in their own homes.]
- Home helps / home support workers / domiciliary care assistants
- Volunteers (including those recruited by agencies such as Crossroads or the Red Cross to visit vulnerable adults in their homes)

Examples :

A domiciliary care assistant is employed by the council's home care service to help housebound older people with weekly shopping. He provides no other support. Activities such as shopping and cleaning, without other support, are unlikely to

meet the definition of "personal care", and so a check will not be required in these circumstances.

An administrator with a domiciliary care agency works in the agency's office but stands in for the agency's home help staff, in times of staff shortages and high demand, by providing less intensive forms of personal care to service users in their own homes. It is likely that a check would be required in this situation. (Note : in this example, the administrator has received appropriate training.)

Contrast this with an administrator with a domiciliary care agency who works in the agency's office but who very occasionally may visit service users in their own homes to listen to any complaints about the service. This would not constitute the provision of personal care and a check would therefore not be required.

Other individuals and other services

Vulnerable adults in care homes and in receipt of personal care from domiciliary car agencies may receive support and visits from a range of professionals, volunteers and services other than those listed above in this annex

In an a care home, these individuals and services, which can include social workers or care managers, community or district nurses, chiropodists, hairdressers and other professionals (some of whom may be self-employed, or may be volunteers), volunteers from local community organisations or places of worship, and the like, should be considered for a POVA check. These checks should only be carried out if, for example, the registered provider of a care home has a contract with them to provide a service, or has some other arrangement that comes within the wide definition of employment set out in the Act and described in this guidance, and which involves these individuals and services in regular contact with the residents.

Hence, a care manager who is invited by the registered provider to run a weekly counselling and advice session for residents of a care home should be checked if the provider considers that the contact is regular. Likewise a priest who is invited by the same care home provider to offer pastoral care to residents on a weekly basis should also be checked against POVA if the provider considers that the contact is regular. This is because the definition of employment for the purposes of the POVA scheme is wide – see paragraph 32 above.

Where other professionals, volunteers or other services come into the care home as part of their statutory duties, or on the express invitation of the resident, POVA checks should not be considered. Hence, council-based social workers or care managers, who in the normal course of their statutory duties with regard to assessment, visit care home residents should not be checked against the POVA list. Community nurses who visit patients registered with the practices or health centres that employ them, as part of their regular duties to such patients, should not be checked. Likewise, self-employed persons, volunteers and informal helpers who visit by private agreement with individual residents and who are neither under a contract to provide a service for the care home, nor have any other arrangements with the providers of care, should not be checked.

Similar logic applies to services users in receipt of services from domiciliary care agencies in their own homes. The key is that those professionals, volunteers and other services who visit people in their own homes to provide personal care, and who are under a contract to do so with the provider of domiciliary care or under some other arrangement that constitutes employment as set out in the Act, should be checked against the POVA list. Otherwise they should not be checked.

Individuals who are directly “employed” by service users living in the community through direct payments should not be checked.

Changing circumstances

It should also be noted that providers of care who may check against the POVA list should be alert to changing circumstances. Take the care home administrator described above who works in the general office and has little contact with residents. It could be that over time, he begins to develop his role and, for example, begins to run regular sessions with individual residents in their rooms on complaints or comments they would wish to make. As these contacts become regular and frequent, it is likely that the care home owner would then be under a duty to make a check against the POVA list in relation to that administrator.

ANNEX C

PRE-EMPLOYMENT AND TRAINING AND SUPERVISION REQUIREMENTS

Pre-employment checks in England

Changes are being made to bring the Care Home Regulations 2001 into line with the Domiciliary Care Agencies Regulations 2002 and the Nurses Agencies Regulations 2002. The changes remove the requirement for applicants to provide a birth certificate and passport but strengthen checks in other areas.

The changes apply to all care homes and domiciliary care agencies, irrespective of whether or not they intend to appoint individuals ahead of the full CRB Disclosure being issued.

For care homes and domiciliary care agencies, from 26 July 2004, the regulations require :

- Details of any criminal offences :
  - of which the person has been convicted. Including details of any convictions which are spent; or
  - in respect of which he has been cautioned by a constable and which, at the time the caution was given, he admitted.
- Two written references, including, where applicable, a reference relating to the person's last period of employment of not less than three month's duration which involved work with children or vulnerable adults.
- Where a person has previously worked in a position which involved contact with children or vulnerable adults, written verification (so far as reasonably practicable) of the reason why he ceased to work in that position.
- Documentary evidence of any relevant qualifications and training.
- A full employment history, together with a satisfactory written explanation of any gaps in employment.
- A statement by the person as to his physical and mental health.
- Details and evidence of registration with, or membership of, any professional body.

For information on care homes and domiciliary care pre-employment checks in Wales, please see the Care Services Inspectorate Wales website: www.csiw.wales.gov.uk/index.asp

Training and supervision

The training and supervisory requirements for new staff have been strengthened by the amendments to the Care Home Regulations 2001 and the Domiciliary Care Agencies Regulations 2002 that came into force on 26 July 2004.

Where providers of care wish to appoint individuals ahead of the full CRB Disclosure being issued, and subject to the requirements set out in paragraphs 37 to 46 above, they must appoint a named person, appropriately qualified and experienced, to supervise new members of staff until they have completed induction training and until the full CRB Disclosure has been completed satisfactorily. The named person, so far as is possible, must be on duty at the same time as the new member of staff. (Please note that there may be more than one named person.)

For domiciliary care providers it will not usually be possible for the named person to accompany the new member of staff on visits to service users' homes. In these circumstances, the regulations require the named person to be contactable, that the new member of staff be observed at work at least once while the result of the full CRB Disclosure is awaited, and that the provider contact the service user on a weekly basis to monitor the service user's satisfaction with the care provided.

The changes make into statutory requirements the induction training previously set out in the National Minimum Standards for Care Homes and Domiciliary Care Agencies. Providers must ensure new staff receive a minimum of three days of appropriate, structured and documented induction training.

Nurses agencies

It should also be noted that training requirement for new staff in the Nurses Agencies Regulations 2002 have been strengthened. Since 26 July 2004, nurses agencies acting as employment businesses are required to ensure that new nurses are provided with appropriately structured induction training.

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