EXPLANATORY MEMORANDUM TO

THE PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007 (CONSEQUENTIAL MODIFICATIONS) ORDER 2010

2010 No. [XXXX]

1. This explanatory memorandum, prepared by the Department for Education, is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order makes amendments to support the vetting and barring scheme under the Protection of Vulnerable Groups (Scotland) Act 2007 ("the 2007 Act") which the Scottish Ministers have announced will be launched on 30 November 2010. The Order enables the Independent Safeguarding Authority to provide information to the Scottish Ministers for the purposes of their functions under the 2007 Act, and makes an amendment to the Data Protection Act 1998.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This Order is subject to the affirmative resolution procedure.

4. Legislative Context

4.1 This instrument is being made to enable the implementation of the 2007 Act, whose aim is to help to ensure that individuals in Scotland who have regular contact with children and protected adults through paid and unpaid work do not have a known history of harmful behaviour[1].

4.2 Section 104 of the Scotland Act 1998 allows provision to be made consequential upon legislation of the Scottish Parliament.

5. Territorial Extent and Application

5.1 This instrument extends to the United Kingdom.

6. European Convention on Human Rights

6.1 Mr Tim Loughton MP, Parliamentary Under Secretary of State for Children and Families, has made the following statement regarding Human Rights:

In my view the provisions of The Protection Of Vulnerable Groups (Scotland)

[1] A description of the Protection of Vulnerable Groups (Scotland) Act 2007 scheme is available at: www.scotland.gov.uk/Topics/People/Young-People/children-families/pvglegislation .

Act 2007 (Consequential Modifications) Order 2010 are compatible with the Convention rights as defined in section 1 of the Human Rights Act 1998.

7. Policy background

- What is being done and why

7.1 This instrument makes two amendments to primary legislation. Firstly, it enables the Independent Safeguarding Authority to provide information to the Scottish Ministers relevant to their functions under the 2007 Act. (The Independent Safeguarding Authority is the body responsible for maintaining the children's barred list and the adult's barred list under the Safeguarding Vulnerable Groups Act 2006 in England and Wales.) Without this information, the Scottish Ministers will not be able to implement effectively the 2007 Act scheme. The policy objective of the 2007 Act scheme is as stated at 4.1 above. It is expected that between 700,000 and 800,000 people in paid and unpaid regulated work will, over time, become 2007 Act Scheme members. The Scottish Government received 108 responses to its 2009 Consultation on significant draft secondary legislation, draft guidance and the Regulatory Impact Assessment. An earlier policy consultation in 2007 received 199 responses. In addition, 16 consultation/ information events, held between November 2007 and January 2008, attracted over 1000 participants. See under "Consultation outcome" below for examples of changes made as a result.

7.2 Secondly, it makes amendments to the Data Protection Act 1998 (DPA) equivalent to those made in the Safeguarding Vulnerable Groups Act 2006 and in the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007. This will, for example, protect individuals who have obtained 2007 Act data from the Scottish Ministers under a subject access request from being forced to reveal that data to an employer.

Consolidation

7.3 n/a

8. Consultation outcome

8.1 There has been no public consultation on the particular provisions of this instrument. However, there were two consultations on the PVG scheme overall, as described at 7.1 above. The Scottish Government's response (April 2010) to the second consultation listed changes made as a result of the consultation, which included dis-applying some barring offences around "host parents" to provide more local discretion; narrowing provision in respect of children's charity trustees; and re-drafting the regulatory impact assessment to address points made in the consultation[2].

9. Guidance

[2] Further details at: http://www.scotland.gov.uk/Resource/Doc/1141/0097785.pdf .

9.1 No guidance is required in connection with this instrument.

10. Impact

10.1 The DPA amendment will prevent employers from requesting individuals to make subject access requests under the DPA rather than making disclosure/ vetting applications under the 2007 Act. The impact on such bodies of the 2007 Act scheme is assessed in the Scottish Government's Regulatory Impact Assessment, final version (RIA No. 2009/03) at: www.scotland.gov.uk/pvglegislation .

11. Regulating small business

11.1 The legislation applies to small businesses to the extent that the DPA amendment described in 10.1 above affects such businesses.

12. Monitoring & review

12.1 Paragraphs 153 to 160 of the published Impact Assessment on the VBS (see link at paragraph 10.1 above) contain details of monitoring and review of the VBS as a whole. The ISA will produce statutory annual reports, and any additional reports that the Home Secretary may direct, on any aspect of the exercise of its functions. The ISA's latest annual report, laid before Parliament in July 2010, is at:
www.isa.homeoffice.gov.uk/default.aspx?page=428 .

12.2 The Regulatory Impact Assessment of the 2007 Act scheme indicates that post-implementation review (paragraphs 104 to 106) could include:

- time taken to process applications for scheme membership and scheme disclosures;
- volume and nature of complaints received by the PVG agency and appeals against listing decisions;
- outcome-based indicators to be developed to complement the above, e.g. stakeholder satisfaction (ease of use, fairness, accessibility);
- an important longer-term indicator to measure the anticipated reduction in harm to vulnerable groups by those who work with them.

13. Contact

13.1 Nicholas Smith at the Department for Education Tel: 020 7783 8474 or email: Nicholas.SMITH@education.gsi.gov.uk can answer queries on the instrument.

Department for Education 2010