EXPLANATORY MEMORANDUM TO

THE SAFEGUARDING VULNERABLE GROUPS ACT 2006 (CONTROLLED ACTIVITY AND MISCELLANEOUS PROVISIONS) REGULATIONS 2010

2010 No. XXXX

1. This explanatory memorandum has been prepared by the Department for Children, Schools, and Families in consultation with the Department of Health, and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1. These Regulations specify the circumstances in which employers ("responsible persons") may permit individuals to undertake work in England which is a controlled activity as defined in sections 21 and 22 of the Safeguarding Vulnerable Groups Act 2006 ("the Act"), and which the individual was not already engaged in for that employer when these Regulations come into force. The employer will either have to be satisfied that the individual is not on a barred list nor on a list which predates the Act pending migration to one of the barred lists, or have seen an enhanced criminal record certificate ("CRB disclosure") or a notification that the individual is not on such a list issued within the previous 90 days. The Regulations therefore also modify provisions in the Police Act 1997 dealing with the issue of criminal record certificates. The Regulations also make amendments to the criteria for automatic barring under the Act: first, to include offences under the law of any of the Channel Islands and the Isle of Man which would amount to an equivalent specified offence; and second, detailed changes in relation to four groups of sexual offences.

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

3.1. These Regulations are subject to the affirmative resolution procedure.

4. Legislative Context

4.1. The Act reforms arrangements for safeguarding children and vulnerable adults from harm or the risk of harm by employees (paid or unpaid) whose work gives them significant access to these groups. The new arrangements it introduces include barring and referral arrangements which, from October 2009, broadly replaced those under the Protection of Children Act 1999, Care Standards Act 2000, Criminal Justice and Court Services Act 2000 and Education Act 2002.

4.2. Sections 21 and 22 of the Act define the term "controlled activity". It covers a tightly-defined range of specified activities carried out e.g. by support staff for employers in sectors such as further education, local authorities or the health service, that provide either an opportunity for contact with children or vulnerable adults, or access to certain personal records on individuals in those groups.

4.3. Section 23 of the Act provides for the Secretary of State, by regulations, to make provision as to the persons who are permitted to engage in controlled activity, the steps which must be taken by a responsible person in connection with permitting another to engage in controlled activity, and circumstances in which a responsible person must not permit another to engage in controlled activity.

4.4. Section 64 provides that the power to make subordinate legislation under the Act includes power to make supplementary, incidental or consequential provision which may amend, repeal, revoke or otherwise modify any enactment including the Act itself. The modifications to the Police Act 1997 are incidental to the provisions being made in relation to the circumstances in which a responsible person may permit another to engage in work which is a controlled activity.

4.5. Paragraphs 1, 2, 7, 8 and 24 of Schedule 3 to the Act make provision in relation to inclusion on the children's barred list and the adults' barred list.

4.6. Further detail on the legislative background to the Act is in a supplement (updated for the purposes of this Memorandum) to the previous over-arching explanatory memorandum on the implementation of the Act, at Annex 1 below. The annex is a supplement to the overarching memorandum on the implementation of the Act which was submitted to Parliament in February 2008. Annex D to Annex 1 lists, in groups, all previous Statutory Instruments under the Act. Each Instrument in the first group was accompanied by an overarching memorandum about the Act overall. Each Instrument in later groups was accompanied by a supplement which updated that original overarching memorandum.

4.7. These Regulations are the first making provisions under section 23 of the Act**.**

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales; regulations 2 and 3 make provision only for controlled activity in England. The Welsh Assembly Government plans to make regulations in respect of controlled activity in Wales.

6. European Convention on Human Rights

6.1. Baroness Morgan of Drefelin, Parliamentary Under Secretary of State for Children, Young People and Families, has made the following statement regarding Human Rights:

In my view the provisions of The Safeguarding Vulnerable Groups Act 2006 (Controlled Activity and Miscellaneous Provisions) Regulations 2010 are compatible with the Convention rights as defined in section 1 of the Human Rights Act 1998.

7. Policy Background

7.1 By reducing the risk of an individual barred from regulated activity seeking to move into controlled activity without an employer knowing of that bar, the controlled activity provisions in this Order increase the effectiveness of

safeguarding measures arising from the introduction of ISA registration[1] in relation to Regulated Activity, which for new entrants and movers working for a new regulated activity provider will be optional from July 2010, and mandatory from November 2010, bringing about a further milestone in the transition to the new Scheme. Similarly, the prescribed criteria provisions will improve the working of automatic barring under the Scheme.

7.2 Regulations 2 to 3 require a responsible person (normally an employer), before permitting someone to undertake work in England which is a controlled activity either to be satisfied that the individual is not on a barred list nor on a list which predates the Act pending migration to one of the barred lists, or to have seen an enhanced criminal record certificate, or a notification that the individual is not on such a list, issued within the previous 90 days. At present, some employers can be satisfied without seeing a certificate or notification: an employer who subscribes to DCSF's online checks service (hosted through a teachers pensions service for education employers) can use that route, and in relation to regulated activity with vulnerable adults there is at present the ISA Adult First service. The requirements in regulations 2 and 3 do not apply if the permission was granted before, and continues after the Regulations come into force; the requirements will only affect new entrants to, and those who move post within, the controlled activity workforce. A personnel supplier will similarly be able to check whether an individual they intend to supply for controlled activity is barred. DCSF guidance will recommend that an employer to whom an individual is supplied should, as a condition, require the supplier to confirm the outcome of a check; if the individual is barred in relation to the relevant group, the employer must receive a copy of a criminal record certificate issued no more than 90 days before the employer starts the individual in controlled activity.

7.3 The employer needs to know if the person is barred or not, because controlled activity comprises certain work for specified employers involving contact with a vulnerable group or access to their sensitive records, and the Government wants the employer, if the person is barred from regulated activity with that vulnerable group, to be able to take an informed decision as detailed below at 7.5.

7.4 Regulation 4 makes an incidental modification to the Police Act 1997 so that there is no duty on the Secretary of State (acting via the CRB) to issue a criminal record certificate under section 113A of that Act where the purpose of the application for such a certificate is the assessment of the suitability of a person for work which is a controlled activity. The reason for this modification is that, by virtue of the modification made by regulations 5 to 7, an applicant for an enhanced criminal record certificate under section 113B will receive only a 'notification' if they are not on a barred list (or other list as above), rather than a criminal record certificate; the employer would see only the notification, and not any of the applicant's conviction history. Regulation 4 therefore will prevent an employer from seeing conviction history (on a 'standard' criminal record certificate issued under section 113A) where the applicant is not on a barred list (or other list as above).

[1] i.e. being subject to monitoring under section 24 of the Act following an application made to the Secretary of State.

7.5 Regulations 5 to 8 make an incidental modification to the Police Act 1997 so that:

- the Secretary of State (acting via the CRB) will issue a 'notification' rather than an enhanced criminal record certificate under section 113B of that Act where the purpose of the application for such a certificate is assessing the suitability of a person for a controlled activity in relation to children or vulnerable adults (or both) and the person is not barred from regulated activity in relation to the relevant vulnerable group or groups (nor on a list which predates the Act, pending migration to a barred list);
- the notification will state that the person is not on any of the above lists;
- however, a certificate rather than a notification will continue to be issued where the controlled activity is work in a further education institution within the meaning of section 140(3) of the Education Act 2002 where the normal duties of that work involve regular contact with persons aged under 18 (see comments on consultation outcome at 8.3 below).

The reason for these provisions in regulations 5 to 8 is to balance safeguarding of vulnerable groups with the privacy of individuals and rehabilitation of offenders, by only disclosing criminal records where relevant. The intention is to ensure that an employer has ascertained whether an individual is on any of the above lists so that, if the individual is barred, the employer can decide whether to employ the individual in controlled activity, and if so then whether to set any conditions, taking account of criminal records information on that individual.

7.6 Regulation 9 amends the criteria for automatic barring prescribed in the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009[2] in the following respects:

7.6.1 offences under the law of the Channel Islands and the Isle of Man that are equivalent to automatic barring offences in England and Wales are added alongside foreign offences as criteria for automatic barring; and

7.6.2 detailed changes relating to four groups of sexual offences following comments in the light of operational experience by the ISA and by the Northern Ireland Executive: to remove a Northern Ireland offence now used for some behaviour that is not a risk, remove a duplication in relation to a Scottish offence, remove automatic barring in relation to vulnerable adults for non-contact offences against a victim aged 16 or over, and broaden the existing automatic bar from regulated activity with vulnerable adults for rape.

7.7 The Government's response to Sir Roger Singleton's report on aspects of the VBS in December 2009[3] confirmed the previously published intention to bring forward Regulations introducing this interim requirement (which is 'interim' because the intention is to replace it by permanent arrangements as explained at 7.9 below) in relation to controlled activity, despite the Government having

[2] SI 2009/37 as amended by SI 2009/2610.

[3] Written Ministerial Statement at Hansard Col 50WS 14 December 2009; Sir Roger Singleton's report and the Government's response, also both 14 December, are at: www.dcsf.gov.uk/everychildmatters/safeguardingandsocialcare/safeguardingchildren/vettingandbarringscheme/vettingvandbarring .

accepted the recommendation to review the continuing need for the category of controlled activity in the VBS. The principal reason for this is that, as regulated activity is rolled out, there will be individuals who will become barred from it, and the risk is that some of them may seek to gain access to vulnerable groups by applying for a position in controlled activity. Therefore the Government aims to enable employers with such posts to determine whether an applicant is barred, so that in the rare cases where an applicant does turn out to be barred, the employer can make a considered judgment on the applicant's suitability.

7.8 The CRB will consult publicly on a proposed fee for the service, which is expected to be significantly less than the normal fee for an enhanced disclosure. In most cases, the Government expects that an application will result in a "not barred" notification. In a relatively low proportion of cases, an application will result in an enhanced disclosure with a barred list check; it is planned not to charge a separate or second fee in that minority of cases. Applications in relation to new entrants or movers into controlled activity in the interim period will be handled separately outside the main automated system, using a separate process on which CRB will inform Registered Bodies of details in time for April.

7.9 As previously announced, the full set of requirements on a Responsible Person (e.g. an employer) in relation to an individual working in Controlled Activity will be in future regulations under the VBS which will not start until 2015, at the end of the phasing-in period for ISA-registration; and which will (as announced in December 2009) be subject to any changes that might arise from a review in 2010 of the continuing need for controlled activity.

8. Consultation outcome

8.1. There was a public consultation on various aspects of the Vetting and Barring Scheme, including some which are implemented by these Regulations, in November 2007, with the Government's response being published in May 2008. The Government response can be viewed at www.dcsf.gov.uk/consultations . The consultation invited views on issues including some which are relevant here, specifically:

- the extent of regulated activity;
- who is eligible to make checks of a person's ISA registration status;
- controlled activity;
- applying to the scheme; and
- the phased introduction of the scheme.

8.2. There were 326 responses to the consultation. These came from bodies including Local Authorities, Local Safeguarding Children Boards, voluntary sector organisations, unions, national and professional organisations, and health and care sector organisations, as well as parents. The opportunity to comment on the scheme in advance of implementation was welcomed, and most proposals in the consultation were met with overwhelming levels of agreement. On Controlled Activity, the Government said in its report on responses received (30th May 2008[4],

[4] www.dcsf.gov.uk/consultations/index.cfm?action=conResults&external=no&consultationId=1516&menu=1

section 11, para 97 to 105) that there was strong support for its proposal for regulations to require a "responsible person" to obtain a disclosure before employing a barred individual in Controlled Activity – 92% of respondents agreed (para 99). The report also said:

> "The Government will proceed on the basis of the consultation proposals, taking the responses to questions 10 to 13 into account in developing the regulations and accompanying guidance to employers on employing barred and non-barred individuals in controlled activity", and "given the relatively low number of barred people expected to be working in controlled activity, the burden on employers of meeting the requirements set out in the regulations is not expected to be significant" (para 105).

8.3. In addition, the Department publicised, in guidance on the Scheme published in October 2009, its intention to bring forward interim regulations on controlled activity; and detailed these proposals in a note to all consultative groups on the VBS in December 2009, inviting comment. Three responses were received, from an employment businesses organisation, a further education representative body, and a faith body. They recognised the purpose of the requirement specified at 7.2 above, and their main request was for clear and timely guidance, with specific reference to particular stakeholders such as Further Education colleges or employment businesses or agencies. In response, DCSF will share draft guidance shortly with VBS consultative groups, in particular with these respondents, and is liaising with individual respondents. In addition, their comments will feed in to the forthcoming review of the continuing need for the category of controlled activity (see 7.7 above). Finally, the different treatment for further education colleges noted at 7.5 above responds to representations from that sector, which until October 2009 had been to obtain barred list checks via an application for a criminal records certificate under section 113A of the Police Act 1997.

9. Guidance

9.1. Comprehensive guidance about the operation of the Scheme, focusing on those parts of the Scheme that commenced in 2009, was published in October 2009 at www.isa-gov.org.uk/default.aspx?page=402 . It is essential that both the nine to nine and a half million strong workforce to whom the Vetting and Barring Scheme will apply, and their employers, are aware of the requirements of the scheme in relation to registration to work in regulated activity, checking applicants for posts and the implications of the bar. Guidance was developed in consultation with stakeholders. At the same time, marketing and communications campaigns are publicising the scheme to stakeholders, by means of direct mailing, a programme of roadshows (more of which are to take place in spring 2010, with details advertised at www.isa-gov.org.uk) and various other methods including paid advertising in national daily newspapers (the first appeared on 18 January 2010).

9.2. The Government has also publicised a wide-ranging list of examples of when the Scheme will not require an individual to be "ISA-registered" (that is, subject to monitoring under section 24 of the Act), which the Secretary of State for Children, Schools and Families sent to all MPs in December 2009 and which is also published at:

www.dcsf.gov.uk/news/content.cfm?landing=vetting_and_barring_myth_buster&type=3 .

9.3. The 2009 guidance mentioned at 9.1 above comprises:

- an overview of the Vetting and Barring Scheme;
- the scope of the Vetting and Barring Scheme; and
- barring arrangements.

In addition:

- ISA in 2009 published guidance for organisations which have a duty to refer individuals to the ISA for consideration for possible barring, at: www.isa-gov.org.uk/Default.aspx?page=397 .

Expanded guidance is being published early in 2010 in the same format and through the same channels, in order to provide more detail on the parts of the Scheme which are to commence in July and November 2010 for new entrants to the workforce, and from 2011 for existing members of the workforce, comprising in addition to the above:

- how the Vetting and Barring Scheme will affect employees and volunteers;
- how the Vetting and Barring Scheme will affect regulated activity providers;
- timescales; and
- transitional arrangements.

Work with stakeholders on sector-specific guidance is continuing.

10. Impact

10.1. These provisions should have only a marginal impact on business, charities or voluntary bodies, because such bodies are generally keen to establish whether new entrants to these areas of work are barred persons, and to have details of their criminal records information where they are barred. At the same time, the Government will as stated above shortly consult on a review of the continuing need for controlled activity, including whether any posts now in controlled activity should instead be excluded from the coverage of the VBS. In addition, businesses, charities and voluntary bodies will benefit from the reduced impact of the VBS arising from the Government's decision in December 2009 to amend the criteria on when an activity under the VBS is frequent (in guidance, from once a month or more often to once a week or more often) or intensive (in law, from more than twice in one month to more than three times in one month), which is expected to reduce by about a fifth the numbers covered by regulated and controlled activity.

10.2. Several factors reduce the impact of this new requirement. Education employers which subscribe to DCSF's current online barred list checking service (offered alongside the Teachers Pensions Online service, and which, DCSF proposes[5], will continue until, under the phasing-in of the VBS, "existing" staff can apply for ISA registration, which is planned for 1st April 2011) will until then be able to check the children's barred list through that route, and so will not have to require the employee to apply for a criminal record certificate under these regulations. As mentioned at 7.6 above, the fee is expected to be significantly lower, and a second fee will not be charged where a certificate is issued. The interim regulations will

[5] The specific delivery arrangements of such a service are to be confirmed.

not make it an offence to omit without good reason to fulfil the duty to seek a certificate on an entrant where the responsible person does not already know the person is not barred. Not having an offence in the interim period keeps the regulations light-touch which is in keeping with their interim character, and with the Government's December 2009 commitment to review the continuing need for controlled activity in the Scheme. Subject to that review, the Government would plan to bring forward "permanent" regulations for 2015, to require a responsible person to (among other things) check whether a person in controlled activity is ISA-registered, with an offence for a failure to check. There is no requirement in the interim period (which lasts until July 2015) to request a certificate (with a barred list check) on a person in controlled activity who was already in controlled activity at the start of the transitional period unless they move job; and no recommendation to ISA-register a person in controlled activity until 2014.

10.3. The impact on the public sector is as for business, charities and voluntary bodies. It is expected that most entrants to controlled activity will be working for public sector employers.

10.4. At Annex B to the attached supplementary overarching memorandum is a copy of the 1st April 2008 announcement by the Home Office Minister, which showed revised total cost figures for the VBS (of which staff in controlled activity are expcted to be no more than about five per cent). The Home Office is reviewing the Impact Assessment and an updated version reflecting these figures will be published once this review is completed. The existing published Assessment for the overall Vetting and Barring scheme signed by a Minister in July 2006, is at: www.dfes.gov.uk/ria/index.cfm?action=assessments.view&i_assessmentID=73

11. Regulating small businesses

11.1. The legislation applies to small business.

11.2. Small businesses will benefit from the reduced impact of the VBS arising from the Government's recent decision to reduce the stringency of the "frequent" and "intensive" criteria. In addition, to minimise the impact of the requirements of the new Scheme on firms employing up to 20 people, the approach taken is to consider how far it is necessary that such firms comply with the same duties applying to larger firms. Generally, the requirements of the Act will apply to some small businesses that work with vulnerable groups, such as care homes for vulnerable adults. Employees of such businesses will have to register with the ISA in order to engage in regulated activity (and, subject to the review mentioned above, by 2015 so will non-barred employees in order to engage in controlled activity), and employers will be strongly encouraged to register their interest in such staff. In response to concerns raised by people operating small businesses, the Government has agreed that:

- in relation to those working with under-16 year olds who are employed or engaged as part of work experience or otherwise in workplace settings, there will be no requirement for the employee to register under the VBS or for an employer to check such workers. This does not reduce safeguarding for children in the workplace, but simply maintains current arrangements (namely

that a barred person is not permitted to take up certain posts that involve work with children or vulnerable adults), including the employer retaining the discretion and the responsibility to decide what checks to make and who to check;

- once registration starts under the Scheme, any person making a check on an individual will be able to do so by means of a quick and free on-line check (with safety measures to preserve confidentiality) which will confirm whether the individual is registered with the ISA, with the assurance that an individual who is so registered is not barred;
- employers of small and other businesses alike will be encouraged to register an interest (under section 32 of the Act) in an individual that they allow to engage in regulated activity, leading to any such employer being notified if there is any change in the registration status of the individual.

11.3. The Government balanced its final decision on what action to take to help small businesses with its commitment to have in place appropriate safeguards for children and vulnerable adults. These issues were also covered in the DCSF consultation referred to in paragraph 8.1 above. Paragraphs 45 to 48 of that document gave the Government's response to points made by businesses on issues concerning under-16s in work experience and employment.

12. Monitoring & review

12.1. Paragraphs 153 to 160 of the published Impact Assessment (see link at paragraph 10.3 above) contain details of monitoring and review of the VBS as a whole. The proposed revised impact assessment (see paragraph 10.3 above) will include a fully updated cost / benefit analysis, which will also take account of the revised costs announced by Home Office Ministers on 1 April 2008 (see Annex B to the attached overarching explanatory memorandum).

12.2. 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 first annual report, published in 2009, is at:
www.isa-gov.org.uk/Default.aspx?page=321 .

12.3. The ISA, as a non-departmental public body, is under the sponsorship of the Home Office, which will exercise its responsibility as sponsor in consultation with the Government Departments which have policy responsibility for the workforces and vulnerable groups covered by the Scheme. The ISA is committed to openness and consultation in order to provide an assurance of its independence and that the Vetting and Barring Scheme is robust and has the confidence of the public and stakeholders

13. Contact

13.1. Nicholas Smith at the Department for Children, Schools, and Families. Telephone: 020 7783 8474. Email: nicholas.smith@dcsf.gsi.gov.uk

DCSF, 21 January 2010

Annex: over-arching supplement

Annex
Supplement to Explanatory Memorandum on Safeguarding Vulnerable Groups Act 2006 (Controlled Activity and Miscellaneous Provisions) Regulations 2010
(Reference: para 4.3 of that E.M.)

EXPLANATORY MEMORANDUM ON THE IMPLEMENTATION OF THE SAFEGUARDING VULNERABLE GROUPS ACT 2006

1. The Department for Children, Schools and Families (DCSF) prepared this memorandum in consultation with the Department of Health, and submitted it voluntarily to Parliament.

2. Description

2.1 This is a further supplement to DCSF's over-arching explanatory memorandum dated 27th February 2008 which explained the context to the first set of Statutory Instruments laid before Parliament under the Safeguarding Vulnerable Groups Act 2006[6] ("the Act"). Annex D below provides:

- a list of all sets of Statutory Instruments laid before Parliament under the Act;
- links to the over-arching explanatory memorandum or supplements to it, as published with each of those Instruments.

2.2 Where relevant, the content of the overarching explanatory memorandum, and of the previous supplements, is repeated in this supplement. This supplement explains the context to the fourth set of Statutory Instruments to be laid before Parliament under the Act. These are:

- an Order to further amend the scope of regulated activity under the Act, which DCSF plans to lay in draft shortly;
- a set of affirmative regulations to make interim arrangements in relation to controlled activity under the Act;
- a commencement order in relation to the above controlled activity regulations; and
- two commencement orders in relation to ISA-registration provisions. The Government plans to commence those provisions, to enable individuals who newly enter, or move to new posts in regulated activity from July 2010 to become "ISA-registered" (that is, subject to monitoring), and to require individuals who newly enter, or move to new posts in regulated activity from November 2010 to become ISA-registered before starting that activity, as previously announced[7] and as mentioned in earlier explanatory memoranda.

All instruments (except Commencement Orders) will be described in their respective explanatory memoranda, to each of which an up-to-date version of this supplement will be appended.

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

[6] 2006 c.47.
[7] Written Ministerial Statement on 19th March 2009 by Meg Hillier MP, Parliamentary Under Secretary of State, Home Office; see copy at Annex B, below.

3.1 As noted in the explanatory memorandum relating to that Instrument (to which this supplement is annexed), the draft Safeguarding Vulnerable Groups Act 2006 (Controlled Activity and Miscellaneous Provisions) Regulations 2010 are subject to the affirmative resolution procedure.

4. Legislative background

Introduction

4.1. The Act provides for a new Vetting and Barring Scheme (VBS) to replace the existing arrangements for safeguarding children and vulnerable adults[8] from harm or the risk of harm by employees (paid or unpaid) whose work gives them significant access to these groups. A public consultation for the new Scheme, "*Making Safeguarding Everybody's Business: A Post-Bichard Vetting Scheme*" (Ref: 1485-2005DOC-EN), ran in 2005. That consultation paper and a summary of responses are at www.dcsf.gov.uk/consultations . In addition to further consultations on detailed aspects of implementing secondary legislation under the Act, Sir Roger Singleton consulted stakeholders in compiling his December 2009 report "Drawing the Line", which includes a list of those consulted and reflects their views[9]. This led to amendments to the Scheme which will reduce its impact by reducing the number of individuals whom it requires to register. The total is expected to fall from 11.3 million to around nine to nine and a half million.

4.2. The purpose of the new Scheme is to minimise the risk of harm to children and vulnerable adults from those who might seek to harm them through their work (paid or unpaid). It seeks to do this by barring unsuitable individuals not just on the basis of referrals, but also at the earliest possible opportunity, as part of a centralised vetting process that all those working closely with children and/ or vulnerable adults will have to go through. The new arrangements introduced by the Act have since October 2009 broadly

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[8] Vulnerable adult is defined at S.59(1) of the Act as follows:
"59 Vulnerable adults
(1) A person is a vulnerable adult if he has attained the age of 18 and—
(a) he is in residential accommodation,
(b) he is in sheltered housing,
(c) he receives domiciliary care,
(d) he receives any form of health care,
(e) he is detained in lawful custody,
(f) he is by virtue of an order of a court under supervision by a person exercising functions for the purposes of Part 1 of the Criminal Justice and Court Services Act 2000 (c. 43),
(g) he receives a welfare service of a prescribed description,
(h) he receives any service or participates in any activity provided specifically for persons who fall within subsection (9),
(i) payments are made to him (or to another on his behalf) in pursuance of arrangements under section 57 of the Health and Social Care Act 2001 (c. 15), or
(j) he requires assistance in the conduct of his own affairs."
We have consulted publicly on minor refinements, but the definition will remain substantially as above.

[9] Sir Roger Singleton's report and the Government's response, both dated 14 December 2009, are at: www.dcsf.gov.uk/everychildmatters/safeguardingandsocialcare/safeguardingchildren/vettingandbarringscheme/vettingvandbarring . See Written Ministerial Statement of same date at Hansard col 50WS.

replaced previous barring arrangements provided for under the Protection of Children Act 1999, the Care Standards Act 2000, the Criminal Justice and Court Services Act 2000 and the Education Act 2002. Barring under the new Scheme went " live" on 12th October 2009: from that date, inclusion in a barred list took effect to bar individuals from engaging in "regulated activity" (see 4.5.6 below).

4.3. The current system for vetting people who wish to do certain specified work with children or vulnerable adults operates through employers obtaining enhanced criminal record certificates – with the addition, in many cases, of a statement as to whether the individual is on any barred list - issued by the Criminal Records Bureau ("CRB disclosures" with "barred list checks") for new job applicants. CRB disclosures give employers information about an individual's criminal records history, which informs their assessments about the individual's suitability to work with children or vulnerable adults. The barred list checks show whether a person is included in either of the ISA barred lists (or - in a decreasing number of cases that are yet to be considered by the ISA for inclusion in its barred lists - on any of the three lists the Government previously maintained of persons barred from working with children or vulnerable adults, or has been made subject to a disqualification order (see below), where that Order forms part of the records of a conviction).

4.4. The previous lists, which were each subject to different legislation, criteria and procedures, were: "List 99" (a list of those in respect of whom a direction under section 142(1) of the Education Act 2002 has been made), the Protection of Children Act (PoCA) List (kept under section 1 of the Protection of Children Act 1999) and the Protection of Vulnerable Adults (PoVA) List (kept under section 81 of the Care Standards Act 2000). Disqualification orders made by a court (under section 28, 29 or 29A of the Criminal Justice and Court Services Act 2000) also bar individuals from working with children: the repeal of the power to make new orders is to be commenced once the duty to be ISA-registered is started for new entrants. We refer below to being on one of these lists or being subject to a disqualification order as being subject to a previous restriction.

Key features of the Act

4.5. When implemented fully, the Act will replace the previous arrangements with a Scheme with the following key features.

4.5.1. an **Independent Safeguarding Authority** ("ISA"): ISA[10] was established on 2nd January 2008, took all barring decisions on new referrals under previous barring schemes from 20th January 2009, and commenced its full barring functions under the VBS on 12th October 2009. It is a non-departmental governmental body sponsored by the Home Office. Its primary functions are to maintain the barred lists (see below) and to make decisions about whether individuals should be included in one or both lists;

[10] "Independent Safeguarding Authority" (ISA) is now the legal name of the body which the 2006 Act previously called the Independent Barring Board (IBB).

4.5.2. **Barred lists**: there are now two barred lists - one of individuals barred from engaging in "regulated activity" (see below) with children (the "children's barred list"), and one of those barred from engaging in "regulated activity" with vulnerable adults (the "adults' barred list").

4.5.3. There are **four routes to inclusion** in one or both barred lists:

(i) automatic inclusion in one or both of the barred lists without the right to make representations or to appeal[11]. Inclusion in the lists on this basis happens only where a person has been convicted of, or received a caution in relation to, one of a list of specified offences, or meets other prescribed criteria (such as being subject to an order, foreign order or direction of a prescribed description, or being included in a specified foreign barred list) that indicate, of themselves, that any offender would pose such a high risk to vulnerable groups that they simply could not make a case as to why they should be allowed to engage in regulated activity;

(ii) automatic inclusion in one or both of the barred lists with the right to make representations as to why the person in question should be removed and a subsequent right of appeal following inclusion. Inclusion in the lists on this basis happens where a person has been convicted of, or received a caution in relation to, one of a further list of specified offences or as a result of having met some other prescribed criteria;

(iii) inclusion at the ISA's discretion, on the basis that the person in question has engaged in "relevant conduct" i.e. broadly, that they have behaved in a way that has harmed a child or vulnerable adult, or could have done so, or in a way involving child pornography or inappropriate sexual behaviour. In this case, the relevant individual has the opportunity to make representations before they are included in a list and will have a subsequent right of appeal;

(iv) inclusion at the ISA's discretion, on the basis that the person in question seems to ISA to pose a risk of harm to children or vulnerable adults. Again, in this case the relevant individual has the opportunity to make representations before they are included in a list and has a subsequent right of appeal.

4.5.4. When ISA receives any information, it must consider whether it is relevant to ISA's consideration of whether the individual to which it relates should be included in either list.

4.5.5. **Appeals**: there is a right of appeal (against inclusion in a barred list) to the Upper Tribunal, with the permission of the Tribunal, on a point of law or on a finding of fact made by ISA. When the ISA is minded to bar an individual, they write to that person seeking representations, and outline in their letter the reasons behind their intention to bar, and outline the evidence they have used to reach this decision. The provision for the Upper Tribunal to

[11] See at Annex C, the relevant extract from a DCSF memorandum to the House of Lords Merits Committee on why the provisions described in this sub-paragraph are deemed compatible with the right to a fair trial (Article 6 of the ECHR).

hear appeals on ISA decisions is at Schedule 1 of the Transfer of Tribunal Functions Order 2008[12]. The Tribunal Procedure Committee consulted publicly on its Upper Tribunal rules, agreed by the Ministry of Justice[13] , which came into force on 3rd November 2008.

4.5.6. **Regulated activity:** this is defined in Schedule 4 to the Act. Broadly, it covers a range of specified activities that provide an opportunity for close contact with children or vulnerable adults, other activities in key settings such as schools and care homes which provide an opportunity for contact, and key positions of responsibility such as the Children's Commissioner and the Director of Adult Social Services. DCSF fully commenced the definition of regulated activity on 12 October 2009.

4.5.7. **Controlled activity:** this is defined in sections 21 and 22 of the Act. Broadly, it covers support work in general health settings, further education settings and adult social care settings. It also covers work which gives a person the opportunity for access to sensitive records about children and vulnerable adults, e.g. education or social services records. The Secretary of State has power to make regulations determining who may engage in controlled activity, what steps must be taken by the person permitting them to do so, and the circumstances in which a person must not allow another person to engage in controlled activity. DCSF fully commenced the definition of controlled activity on 12 October 2009. DCSF and DH plan to bring forward interim draft Regulations on controlled activity in early 2010, and (subject to the outcome of a review to be held in 2010 following the Government response to "Drawing the Line" – see earlier footnote) full Regulations for the end of the period of phasing-in of requirements to become subject to monitoring (see next paragraph). A detailed timetable for the phasing period will be announced well in advance.

4.5.8. **Monitoring**: to become "subject to monitoring" (or "ISA-registered"), individuals will make an application to the Secretary of State - in practice, to the Criminal Records Bureau (CRB). The CRB will check for any information relating to the individual and pass any that it discovers to ISA. ISA will then consider whether the person should be barred from working with children and/ or vulnerable adults. The CRB must repeat these checks at intervals for as long as the individual remains subject to monitoring, again passing on any information that it discovers to ISA. Monitoring will be phased in, starting with new entrants and job movers into regulated activity. For those groups, monitoring can start from July 2010, and must start from November 2010, see Annex A.

4.5.9. **Offences**: there will be a series of criminal offences to:

- prevent barred individuals engaging in regulated activity in relation to children or vulnerable adults (in force from 12th October 2009);

[12] The S.I. is at: www.opsi.gov.uk/si/si2008/pdf/uksi_20082833_en.pdf . See also para 4.10.5 below.
[13] The rules are at: www.opsi.gov.uk/si/si2008/pdf/uksi_20082698_en.pdf .

- ensure that people permitted to engage frequently or intensively in regulated activity in relation to children or vulnerable adults with the permission of a "regulated activity provider" (usually, the employer) are "subject to monitoring" (see above);

- ensure that relevant employers check an individual's status in the scheme before permitting an individual to engage in regulated activity in relation to children or vulnerable adults.

Transition

4.6. Schedule 8 to the Act makes provision for the transition from the previous system to the new arrangements under the Act. During the period leading up to the full implementation of the Act, this has two main elements. Firstly, all those who are subject to a previous restriction must be included, or considered for inclusion, in the new barred lists kept under the Act, in accordance with the Statutory Instruments listed at Annex D below, which are now in force. Secondly, ISA must give the Secretary of State advice, on request, in relation to outstanding cases under the existing arrangements (see paragraph 1 of Schedule 8) which were referred before 20th January 2009; since 31st March 2008, ISA has been so advising. A relatively low number of such cases are still being advised on at January 2010.

4.7. The Government proposes to continue managing the transition in stages, to help ensure that it will be effective and maintain high levels of protection for vulnerable groups at every stage.

4.8. Further detail on how the new Scheme will work is in guidance published in October 2009 at www.isa-gov.org.uk/default.aspx?page=402 and in Explanatory Notes to the Act at www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060047_en.pdf (36 pages).

Grouping of implementation of secondary legislation

4.9. The Government has laid before Parliament three main groups of secondary legislation in the lead-up to go-live of the new Vetting and Barring Scheme:

- the first created the ISA as a Non-Departmental Public Body and provided for people subject to previous restrictions or whose cases were being considered under the previous arrangements to be included or considered for inclusion in one or both of the two new lists;

- the second provided for transitory arrangements under which the ISA started to take barring decisions on referrals to the old barring schemes in accordance with the Act, and provided for the commencement of automatic barring on the basis of criteria prescribed in Regulations;

- the third provided for full commencement of barring under the Act, and the repeal (subject to transitional and saving provisions) of the legislation underpinning the previous arrangements.

Forthcoming secondary legislation in 2010 is planned to phase in provisions under the Act in relation to different groups of employees who are seeking or engaged in regulated activity, to start to take effect from July 2010.

4.10. For each Statutory Instrument, the lead Department will submit an individual explanatory memorandum setting out the detail of the SI, and where relevant, an update of the Regulatory Impact Assessment completed for the Act. Government consultation on policy issues in these S.Is included two formal consultation documents in 2007 – details below.

4.11. Details of all previous Statutory Instruments under the Act are at Annex D to Annex 1, below.

5. Extent

5.1 The Act mainly extends to England and Wales. The main provisions of the Act which also extend to Northern Ireland are section 1 and Schedule 1, which provide for the establishment of ISA. Otherwise, the provisions of the Act are essentially mirrored in the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007. The Scottish Executive passed its own legislation, the Protection of Vulnerable Groups (Scotland) Act 2007, and has consulted on its implementation. The explanatory memorandum for each Instrument made under the Act will set out the Instrument's extent or application.

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6. Policy background

6.1 The Bichard Inquiry Report (2004), identified systemic failures in current vetting and barring systems. These included the following factors:

6.1.1 inconsistent decisions were being made by employers on the basis of CRB disclosure information;

6.1.2 CRB disclosure information is only certain to be accurate on the day of issue;

6.1.3 there are inconsistencies between List 99, and the POCA and POVA lists, which operate under different legislative procedures;

6.1.4 the current barring system is reactive to harmful behaviour rather than preventive;

6.1.5 there are inconsistencies between police authorities in the disclosure of police information.

6.2 The aspects of policy most relevant to each of the Instruments referred to at Annex D below are described in those Instruments' respective Explanatory Memoranda. Looking at the broader policy behind the Act, the intention is to address the failings identified at paragraph 6.1 and – as implemented in January 2009 - to put barring decisions into the hands of a body of experts that is independent of Government.

6.3 As described above, all those who were subject to previous restrictions have been included or are being considered for inclusion in the new barred lists (with a saving provision to maintain the previous restriction until such consideration is completed). From 12 October 2009, inclusion on those lists took effect to bar the relevant individuals from engaging in regulated activity with children and/ or vulnerable adults (the legislation does not prevent a barred individual engaging in controlled activity, though those with responsibility for managing controlled activity will, at the end of the phasing-in period (and subject to the review mentioned above), be required to put in place safeguards to manage the risks posed by barred individuals).

6.4 The Government broadly repealed (as provided for in the Act) the previous restrictions at 12 October 2009 (subject to savings for any cases referred to the Secretary of State which remained unfinished at that date). In relation to people who had been on List 99 and whom ISA has decided not to transfer to the new barred lists, the General Teaching Councils for England and Wales (where relevant) must make a decision as to individuals' suitability to be teachers.

6.5 Monitoring for new workers will be possible from July 2010, and compulsory for those who start from November 2010. The Government will issue advice in good time to regulated activity providers for the later stages of the phasing in, from April 2011 onwards, of existing workers becoming subject to monitoring. The Government has published guidance documents (see the explanatory memorandum to which this supplement is annexed) to help intermediary bodies, employers, employees and volunteers understand clearly their rights and responsibilities under the new scheme.

6.6 **Public Consultation**: The Government consulted publicly in 2007. The results were published, first on 14 November 2007 at: http://www.dfes.gov.uk/consultations/conResults.cfm?consultationId=1476 ; and second on 30th May 2008 (details below) at: http://www.dcsf.gov.uk/consultations/conResults.cfm?consultationId=1516 . The explanatory memorandum with each Statutory Instrument, where relevant, gives further detail on any consultation responses relevant to that SI.

6.7 In 2007, 2008 and 2009, Government officials undertook a series of stakeholder information events in major cities around England, Wales and Northern Ireland. Further events are planned for spring 2010; dates and locations will be publicised at: **www.isa-gov.org.uk** . That website also contains a number of fact sheets and background documents on the new Scheme. Also, a Vetting and Barring Scheme contact centre is now live for queries about the Scheme on 0300 123 1111 (Lo-call) available Monday to Friday between 8am and 5.30pm, to help support stakeholders, including employers and employees, with their understanding of the new Scheme.

6.8 The second formal consultation on implementation of the Scheme, undertaken when details of the Scheme's procedures and computer systems were still to be designed or built, set out in detail how it is intended that the Scheme will operate. This consultation invited views on a range of issues that are

fundamental to implementing the Scheme. It covered:

- the definitions of children and of vulnerable adults;
- further defining the scope of regulated activity;
- eligibility to make checks on an employee's status in the Scheme;
- how to apply to the Scheme;
- phasing-in of applications to the Scheme;
- the application fee;
- referring information to ISA; and
- representations and appeals against barring decisions.

7. Impact

7.1 At Annex B is a copy of the announcement by the Home Office Minister, which showed revised total cost figures. An updated impact assessment, reflecting these figures, will be made available by the Home Office. The existing published Assessment for the overall Vetting and Barring Scheme, signed by a Minister in July 2006, is at: www.dfes.gov.uk/ria/index.cfm?action=assessments.view&i_assessmentID=73 .

8. Contact

8.1 Matthew Tagney, Safeguarding Vulnerable Groups Act Implementation Division, Department for Children, Schools and Families, Level 1, Sanctuary Buildings, Great Smith Street, London SW1P 3BT matthew.tagney@dcsf.gsi.gov.uk tel: 020 7783 8253.

DCSF, 15 January 2010

Annexes

A Written Ministerial Statement by the Parliamentary Under Secretary of State for Identity (Meg Hillier), Thursday 19 March 2009

B Written Ministerial Statement by the Parliamentary Under Secretary of State for Identity (Meg Hillier), Tuesday 1 April 2008.

C DCSF memorandum to the House of Lords Merits Committee, published in the 15th Report of Session 2007-08, 19th March 2008.

D Previous Statutory Instruments, and how they relate to the over-arching explanatory memorandum, and supplements to it.

Annex A
Reference from Supplement to Explanatory Memorandum, para 4.5.8

WRITTEN MINISTERIAL STATEMENT

Thursday, 19 March 2009

HOME OFFICE

Vetting and Barring Scheme

The Parliamentary Under-Secretary of State for the Home Department (Meg Hillier): Since January this year, the new Independent Safeguarding Authority (ISA) has been taking all barring decisions on new cases referred to it under the current barring provisions of POVA, POCA and List 99. This has replaced barring decisions by Ministers with independent decision making in relation to those persons considered unsuitable to work with children or vulnerable adults.

From 12 October this year, we will bring into force the barring provisions under the Safeguarding Vulnerable Groups Act 2006, significantly extending the range of activities and workplaces from which individuals may be barred to include all regulated activities, as defined by the Act. In particular, a wider range of posts and workplaces which provide for vulnerable adults will now be covered by the barring arrangements. The ISA will make independent barring decisions on cases referred to it, and bars will apply to paid employment and voluntary work in regulated activities. From this date, those barred under current arrangements who have been transferred to the new barred lists by the ISA will also be barred from the wider scope of regulated activities. It will be an offence for any barred person to work in regulated activities, and for any employer to employ someone he knows to be barred, in either a paid or voluntary capacity. Requirements will also come into force for employers to refer relevant cases to the ISA in instances of harm to the vulnerable groups.

With effect from July 2010, the final element of the new scheme will be phased in. Those wishing to work with children or vulnerable adults will be able to apply for registration with the new scheme; the ISA will consider all cases referred to it and will be able to bar those considered unsuitable for such work; and continuous monitoring of those registered with the scheme will commence. New entrants to the workforce and those changing posts will apply to the scheme first under plans to phase in the workforce gradually. In order not to disrupt normal recruitment processes over the summer period, relevant criminal offences will not be brought into force until November 2010. At this point registration with the new scheme and the requirement for employers to check registered status will become mandatory for the phased-in groups.

Annex B
Reference from Supplement to Explanatory Memorandum, para 2.2 (footnote) and 7.1

WRITTEN MINISTERIAL STATEMENT

Tuesday, 1 April 2008

HOME OFFICE
INDEPENDENT SAFEGUARDING AUTHORITY

The Parliamentary Under Secretary of State for Identity (Meg Hillier): Further to the Written Statement made by my rt hon Friend the Secretary of State for Children, Schools and families on 17 March, I am pleased to announce plans for the work of the new Independent Safeguarding Authority (ISA), together with the fee to be charged for applications.

The Independent Safeguarding Authority was established in January this year under powers in the Safeguarding Vulnerable Groups Act 2006. It will meet the aims of one of the key recommendations made by the Bichard Inquiry, which pointed to the need for a scheme to register those seeking work with children or other vulnerable groups.

The ISA's role will be to consider all relevant information relating to the risk of harm posed by persons seeking to work with children or vulnerable adults, in either a paid or voluntary capacity, and to bar those considered unsuitable for such work. The transition to the new scheme is now underway. From 31 March this year, the ISA began to advise the Secretaries of State for Children, Schools and Families and for Health in connection with new cases arising under the existing barring arrangements, in accordance with the provisions of paragraph 1 of Schedule 8 to the Safeguarding Vulnerable Groups Act. From 7 April this year, cases will be referred to the ISA under the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008, under which ISA must include, or consider including, in the new barred lists those individuals who are barred under the current schemes.

From October 2009 the new ISA scheme will "go-live". From that point, the scheme will consider new applications in relation to persons seeking work with children or vulnerable adults. The fee charged for ISA scheme applications has been set at £28. This is based on cost recovery of the operational costs for the scheme over its first five years of operation, estimated at £246m. The scheme will cost £84m to set up.

Taken together with the fee required for an enhanced Criminal Records Bureau disclosure check, the total fee for an initial application will be £64. Under the planned arrangements, the ISA element of the fee will be payable only on first joining the scheme. Once registered, employers will be able to verify an applicant's registered status in the scheme by means of a free on-line check. No fee will be payable by those in unpaid voluntary work. The need for subsequent CRB checks will remain a matter for employers, except in those sectors where it is a legal requirement.

The establishment of the ISA plays an important part in the Government's agenda to meet the Bichard recommendations and ensure the most robust procedures are in place to safeguard children and other vulnerable groups.

Annex C
Reference from Supplement to Explanatory Memorandum, para 4.5.3 (i) footnote

Extract from DCSF memorandum to the House of Lords Merits Committee, published in the 15th Report of Session 2007-08, pages 31-32, 19th March 2008

Q1*: In order to understand why the provisions described at 4.4.3(i) of the overarching memorandum, i.e. withholding the right to make representations or appeal, are deemed compatible with the right to a fair trial (Article 6 of the ECHR), the Committee would like more information about what individuals would be covered by them, i.e. what are the offences / criteria that would place them in this category*.

A1: The information requested is below.

1. By way of introduction:

[a] in the Government's view, the act of barring a person from engaging in an area of activity *automatically, without the right to make representations (as described in para. 4.4.3(i) of the Overarching Memorandum)* does not constitute the determination of a civil right. Consequently, the Government's view is that the right to a fair trial is not engaged by these Regulations. As the Minister said in his reply to the Joint Committee on Human Rights:

> "Article 6(1) provides: "In the determination of his civil rights and obligations … everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law …". But these guarantees apply only where there is a *determination* of a person's civil rights. As the bar is an automatic one, arising by operation of law, there can be no dispute of law and so I am advised that article 6 has no relevance." (PUSS Parmjit Dhanda MP to Andrew Dismore MP, Chair, JCHR, 10th October 2006);

[b] paragraph 4.4.3 of the Overarching Memorandum relates to how barring will work once the Safeguarding Vulnerable Groups Act 2006 has been brought into force fully, rather than to the process of transferring everyone who is currently barred from working with children or vulnerable adults to the new lists. The intention is that the future list of offences which will lead to a person being included in a barred list without the right to make representations should be as close as possible to the list which will mean that a currently barred person has no right to make representations when transferred to new lists under the 2006 Act: see paragraph 7.5 of the Explanatory Memorandum for the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria)(Transitional Provisions) Regulations.

2. Turning to the specific information requested by the Merits Committee: as stated at para 4.9.4 of the overarching memorandum, it is the Prescribed Criteria - Transitional Provisions regulations themselves which specify the criteria which will enable the Independent Safeguarding Authority (the ISA; called IBB in the legislation) to identify" individuals who "will not have the right to make representations". The offences and criteria are in the Schedule: paragraph 1 and its

table relate to children; paragraph 2 and its table relate to vulnerable adults.

3. The Committee will appreciate that the nature of the offences here is very high-risk and serious, and along with the specified circumstances of commission (e.g. where the offence was committed against a child) very specific. They are all offences of a sexual nature, involving young children, a lack of consent and/ or an abuse of a position of trust. In addition, they relate to where the offence was committed fairly recently – within the last 10 years – which places it at the high end of the risk spectrum. The Committee might wish to note that the starting point for this list of offences was the list that currently leads to an automatic direction, without the right to make representations, under section 142 of the Education Act 2002 (which governs "List 99"). To this were added some further offences, particularly offences relating to the health care sector. However, the key point that we would wish to draw to the Committee's attention is that the concept of a scheme under which a person may be barred from working with a particular group without being given the chance to make representations in his own favour is nothing new.

Finally, the Committee may find it helpful to note that these regulations cover individuals who are already barred, and will continue to be barred on the current lists until the new scheme comes into force. The new scheme merely changes the scope of that bar. A barred individual will of course have an opportunity to apply for a review of his listing at the end of his barred period if his circumstances change. And the provisions of the associated Barring Procedure Regulations mean that this period is merely the balance of the period of his original bar.

[Ends]

Annex D
Reference from Supplement to Explanatory Memorandum, para 2.1

Previous Statutory Instruments under the Act, and how they relate to the over-arching explanatory memorandum and supplements to it

1. The lists below describe the previous Statutory Instruments laid before Parliament under the Act, and relate them to both the original over-arching explanatory memorandum by the Department for Children, Schools and Families, and to subsequent supplements to that memorandum. The most recent set of Instruments is described at paragraph 4 below, and the earlier sets at paragraphs 2 to 3.

2. The first set of Statutory Instruments under the Act (mentioned above at Annex 1, paragraph 2.1) were as follows, made in 2007 and 2008. The original over-arching explanatory memorandum by the Department for Children, Schools and Families is available with each Statutory Instrument (except the Commencement Orders) made by a DCSF Minister, at the link shown below.

a. The Safeguarding Vulnerable Groups Act 2006 (Commencement No.1) Order 2007, S.I. 2007/3545, and (Commencement No.2) Order 2008, SI 2008/1320; and The Safeguarding Vulnerable Groups Act 2006 (Barred List Prescribed Information) Regulations 2008 (these specify information which ISA must keep about people included in the barred lists);

b. The Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008, SI 2008/473, which requires ISA to transfer, or consider transferring, all those subject to existing restrictions to the new barred lists. Explanatory memorandum: www.opsi.gov.uk/si/si2008/em/uksiem_20080473_en.pdf ;

c. The Safeguarding Vulnerable Groups Act 2006 (Barring Procedure) Regulations 2008, SI 2008/474. They make provision in relation to the making of representations, and the periods that must elapse before a person may apply for permission to apply for a review of their inclusion in one of the barred lists. Explanatory memorandum: www.opsi.gov.uk/si/si2008/em/uksiem_20080474_en.pdf ;

d. The Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria) (Transitional Provisions) Regulations, SI 2008/1062. They specify the criteria which enable ISA to identify which of the people it considers in accordance with the Transitional Provisions Order do not have the right to make representations as to their inclusion in the new lists. Explanatory memorandum: www.opsi.gov.uk/si/si2008/em/uksiem_20081062_en.pdf ;

e. The Protection of Children and Vulnerable Adults and Care Standards Tribunal (Children's and Adults' Barred Lists) (Transitional Provisions) Regulations 2008, SI 2008/1497. They set out the procedure to be followed by the relevant Tribunal when considering appeals against decisions taken by ISA under the Order at (b) above. The then role of the Care Standards Tribunal in such appeals is now with the new First-tier Tribunal.

3. The original version of the supplement to the over-arching explanatory memorandum was attached to explanatory memoranda accompanying the second set of Statutory Instruments under the Act, which comprised:

a. The Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria) (Foreign Offences) Order 2008, SI 2008/3050, in force 13th November 2008. This Order amends Schedule 3 to the Act to allow foreign offences to be prescribed as forming the basis for criteria that will cause a person to be barred automatically. It also clarifies the duty on courts under paragraph 25 of that Schedule. Explanatory memorandum: www.opsi.gov.uk/si/si2008/em/uksiem_20083050_en.pdf ;

b. The Safeguarding Vulnerable Groups Act 2006 (Prescribed Information) Regulations 2008, SI 2008/3265, which came fully into force on 12th October 2009. They prescribe the information that the ISA may demand from employers and others as well as the information that anyone must provide to the ISA when making a referral pursuant to a requirement under the Act. Explanatory memorandum: www.opsi.gov.uk/si/si2008/em/uksiem_20083265_en.pdf ;

c. the Safeguarding Vulnerable Groups Act 2006 (Transitory Provisions) Order 2009, SI 2009/12, in force 20th January 2009. This Order provided for referrals under the existing arrangements referred to at para.4.2 above to be made to the ISA rather than the Secretary of State and for the ISA to take barring decisions in relation to them in accordance with the provisions of the Act. Explanatory Memorandum: www.opsi.gov.uk/si/si2009/em/uksiem_20090012_en.pdf ,

d. The Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009, SI 2009/37, in force 20th January 2009. They prescribe the criteria (principally the fact that a person has been convicted of or received a caution in relation to one of the offences specified in the Regulations) which lead to the ISA being required to include the person in one or both of the barred lists maintained under the Act. Explanatory Memorandum: www.opsi.gov.uk/si/si2009/em/uksiem_20090037_en.pdf ;

e. The Safeguarding Vulnerable Groups Act 2006 (Commencement No.3) Order 2009, SI 2009/39, made 14th January 2009, commenced the provisions necessary for the above instruments to have effect;

f. The Safeguarding Vulnerable Groups Act 2006 (Devolution Alignment) Order 2009, SI 2009/265, in force 13th March 2009. This bars, in England and Wales, anyone on the ISA Northern Ireland barred lists. Explanatory Memorandum: www.opsi.gov.uk/si/si2009/em/uksiem_20090265_en.pdf .

4. The second supplement was attached to DCSF explanatory memoranda accompanying the third set of Statutory Instruments to be laid before Parliament under the Act. These comprised:

a. the Safeguarding Vulnerable Groups Act 2006 (Commencement No.4) Order 2009, SI 2009/1503, made 17th June 2009 by Home Office to enable Home Office to make regulations to support the new VBS in time for 12th October 2009;

b. The Safeguarding Vulnerable Groups Act 2006 (Miscellaneous Provisions) Regulations 2009 S.I. 2009/1548, in force on 12 October 2009;which defined individuals as vulnerable adults when receiving certain welfare services, and prescribed when driving a vehicle being used only for purposes of conveying children or vulnerable adults and those caring for them, will be a regulated activity. Explanatory memorandum by the Department of Health: www.opsi.gov.uk/si/si2009/em/uksiem_20091548_en.pdf ;

c. the Safeguarding Vulnerable Groups Act 2006 (Miscellaneous Provisions) Order 2009 S.I. 2009/1797, in force on 12 October 2009;which excepts persons from being vulnerable adults just because they receive services in relation to certain learning difficulties; excepts ancillary first aid from regulated activity; allows a local authority to placed a fostered child with a barred person in limited circumstances where the child's welfare requires it; and makes devolution alignment provisions. Explanatory memorandum: www.opsi.gov.uk/si/si2009/em/uksiem_20091797_en.pdf ;

d. the Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Miscellaneous and Transitional Provisions and Commencement No.5) Order 2009, SI 2009/2610, which contains provisions necessary for the commencement of the barring and referral aspects of the new Scheme, and transitional provisions in relation to unfinished cases under the old barring schemes. Explanatory Memorandum: www.opsi.gov.uk/si/si2009/em/uksiem_20092610_en.pdf ;

e. the Safeguarding Vulnerable Groups Act 2006 (Commencement No.6, Transitional Provisions and Savings) Order 2009, SI 2009/2611, which brings into force the main barring and referrals provisions of the new Scheme and commences repeals of provisions relating to previous barring schemes, and makes transitional and saving provisions in relation to those schemes.

5. The Act is also amended by sections Sections 81 to 89of the Policing and Crime Act 2009, at www.opsi.gov.uk/acts/acts2009/pdf/ukpga_20090026_en.pdf .

DCSF, January 2010