EXPLANATORY MEMORANDUM TO

THE SAFEGUARDING VULNERABLE GROUPS ACT 2006 (CONTROLLED ACTIVITY AND PRESCRIBED CRITERIA) REGULATIONS 2012

2012 No. [XXXX]

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument makes some changes to the list of criminal offences which lead to a person being barred from working with children and/or vulnerable adults by the Independent Safeguarding Authority. It also revokes the regulations which specify what employers must do if they wish to employ someone who has the opportunity for a moderate degree of contact with children or vulnerable adults, or access to their records.

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

3.1 None

4. Legislative Context

4.1 The Safeguarding Vulnerable Groups Act 2006 ('SVGA') established a unified system for barring people from working with children and vulnerable adults if those people pose a risk of harm to vulnerable groups, or are considered inappropriate to undertake such work. The Independent Barring Board – later renamed as the Independent Safeguarding Authority ('ISA') – was established as a central authority to make decisions about who should be barred and to maintain lists of those barred. The SVGA listed the work and roles - 'regulated activity' - which a barred person must not do.

4.2 The SVGA also specified a further set of roles known as 'controlled activity', and gave the Secretary of State the power to make regulations setting out what providers of controlled activity are required to do. Such regulations were made in the Safeguarding Vulnerable Groups Act 2006 (Controlled Activity and Miscellaneous Provisions) Regulations 2010 (SI 2010/1146), which essentially require providers of controlled activity to ascertain whether a person is on an ISA barred list before engaging them in controlled activity.

4.3 Section 68 of the Protection of Freedoms Act 2012 repealed the sections of the SVGA which relate to controlled activity. In consequence, this instrument revokes the above regulations. Following the repeal of controlled activity, the above regulations would have no effect, and it is considered helpful to revoke the regulations formally so that providers of those roles

which did comprise controlled activity are clear that those obligations on them no longer apply.

4.4 The SVGA also allows the Secretary of State to prescribe the criteria which lead to someone being placed on the ISA's barred list(s). Such regulations were made in the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 (SI 2009/37, as modified by SI 2009/2610). These regulations essentially specify the criminal offences in relation to which a conviction or caution will usually lead to someone being placed on the ISA's barred list(s). This instrument makes a number of amendments to those regulations.

4.5 A number of other instruments will be prepared to give effect to other changes to the barring arrangements in the Protection of Freedoms Act. These include the Safeguarding Vulnerable Groups Act 2006 (Miscellaneous Amendments) Order 2012. Other instruments – or drafts of them, as appropriate – will be laid before Parliament later this year.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales; the amendment to the prescribed criteria applies to England and Wales; the revocation of the controlled activity regulations applies only to England.

6. European Convention on Human Rights

The Parliamentary Under-Secretary of State for Equalities and Criminal Information, Lynne Featherstone M.P., has made the following statement regarding Human Rights:

In my view the provisions of the Safeguarding Vulnerable Groups Act 2006 (Controlled Activity and Prescribed Criteria) Regulations 2012 are compatible with the Convention rights.

7. Policy background

What is to be done and why

7.1 In June 2004, Sir Michael (now Lord) Bichard published a report into the information management and child protection procedures of Humberside Police and Cambridgeshire Constabulary. The Bichard Inquiry had been established in response to the conviction of Ian Huntley, a school caretaker, for the murders of Holly Wells and Jessica Chapman. The Inquiry Report recommended, amongst other things, that a registration scheme, administered by a central body, should be established for those wishing to work with children or vulnerable adults.

7.2 The Safeguarding Vulnerable Groups Act 2006 ('SVGA') established the Independent Barring Board – later renamed as the Independent Safeguarding Authority ('ISA'). Its role was to operate as an independent

central barring authority, preventing people from working with children and vulnerable adults if they pose a risk of harm to vulnerable groups, or are considered inappropriate. The aim was to replace the existing disqualification systems, under which decisions about a person's suitability to work with children or vulnerable adults were taken by Secretaries of State or by sentencing judges. In the majority of cases, a decision to bar someone under the SVGA follows from a conviction or caution for an offence specified in regulations made under that Act. The SVGA also lists the work and roles – 'regulated activity' – involving contact with children and vulnerable adults, which a person whom it has barred must not do. It also lists a further set of roles – 'controlled activity' – which involve the opportunity to have a moderate degree of contact with children or vulnerable adults, or access to their records. Regulations made under the SVGA specified that a provider of controlled activity must ascertain whether a person has been barred from engaging in regulated activity by the ISA before engaging them in controlled activity.

7.3 The policy of the current Government is to scale back the barring arrangements to more proportionate levels. The Protection of Freedoms Act 2012 gives effect to this policy; amongst other things, it repeals the monitoring scheme, significantly scales back the scope of regulated activity and repeals the concept of controlled activity. Controlled activity currently covers around half a million people. The revocation of the controlled activity regulations follows from the repeal of controlled activity.

7.4 These Regulations also make some changes to the regulations that specify the offences which lead to a person being barred. The current regulations essentially contain four lists of offences: those which lead to a person being barred automatically from working with children without the right to make representations, those which lead to a person being barred automatically from working with children with the right to make representations, and the two equivalent lists for work with vulnerable adults. In almost all cases, this instrument makes changes to the two lists where representations are permitted. These changes are not consequential on the changes in the Bill, but are being made *in tandem* with its implementation for simplicity. The changes derive from recent changes in the law, a review of the current criteria and the need to make some technical amendments. In summary, the changes are:

a. The removal from the two 'with representations' lists of three offences in the Mental Health Act 1983, which do not meet the criteria for automatic bars. Those criteria are essentially that the nature of the offence clearly indicates that an individual poses a risk of harm to children or vulnerable adults, subject to any representations concerning the circumstances of commission.

b. The insertion into all four lists of offences from the Sexual Offences (Scotland) Act 2009, which post-dated the original regulations. Although these Regulations extend only to England and Wales, they include Scottish and Northern Irish offences which also lead to barring by the ISA. Where an

offence in England and Wales is currently included in a list, and there is an equivalent offence in the Sexual Offences (Scotland) Act 2009, that offence is included in the same list.

c. The insertion into the two 'with representations' lists of eleven offences which meet the criteria for automatic bars. These comprise three offences relating to female genital mutilation, two offences relating to the possession of pornographic images, two new offences relating to people trafficking, one offence relating to the commission of sexual offences outside the UK and three sexual offences in Scottish or Northern Irish legislation.

d. The insertion into the adults' 'with representations' list of a Scottish trafficking offence which is currently on the children's 'with representations' list.

e. Some changes which reflect the reduction in the age of consent in Northern Ireland from 17 to 16.

f. Chapter 4 of Part 5 of the Protection of Freedoms Act 2012 also allows someone with a conviction or a caution for one of a number of certain sexual offences which would not now be offences to apply to have that conviction or caution disregarded. This instrument specifies that a disregarded conviction or caution will not lead to barring.

g. Some textual amendments which do not represent substantive changes.

7.5 It is necessary to legislate in this area because it is necessary to amend the existing legislation in order to give effect to Chapter 1 of Part 5 of the Protection of Freedoms Act 2012.

Consolidation

7.6 The Home Office does not consider it necessary to consolidate legislation at this time.

8. Consultation outcome

8.1 The repeal of controlled activity was one of the conclusions of the report from the Government's Remodelling Review of the Vetting and Barring Scheme, published in February 2011. That review involved consultation with a range of parties.

8.2 The prescribed criteria for the offences which lead to automatic bars were the subject of a public consultation in 2007. As these changes are limited, they have not been subject to consultation, but they are informed by the work and views of the Independent Safeguarding Authority.

9. Guidance

9.1 Information on the changes to the scheme will be provided in due course.

10. Impact

10.1 The impact on business, charities and voluntary bodies of the repeal of controlled activity was set out in the impact assessment of Part 5 of the Protection of Freedoms Bill. That repeal will reduce the requirements on those parties. The changes to the prescribed criteria regulations will have no impact on business, charities and voluntary bodies.

10.2 The impact on the public sector is very low. The changes to the prescribed criteria regulations will have a small impact on the workload of the Independent Safeguarding Authority. As police officers who administer a caution for a prescribed offence and judges who sentence a person for the same must inform the person that they will (or may) be barred, there will be a very minor impact on them.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation may apply to small business if small businesses are controlled activity providers. The effect is to reduce requirements on them.

12. Monitoring & review

12.1 The prescribed criteria and other aspects of the barring arrangements will remain subject to internal review.

13. Contact

Andrew Lewis at the Home Office Tel: 020 7035 0873 or email: Andrew.Lewis5@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.