EXPLANATORY MEMORANDUM TO

THE SAFEGUARDING VULNERABLE GROUPS ACT 2006 (MISCELLANEOUS AMENDMENTS) ORDER 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 revokes some legislative provisions which were intended to govern the operation of some aspects of the Vetting and Barring Scheme prior to the full implementation of the vetting element of that scheme. Those provisions are now no longer required following the repeal of that element of the scheme. The list of work and roles which must not be undertaken by a person who has been barred by the Independent Safeguarding Authority from working with children and vulnerable adults has also been amended; this instrument makes some changes which are consequences of those amendments.

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') gave legislative effect to the planned Vetting and Barring Scheme ('VBS'). The SVGA listed a set of roles, and defined certain activity, collectively known as 'regulated activity'. Anybody who wished to work in regulated activity was required to be continuously monitored for any criminal convictions and cautions (the 'vetting' element of the VBS). The SVGA also established the Independent Barring Board – later renamed as the Independent Safeguarding Authority ('ISA') - which has the power to bar people who pose a risk of harm or are considered inappropriate from working with children and vulnerable adults, and maintains lists of those barred (the 'barring' element of the VBS). A barred person must not work in regulated activity.

4.2 Barring was commenced in a series of stages, of which the last was October 2009, as specified by the Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Miscellaneous and Transitional Provisions and Commencement No. 5) Order 2009 (SI 2009/2610, 'the 2009 Commencement Order'). The 2009 Commencement Order also set out a series of transitional periods governing the operation of various elements of the legislation until the full commencement of the vetting part of the scheme.

4.3 Monitoring under the scheme – or vetting – has been repealed by section 69 of the Protection of Freedoms Act 2012. As such, there is no conclusion point for the transitional periods set out in the 2009 Commencement Order, and it is necessary to revoke them, which this instrument does.

4.4 This instrument also makes some revisions to the Safeguarding Vulnerable Groups Act 2006 (Miscellaneous Provisions) Order 2009 (SI 2009/1797, 'the 2009 Order'), by revoking the provisions in the 2009 Order which provided that certain people should not be treated as vulnerable adults or as providing regulated activity to children or to vulnerable adults. This is in light of the changes to the definitions of vulnerable adults, regulated activity relating to children and regulated activity relating to vulnerable adults in sections 64, 65 and 66 of the Protection of Freedoms Act.

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 (Controlled Activity and Prescribed Criteria) Regulations 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.

6. European Convention on Human Rights

The Parliamentary Under-Secretary 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 (Miscellaneous Amendments) Order 2012 are compatible with the Convention rights.

7. Policy background

What is being 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') – as that central body. Its role was to act as a 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 to undertake such work. The aim was to replace the existing disqualification systems, under which decisions about a person's suitability to work with vulnerable people were taken by Secretaries of State or by sentencing judges. The SVGA listed the work and roles – 'regulated activity' – involving contact with children and vulnerable adults, which a person whom the ISA has barred must not do.

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 registration scheme (or 'monitoring') and significantly scales back the scope of regulated activity.

7.4 The Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Miscellaneous and Transitional Provisions and Commencement No. 5) Order 2009 (SI 2009/2610, 'the 2009 Commencement Order') set out a series of transitional periods which governed how the barring arrangements and related processes would operate, prior to the full commencement of monitoring and associated parts of the SVGA. However, monitoring was never commenced and has now been repealed by section 69 of the Protection of Freedoms Act. This means that those transitional periods no longer have any meaning and this instrument revokes the provisions of the 2009 Commencement Order related to them.

7.5 This instrument puts in place two transitional provisions, which are consequences of the revocation of parts of the 2009 Commencement Order. The first provides that, until section 72 of the Protection of Freedoms Act 2012 (insofar as it inserts section 30A – which allows various parties to check whether a person is barred - into the SVGA) is brought into force, the ISA will be able to provide information about whether someone is barred (or subject to one of the disqualification regimes which preceded barring) to a person who has a 'legitimate interest' in knowing that fact. The second transitional provision provides that the system for informing certain regulated activity providers whether a person has been barred before issuing them with an enhanced criminal record certificate – known as the 'ISA Adult First' service – will also continue until the insertion of section 30A.

7.6 The Safeguarding Vulnerable Groups Act 2006 (Miscellaneous Provisions) Order 2009 (SI 2009/1797 – 'the 2009 Order') provides that the provision of any form of treatment to a child or vulnerable adult, which is generally within regulated activity, is not regulated activity in certain circumstances. The Protection of Freedoms Act makes significant changes to the definition of regulated activity in the SVGA. It is therefore no longer necessary to retain these exceptions and this instrument revokes them.

7.7 Section 59 of the SVGA also sets out a definition of 'vulnerable adult'; an activity is regulated activity relating to vulnerable adults only if it is

provided to somebody falling within that definition. The 2009 Order sets out an exception to that definition. The Protection of Freedoms Act repeals section 59 of the SVGA, and therefore this instrument revokes the amendment to the definition of 'vulnerable adult' in the 2009 Order.

7.8 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

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

8. Consultation outcome

8.1 The repeal of the monitoring element of the Vetting and Barring Scheme and the reduction in the scope of regulated activity were amongst 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.

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 monitoring and the reduction in the scope of regulated activity was set out in the impact assessment of Part 5 of the Protection of Freedoms Bill. Those changes will reduce the requirements on those parties.

10.2 The changes effected by this instrument will have minimal effect on the public sector.

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

11. Regulating small business

11.1 This instrument itself has no impact on small business.

12. Monitoring & review

12.1 The content of regulated activity 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.