EXECUTIVE NOTE

# THE PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007 (TRANSITORY PROVISIONS IN CONSEQUENCE OF THE SAFEGUARDING VULNERABLE GROUPS ACT 2006) (NO. 2) ORDER 2009 (SSI 2009/337)

## Powers under which Instrument is made

1. Section 87(1) and (3) of the Protection of Vulnerable Groups (Scotland) Act 2007 ("the 2007 Act"), enables the Scottish Ministers by order to make provision in consequence of, or to give full effect to, provision made by the Safeguarding Vulnerable Groups Act 2006. Section 87 was brought into force in the second Commencement Order (SSI 2007/564) on 11 January 2008. Section 100(2) enables the Scottish Ministers to make such transitory provisions as they consider appropriate and came into force on Royal Assent on 18 April 2007.

## Parliamentary procedure

2. This Scottish Statutory Instrument is a class 5 instrument subject to the negative resolution procedure at the Scottish Parliament.

## Summary of policy proposals

*Current position in Scotland*

3. Under Part 5 of the Police Act 1997, the Scottish Ministers may carry out criminal record checks. There are currently three levels of checks: the criminal conviction certificate (basic disclosure); the criminal record certificate (standard disclosure); and the enhanced criminal record certificate (enhanced disclosure). Most enhanced checks are carried out for the purpose of assessing the suitability of a person for working with vulnerable groups. The Protection of Children (Scotland) Act 2003 established a list of individuals disqualified from working in child care positions in Scotland and similarly disqualifies individuals on corresponding lists in other UK jurisdictions. The 2007 Act (when fully commenced) will provide for a new vetting and barring scheme, including new types of disclosure check which will replace enhanced disclosure checks for people working with vulnerable groups.

*Current position in England and Wales*

4. Similarly, the UK Government is in the process of implementing the Safeguarding Vulnerable Groups Act 2006 ("the 2006 Act") which establishes a vetting and barring scheme for England and Wales and enables such arrangements to be made for Northern Ireland. The 2006 Act establishes the Independent Barring Board ("the IBB") (aka Independent Safeguarding Authority) to which the responsibility for making decisions to bar individuals from working with children or vulnerable adults is being transferred from the Secretary of State in a phased transition.

5. Currently, the IBB is responsible for making barring decisions on referrals made under the Protection of Children Act 1999 and the Care Standards Act 2000. These Acts establish the so-called POCA list, which disqualifies individuals from working in

certain child care positions, and the POVA list, which disqualifies individuals from working with vulnerable adults, respectively. But individuals barred by the IBB are included on the children's and adults' barred lists established by the 2006 Act rather than the lists kept under POCA or POVA . This arrangement was put in place by the Safeguarding Vulnerable Groups Act 2006 (Transitory Provisions) Order 2009 (SI 2009/12) which came into force on 20 January 2009. That Order also ensures that inclusion on the SVG barred lists *has the effect of* barring the individual as if they had been put on the POCA or POVA lists.

*How the current position in England and Wales is reflected in Scotland*

6. The Protection of Vulnerable Groups (Scotland) Act 2007 (Transitory Provisions in Consequence of the Safeguarding Vulnerable Groups Act 2006) Order 2009 (SSI 2009/4) ensures that individuals included on the new SVG barred lists after the Safeguarding Vulnerable Groups Act 2006 (Transitory Provisions) Order 2009 came into force continue to be subject to the same disclosure and barring arrangements in Scotland as existed prior to 20 January 2009.

*Imminent changes for England and Wales*

7. From 12 October, the SVG barred lists take full effect in that individuals included on those barred lists are barred from regulated activity as defined in the SVG Act rather than relying on the prohibitions in the Protection of Children Act 1999 and the Care Standards Act 2000. The Safeguarding Vulnerable Groups Act 2006 (Commencement No. 6, Transitional Provisions and Savings) Order 2009 (SI 2009/2611) ("SVG CO6") brings into force the relevant provisions in the 2006 Act and the Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Miscellaneous and Transitional Provisions and Commencement (No. 5)) Order 2009 (SI 2009/2610) repeals the Safeguarding Vulnerable Groups Act 2006 (Transitory Provisions) Order 2009 (SI 2009/12).

8. SVG CO6 commences provision in the SVG Act which repeals the Protection of Children Act 1999 and the Care Standards Act 2000. However, the IBB has not completed the process of migrating individuals included on these old lists to the SVG barred lists; this process requires case-by-case consideration with individuals either being migrated or de-barred. So savings provision in SVG CO6 preserve the POCA list and POVA list and the effect of such listing for unmigrated cases. Once the case migration is complete, the saving provisions fall away and the repeals take full effect without recourse to further legislation.

*Corresponding provision for Scotland*

9. The Protection of Vulnerable Groups (Scotland) Act 2007 (Transitory Provisions in Consequence of the Safeguarding Vulnerable Groups Act 2006) Order 2009 made provision in relation to those placed on the SVG lists by the IBB exercising functions under SI 2009/12; as stated above, SI 2009/12 is being repealed. The Protection of Vulnerable Groups (Scotland) Act 2007 (Transitory Provisions in Consequence of the Safeguarding Vulnerable Groups Act 2006) (No. 2) Order 2009 ("the Scottish No. 2 Order") revokes the earlier Scottish Order and makes provision effective from 12 October 2009.

10. The Scottish No. 2 Order provides for the Police Act 1997 to have effect as if modified and the Police Act 1997 (Criminal Records) (Scotland) Regulations 2006 (SSI 2006/96) to be amended to allow for the disclosure of the SVG barred lists, including whether any appeal is pending. It also modifies the Protection of Children (Scotland) Act 2003 to disqualify individuals included on the SVG children's barred list from working in a child care position in Scotland. This will mean that, during the SVG transitional phase, all four of these lists in England and Wales may be displayed on enhanced disclosure certificates.

*Why this provision is necessary*

11. The Scottish No. 2 Order is very important as it will prevent a loophole from emerging which would otherwise occur from 12 October. Without the Scottish No. 2 Order, a person included on an SVG barred list would not have that fact included on a Scottish enhanced disclosure and, in respect of inclusion on the SVG children's barred list, would not be barred from taking up a child care position in Scotland. Without this Order, an individual determined to be unsuitable by the IBB could legally and undetected enter the Scottish vulnerable groups' workforce.

**Consultation**

12. The Order has not been the subject of public consultation because it is a technical instrument absolutely necessary to preserve current disclosure and barring arrangements in Scotland.

**Financial effects and Regulatory Impact Assessment**

13. The Order has no financial implications as it has the effect of preserving current arrangements for barring and disclosure until the 2007 Act is substantively commenced in 2010. Since this Order has absolutely no financial implications either for the Scottish Government or external organisations by virtue of simply preserving current policy and procedure, no Regulatory Impact Assessment has been prepared for this instrument.

Scottish Government
Children, Young People and Social Care Directorate