EXPLANATORY MEMORANDUM TO

THE SAFEGUARDING VULNERABLE GROUPS ACT 2006 (MISCELLANEOUS PROVISIONS) ORDER 2012

2012 No. 2113

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 The Safeguarding Vulnerable Groups Act 2006 (as amended) ('SVGA') specifies a set of activities and work, known as 'regulated activity', which a person who is barred from working with vulnerable groups must not do; this Order excludes two areas of work, which would otherwise be in the amended definition of regulated activity, from its scope. It also prescribes information, akin to information about whether a person is barred, which must in certain cases be provided by the Secretary of State and Independent Safeguarding Authority (ISA) to professional bodies and supervisory authorities. Finally, it makes an addition to the list of those people who will be able to apply to find out whether a person is barred.

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

3.1 None

4. Legislative Context

4.1 The SVGA specifies a set of activities and work which comprise 'regulated activity', which a person who is barred from working with vulnerable groups must not do. The Protection of Freedoms Act 2012 ('PoFA') makes various amendments to the definition of regulated activity. Paragraph 9 of Schedule 4 to the SVGA, which has not been amended by the PoFA, allows the Secretary of State, by order, to provide that in specified circumstances an activity which is a regulated activity in relation to vulnerable adults is not to be treated as a regulated activity. This Order utilises that power to specify two circumstances in which activity is not regulated activity in relation to vulnerable adults.

4.2 The SVGA, as amended by the PoFA, also provides for various mechanisms for information (to the effect that someone is barred, or related information) to be passed by the ISA or the Secretary of State to professional bodies ('keepers of registers') and to 'supervisory authorities'. In some cases, that includes information that a person is subject to a 'relevant disqualification', defined in the SVGA as being included in a list maintained under the law of Scotland or Northern Ireland which the Secretary of State

specifies by order as corresponding to a barred list. This Order specifies what those lists are.

4.3 Schedule 7 to the SVGA includes a table of those groups of people who will, upon commencement of the relevant sections of the PoFA, be able to apply to find out whether a person is barred, or to register to find out if and when a person ever becomes barred. In each case, that person's consent will be required. This order makes one addition to that table.

4.4 This instrument is being laid alongside a number of other instruments made under the SVGA which will also give effect to changes in the PoFA. Those are the Safeguarding Vulnerable Groups Act 2006 (Miscellaneous Provisions) Regulations 2012, the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012 and the Safeguarding Vulnerable Groups Act 2006 (Controlled Activity and Prescribed Criteria) Regulations 2012.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

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 SVGA established the Independent Barring Board – later renamed as the Independent Safeguarding Authority – as that central body. Its role is 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 groups 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. The SVGA, including

the scope of regulated activity defined within it, has been significantly amended by the PoFA.

7.3 The provisions of the SVGA which define the scope of regulated activity relating to vulnerable adults include a power for the Secretary of State, by order, to provide that, in such circumstances as are specified, an activity which is a regulated activity in relation to vulnerable adults is not to be treated as a regulated activity. This Order uses that power to specify two circumstances in which activity is not to be treated as regulated activity.

7.4 The first of those is any health care provided by staff working under the direction or supervision of a health care professional in an optician's or a pharmacy. The SVGA provides that anyone who works under the direction or supervision of a health care professional in providing health care also engages in regulated activity. In these settings, health care professionals such as pharmacists, optometrists and dispensing opticians provide health care to adults and therefore engage in regulated activity. The Order excludes from regulated activity any health care provided by a person who is not a health care professional, but who works under the direction or supervision of a health care professional, in opticians' practice premises (or where those services are provided as mobile services) or pharmacies, for example, a sales assistant who works on the pharmacy counter.

7.5 Secondly, the Order excludes from regulated activity any physical assistance provided to an adult in relation to the care of their hair when that care relates only to the cutting of the adult's hair. This is to ensure that hairdressers who cut the hair of patients and residents in hospitals and care homes are not engaging in regulated activity.

7.6 The SVGA, as amended by the PoFA, also established several mechanisms for the sharing of information between, on the one hand, the Secretary of State (in practice, the Criminal Records Bureau) or the ISA, and, on the other hand, specified professional bodies (referred to as 'keepers of registers', including, for example, the General Medical Council) and specified supervisory authorities (for example, Her Majesty's Chief Inspector of Schools in England). Of those, the following mechanisms are pertinent to this Order:

- If the ISA knows or thinks that a person appears on the register of one of the specified keepers of registers and, either the person is on one or both of its barred lists, or it is aware that the person is subject to a relevant disqualification, it must notify the keeper of the register of that fact.
- If the keeper of a relevant register applies to the ISA to find out whether a person, who is either in or being considered for inclusion in, its register, is on one or both of the ISA's barred lists, or is subject to a relevant disqualification, the ISA must provide them with information to that effect.
- If the keeper of a relevant register applies to the Secretary of State to find out if a person, who is either in or being considered for inclusion in, its register, is on one or both of the ISA's barred lists, or is subject to a relevant disqualification, the Secretary of State must notify them if either of those things is the case or happens in future.

- If a supervisory authority has applied to the Secretary of State to be notified if a person is included in the children's barred list, or is subject to a relevant disqualification, in connection with the exercise of their functions as specified in the SVGA, the Secretary of State must notify the supervisory authority accordingly.
- If a supervisory authority has applied to the Secretary of State to be notified if a person is included in the adults' barred list, or is subject to a relevant disqualification, in connection with the exercise of their functions as specified in the SVGA, the Secretary of State must notify the supervisory authority accordingly.

7.7 In each case, the SVGA defines being subject to a relevant disqualification as being included in a list maintained under the law of Scotland or Northern Ireland which the Secretary of State specifies by order as corresponding to the relevant barred list(s). As none of the above provisions has yet been commenced, no such orders have previously been made. This Order specifies that the lists maintained under the law of Scotland are those maintained under section 1(1) of the Protection of Vulnerable Groups (Scotland) Act 2007. These are the lists which the Scottish Government maintains of people who are barred from doing 'regulated work' (akin to regulated activity) in Scotland. The Order also specifies that the lists maintained under the law of Northern Ireland are those maintained under Article 6(1) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007. Those are the lists, maintained by the ISA, of people who are barred from doing regulated activity in Northern Ireland (which is very similar to regulated activity in England and Wales).

7.8 This Order also adds the ISA to the list of those groups of people who will be able to find out whether a person is barred or to ask to be informed if and when a person becomes barred, with the person's consent in each case. This is in relation to prospective and actual ISA members and staff.

- Consolidation

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

8. Consultation outcome

8.1 The changes to regulated activity are related to the broader changes to regulated activity in the PoFA, which formed part of the Government's Remodelling Review of the Vetting and Barring Scheme, published in February 2011. That review involved consultation with a range of parties. The specification of the Scotland and Northern Ireland barred lists and addition of the ISA to Schedule 7 to the SVGA are minor administrative measures.

9. Guidance

9.1 Information on the changes in the PoFA to which the changes in this instrument relate is available on departmental websites and is being communicated proactively to interested parties, including in a series of road shows which were held around the UK in June and July 2012.

10. Impact

10.1 The impact on business, charities and voluntary bodies of the changes in the PoFA to which the changes in this instrument relate was set out in the impact assessment of Part 5 of the Protection of Freedoms Bill. The changes are deregulatory overall.

10.2 The changes in this order will have minimal impact on the public sector.

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

11. Regulating small business

11.1 The impact assessment for Part 5 of the Protection of Freedoms Bill explored the impact on small firms of the changes to which the changes in this instrument relate. It found that there would be no disproportionate impact on small firms.

12. Monitoring & review

12.1 The scope of regulated activity, and other aspects of the barring arrangements, will remain subject to internal review.

13. Contact

Stewart Baxter at the Home Office Tel: 020 7035 3265 or email: Stewart.Baxter2@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.