EXPLANATORY MEMORANDUM TO

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

2012 No. 2112

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 ('SVGA') sets out the process by which the Independent Safeguarding Authority (ISA) must bar certain people from working in 'regulated activity', which is a set of roles and activities involving work with children and vulnerable adults. The Protection of Freedoms Act 2012 ('PoFA') reduced the scope of regulated activity, repealed the provisions in the SVGA which required those who wanted to work in regulated activity to register with a central scheme and to be monitored, and made other amendments to the ISA's barring process. This instrument makes a number of changes which are consequential to the changes in the PoFA, makes further provision as to the definition of regulated activity, fulfils a commitment that the ISA will in certain cases be able to provide to the police the information which informed its barring consideration, and makes some other minor amendments.

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

3.1 None

4. Legislative Context

4.1 The 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 – was established as a central authority to make decisions about who should be barred and to maintain lists of those barred. The SVGA listed a number of roles – 'regulated activity' – which a barred person must not do.

4.2 The PoFA made a series of amendments to the provisions in the SVGA, including:

- various changes to the definition of regulated activity;
- the repeal of the controlled activity provisions, which included people such as those whose access to vulnerable groups was limited to access to certain records of those groups;

- the repeal of the system under which those who wished to work in regulated activity had to register with a central scheme and be monitored for their convictions and cautions;
- a provision that representations against automatic bars (those which follow from a conviction or caution for a serious offence), when representations are permitted, can be submitted before any decision as to whether to bar a person, rather than after a barring decision, as now;
- changes to the provisions governing the passage of information from professional bodies, supervisory authorities and local authorities to the ISA.

4.3 This instrument makes consequential amendments to various orders and regulations made under the SVGA, as a result of the PoFA changes, including those listed in paragraph 4.2. It also makes a number of other changes to the barring arrangements, in line with the planned commencement of many of the changes in the PoFA on 10 September 2012. These are:

- the inclusion within regulated activity relating to vulnerable adults of the provision of psychotherapy and counselling provided in connection with the health care which an adult is receiving;
- the prescription, under a new enabling power, of the circumstances in which conveying of adults is regulated activity (these are different to the circumstances which were prescribed under the previous enabling power);
- that the information which various parties may be required to provide to the ISA may include details of proceedings commenced under the Children Act 1989;
- an additional reason for which the ISA can pass to the police information which it holds, namely for the disclosure of such information on an enhanced criminal record certificate. An assurance to this effect was given by the Minister of State for Crime Prevention and Antisocial Behaviour Reduction, Lord Henley, during Third Reading of the Protection of Freedoms Bill: http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120312-0002.htm [columns 52-3]

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) Order 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.

7.3 The policy of the current Government is to scale back the barring arrangements to more proportionate levels. The PoFA gives effect to this policy; amongst other things, it:

- repeals the registration scheme (or 'monitoring');
- significantly scales back the scope of regulated activity;
- repeals the provisions concerning 'controlled activity' (people such as hospital records clerks, whose barred status had to be checked by a prospective employer before the employer decided whether or not to engage them);
- provides that, when representations may be submitted by a person whom the ISA would bar automatically, those would be submitted before any decision whether to bar the person, rather than after such a decision, as now;
- specifies that professional bodies ('keepers of registers' – for example, the General Medical Council), supervisory authorities (for example, Her Majesty's Chief Inspector of Schools in England) and local authorities will have a power, rather than a duty, as now, to pass information to the ISA, unless the ISA specifically requests information.

7.4 These Regulations amend a number of statutory instruments made under the SVGA, in consequence of the above changes.

7.5 Additionally, this instrument makes further provision in two respects for the definition of regulated activity in relation to vulnerable adults. Firstly, it provides that psychotherapy and counselling services which are provided in connection with the health care that an adult is receiving constitute regulated activity. People providing such services were in the original definition of regulated activity, but would not otherwise be in the new definition unless they

are otherwise a health care professional within the meaning of the SVGA or working under the direction or supervision of such a health care professional. Psychotherapists and counsellors are included in regulated activity because they have unique access to adults in situations where those adults may be particularly emotionally vulnerable and/or experiencing episodes of mental illness.

7.6 Secondly, it prescribes the circumstances in which the conveying of an adult who needs to be conveyed by reason of age, illness or disability is regulated activity relating to vulnerable adults. Those are:

- conveying by (in the course of their employment) hospital porters, emergency care assistants, ambulance technicians, drivers employed in the Patient Transport Service, and those assisting Patient Transport Service drivers; and
- conveying (or assistance provided in such conveying), by any person, of adults to or from a place where they will receive, or have received, health care, relevant personal care, or relevant social work. The conveying must be on behalf of an organisation, and the purpose of the person in doing the conveying must be to enable the adult to receive that health care/personal care/social work. The regulations specify that this would not include conveying by a taxi or a private hire vehicle driver.

7.7 These Regulations make two further changes:

- Currently, various parties may be required to provide to the ISA details of proceedings before any court, tribunal or any other person taken or to be taken (including the outcome of such proceedings) in relation to a person whom the ISA is considering barring. This instrument specifies that that includes proceedings under the Children Act 1989 (for example, care proceedings), which will in some cases be relevant to consideration of barring.
- The ISA is currently able to pass to the police any information which it has for the purposes of the prevention, detection and investigation of crime; the apprehension and prosecution of offenders; and (once commenced) the appointment of persons who are under the direction and control of a chief officer of police. These Regulations add an additional purpose, concerning the disclosure of information on an enhanced criminal record certificate. That responds to concerns raised during the passage of the Protection of Freedoms Bill that enhanced criminal record certificates will not always contain the information which led to a bar when the post to which the application relates is not within regulated activity.

7.8 It is necessary to legislate in this area in order to amend the existing legislation 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 In the main, the changes in this instrument are consequential upon or related to the changes announced in 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 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 the PoFA to which the changes in this instrument relate have various impacts on the public sector, in that they affect the work of the ISA, the police and local authorities, amongst others; those are also set out in the aforementioned impact assessment. The additional reason for the ISA to pass information to the police will involve a greater passage of information to the police and additional consideration of information by the police.

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 content 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.