EXPLANATORY MEMORANDUM TO

THE SAFEGUARDING VULNERABLE GROUPS ACT 2006 (SPECIFIED LISTS: SCOTLAND) ORDER 2010

2010 No. 2342

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument recognises the barred lists maintained under the Protection of Vulnerable Groups (Scotland) Act 2007 as being equivalent to the barred lists maintained under the Safeguarding Vulnerable Groups Act 2006. An individual included in a Scottish barred list will be barred from regulated activity in England and Wales relating to children and/or vulnerable adults as the case may be without the need for them to be included in the SVGA barred lists as well.

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 ("the SVGA") requires the keeping of a children's barred list and an adults' barred list. Under section 3 of that Act, an individual is barred from regulated activity relating to children and/or vulnerable adults[1] if the individual is (i) included in the relevant list or (ii) included in a list maintained under the law of Scotland or Northern Ireland which is specified by order as corresponding to the children's barred list or the adults' barred list. The SVGA extends to England and Wales. The Protection of Vulnerable Groups (Scotland) Act 2007 ("the PVGA") requires the Scottish Ministers to keep lists of individuals who are barred under the PVGA from regulated work (defined in the PVGA) relating to children and/or vulnerable adults in Scotland. This instrument ensures that an individual included in a Scottish barred list is also barred from regulated activity in England and Wales, without the need for them to be included in the SVGA barred lists as well.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

[1] 'Regulated activity' is defined in Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

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 Both the SVGA and the PVGA were enacted to prevent unsuitable people from working with children and/or vulnerable adults. They establish lists of those barred from certain types of work respectively in England and Wales and in Scotland. This instrument prevents an individual who has been barred from 'regulated work' relating to a vulnerable group in Scotland from carrying out 'regulated activity' relating to that group in England and Wales, without the need for the individual to be included in the English and Welsh lists as well. This instrument recognises that the lists created in respect of those working in Scotland are equivalent to those created in respect of those working in England and Wales.

- Consolidation

7.2 The instrument aligns the lists created under the PVGA with those of the SVGA for the first time, therefore the issue of consolidation does not arise.

8. Consultation outcome

8.1 No consultation has been carried out specifically on the issue of alignment of the SVGA and PVGA but the overarching principle has been a stated aim in all consultation on the vetting and barring scheme, and the implementation of the Acts, in both jurisdictions.

9. Guidance

9.1 The instrument does not create any new duties or obligations, therefore no guidance is required.

10. Impact

10.1 The impact on business, charities or voluntary bodies is none as the requirements to confirm whether an individual undertaking relevant work on their behalf is barred are unchanged.

10.2 The impact on the public sector is none as the requirements to confirm whether an individual undertaking relevant work on their behalf is barred are unchanged.

10.3 An Impact Assessment has not been prepared for this instrument as it does not make any amendments to current requirements.

11. Regulating small business

11.1 The legislation makes no amendments to the current duties already in place with regard to small businesses; therefore the impact is minimal.

12. Monitoring & review

12.1 The Government has committed to a review of the Vetting and Barring Scheme, the outcomes of which will be announced in due course.

13. Contact

Nicholas Smith at the Department for Education Tel: 02077838474 or email: Nicholas.SMITH@education.gsi.gov.uk can answer any queries regarding the instrument.

Department for Education, 23 September 2010