EXPLANATORY MEMORANDUM TO

THE SAFEGUARDING VULNERABLE GROUPS ACT 2006 (SPECIFIED SCOTTISH AUTHORITY AND BARRED LISTS) ORDER 2019

2019 No. 1161

1. Introduction

1.1 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 sets out the arrangements under which the Disclosure and Barring Service (DBS) may bar individuals from certain roles working with children or vulnerable people in England and Wales. The Act includes provisions setting out the relationship between the barred lists maintained under relevant devolved legislation in Scotland and Northern Ireland, and those held in England and Wales. That relationship requires a 'relevant Scottish authority' and 'corresponding list' to be specified by the Secretary of State, by Order. That Order is the purpose of this instrument.

2.2 The instrument therefore provides descriptions of a 'relevant Scottish authority' and 'corresponding list' for the purposes of ensuring that individuals who have been considered for inclusion in a barred list held under Scottish legislation will not subsequently, on the same grounds, be included in a barred list held under England and Wales legislation.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 This entire instrument applies to England and Wales only because it is made under paragraphs 6 and 12 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 which extend to England and Wales only.

3.3 The instrument has effects outside of England and Wales which the Department considers to be minor or consequential. This is because it may require the DBS to make enquiries with Disclosure Scotland as to whether an individual has previously been considered for inclusion on a barred list held under Scottish legislation.

3.4 In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament.

3.5 The Department has reached this view because this instrument relates to safeguarding vulnerable groups which is within the legislative competence of the Scottish Parliament and Northern Ireland Assembly.

4. Territorial Extent and Application

4.1 The extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is set out in Section 3 under "Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws).

5. European Convention on Human Rights

5.1 Victoria Atkins, Minister for Crime, Safeguarding and Vulnerability has made the following statement regarding Human Rights:

"In my view the provisions of the Safeguarding Vulnerable Groups Act 2006 (Specified Scottish Authority and Barred Lists) Order 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is made pursuant to paragraphs 6 and 12 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (the SVGA). Paragraph 6 provides that the Disclosure and Barring Service (DBS) must not include a person in the children's barred list on a particular ground if a relevant Scottish authority has already considered whether the person should be included in a corresponding list on the same ground. Paragraph 12 makes similar provision in relation to the adults' barred list. Paragraphs 6 and 12 provide the Secretary of State with a power to make an order specifying a 'relevant Scottish authority' and 'corresponding list' for these purposes.

6.2 This Order is being made to specify necessary terms under paragraphs 6 and 12 in order to give them effect. The Order specifies that the Scottish Ministers are the relevant Scottish Authority, and the lists maintained by the Scottish Ministers under the Protection of Vulnerable Groups (Scotland) Act 2007 are corresponding lists to those lists of barred individuals maintained by the DBS.

6.3 Section 74 of the Protection of Freedoms Act 2012 (which amends Schedule 3 to the SVGA) includes provisions to place restrictions on duplication with Scottish and Northern Ireland barred lists. These provide that, when the provisions are commenced, the DBS must not include a person in the barred lists if it knows that the person is included in the corresponding lists maintained under the law of Scotland or Northern Ireland. This is to prevent duplication between lists held in respect of England and Wales, Northern Ireland, and Scotland.

6.4 Section 74 also makes limited amendment to paragraphs 6 and 12. Section 74 is not yet commenced as the technical capacity is not yet in place to enable the DBS to implement the provisions. The specification made by this Order of 'relevant Scottish authority' and 'corresponding list' will continue to apply once section 74 is commenced.

7. Policy background

What is being done and why

7.1 The SVGA provides for the maintenance by the DBS of lists of individuals barred from undertaking regulated activity with children or other vulnerable people. Definitions of regulated activity with children and regulated activity with adults are set out in the SVGA. Roles within regulated activity involve working closely with children or vulnerable adults, such as teaching and providing care. It is an offence for someone who is included on the relevant barred list to seek to work in regulated activity with that group, or for a regulated activity provider knowingly to allow them to undertake regulated activity. The DBS also maintains barred lists in relation to Northern Ireland under the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.

7.2 An individual may be included in the barred lists following a conviction or caution for a specified offence (known as an automatic barring offence), or, following a discretionary bar, where the DBS determines that the individual poses a risk of harm following a referral by an employer or regulator.

7.3 Similar statutory arrangements exist under Scottish legislation, and are operated by Disclosure Scotland on behalf of Scottish Ministers. Each jurisdiction recognises barring decisions taken by the other jurisdictions, with the effect that an individual who is barred in Scotland is also barred in England and Wales and Northern Ireland, and vice-versa.

7.4 Paragraphs 6 and 12 of Schedule 3 to the SVGA concern decision-making by the DBS in cases where an individual has already been considered for inclusion in either the adults' or children's barred lists under Scottish legislation. These provisions provide that the DBS must not include an individual in a barred list where, on the same grounds, that individual has already been subject to consideration for barring under Scottish legislation.

7.5 The descriptions contained within this SI are necessary to give practical effect to paragraphs 6 and 12 of Schedule 3. The Order specifies that the Scottish Ministers are the relevant Scottish Authority, and the lists maintained by the Scottish Ministers under the Protection of Vulnerable Groups (Scotland) Act 2007 are corresponding lists to those lists of barred individuals maintained by the DBS.

7.6 Existing Scottish legislation does not require Disclosure Scotland to consider individuals for barring where the individual has already been considered by the DBS and the DBS has considered all relevant information. Nor does it require Disclosure Scotland to apply a bar in cases that are barred under England and Wales legislation. This Order will achieve greater consistency between the jurisdictions enabling Disclosure Scotland and the DBS to work better together to protect children and vulnerable adults.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument does not create a need for consolidation.

10. Consultation outcome

10.1 No consultation has been undertaken as this is a technical provision to give effect to existing provisions in the SVGA.

11. Guidance

11.1 No additional guidance is required as this instrument relates solely to DBS operational practice.

12. Impact

12.1 The impact on business, charities or voluntary bodies is nil.

12.2 The impact on the public sector is limited to the DBS implementing necessary operational change in relation to cases that have previously been considered by Disclosure Scotland.

12.3 An Impact Assessment has not been prepared for this instrument as no significant impact on the private, voluntary or public sector is foreseen.

13. Regulating small business

13.1 The Order does not apply to small business.

14. Monitoring & review

14.1 The descriptions within this SI will be considered in the event of any substantive change to the barring arrangements in Scotland.

15. Contact

15.1 Samuel Wray at the Home Office Tel: 020 7035 3235 or email: Samuel.Wray@homeoffice.gov.uk can answer any queries regarding the instrument.

15.2 Krisztina Katona, Deputy Director for Public Protection, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Victoria Atkins MP at the Home Office can confirm that this Explanatory Memorandum meets the required standard.