EXPLANATORY MEMORANDUM TO

THE SAFEGUARDING VULNERABLE GROUPS (MISCELLANEOUS AMENDMENTS) ORDER (NORTHERN IRELAND) 2012

2012 No. 320

1. This explanatory memorandum has been prepared by the Department of Health, Social Services and Public Safety and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the Rule**

2.1 This Rule revokes some legislative provisions which were intended to govern the operation of some aspects of the Vetting and Barring Scheme, prior to the full implementation of the vetting element of that scheme. Those provisions are now no longer required following the repeal of that element of the scheme. The list of work and roles which must not be undertaken by a person who has been barred by the Independent Safeguarding Authority from working with children and vulnerable adults has also been amended; this Rule makes some changes which are consequences of those amendments.

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 ('SVGA') in England and Wales and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 ('SVGO') in Northern Ireland gave legislative effect to the planned Vetting and Barring Scheme ('VBS'). The SVGO listed a set of roles and defined certain activity, collectively known as 'regulated activity'. Anyone who wished to work in regulated activity was required to be continuously monitored for any criminal convictions and cautions (the 'vetting' element of the VBS). The SVGA established the Independent Barring Board – later renamed as the Independent Safeguarding Authority (ISA), which has the power to bar people who pose a risk of harm or are considered inappropriate to work with children and vulnerable adults, and maintains lists of those barred (the 'barring' element of the VBS). The ISA's remit was extended to Northern Ireland by way of the SVGA. A barred person must not work in regulated activity.

4.2 Barring was commenced in a series of stages, of which the last was October 2009, as specified by the Safeguarding Vulnerable Groups (Regulated Activity, Transitional Provisions and Commencement No. 4) Order (Northern

Ireland) 2009 (S.R. 2009. No. 304, 'the 2009 Commencement Order'). The 2009 Commencement Order also set out a series of transitional periods governing the operation of various elements of legislation until the full commencement of the vetting part of the scheme.

4.3 Monitoring (or vetting) under the scheme has been repealed by paragraph 6 of Schedule 7 to the Protection of Freedoms Act 2012 ('PoFA'). As a result, there is no conclusion point for the transitional periods set out in the 2009 Commencement Order, and it is necessary to revoke them. This Rule revokes those transitional arrangements.

4.4 This Rule also makes some revisions to the Safeguarding Vulnerable Groups (Miscellaneous Provisions) Order (Northern Ireland) 2009 (S.R. 2009 No. 305), ('the 2009 Order'), by revoking the provisions in the 2009 Order which provided that certain people should not be treated as vulnerable adults or as providing regulated activity to children or to vulnerable adults. This is required because of the changes to the definitions of vulnerable adults, regulated activity relating to children and regulated activity relating to vulnerable adults in paragraphs 1, 2 and 3 of Schedule 7 to the PoFA.

4.5 A number of other Rules are being laid before Parliament to give effect to other changes to the barring arrangements in the PoFA. These include: the Safeguarding Vulnerable Groups (Miscellaneous Provisions) Order (Northern Ireland) 2012; the Safeguarding Vulnerable Groups (Miscellaneous Provisions) Regulations (Northern Ireland) 2012; and the Safeguarding Vulnerable Groups (Prescribed Criteria and Miscellaneous Provisions) (Amendment) Regulations (Northern Ireland) 2012.

5. Territorial Extent and Application

5.1 This Statutory Rule extends to Northern Ireland.

6. European Convention on Human Rights

6.1 As this Rule 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 Safeguarding Vulnerable Groups Act 2006 ('SVGA') established the Independent Barring Board – later renamed as the Independent Safeguarding Authority (ISA) – as that central body. The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 ('SVGO') replicated the provisions of the SVGA for Northern Ireland. The remit of the ISA was extended to Northern Ireland by section 66 of the SVGA. Its role was 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 people were taken by Secretaries of State in England and Wales, by Government Departments in Northern Ireland or by sentencing judges. The SVGO 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 in Northern Ireland.

7.3 The policy of the current Government, supported by the Northern Ireland Executive and Assembly, 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') and significantly scales back the scope of regulated activity. Schedule 7 to the PoFA makes specific provision for Northern Ireland.

7.4 The Safeguarding Vulnerable Groups (Regulated Activity, Transitional Provisions and Commencement Order No. 4) Order (Northern Ireland 2009 (S.R. 2009 No. 304), ('the 2009 Commencement Order') set out a series of transitional periods which governed how the barring arrangements and related processes would operate, prior to the full commencement of monitoring and associated parts of the SVGO. However, monitoring was never commenced and has now been repealed by paragraph 6 of Schedule 7 to the PoFA. This means that those transitional periods no longer have any meaning and this Rule repeals the provisions of the 2009 Commencement Order related to them.

7.5 This Rule puts in place two transitional arrangements, which are consequences of the revocation of parts of the 2009 Commencement Order. The first provides that, until paragraph 9 of Schedule 7 to the PoFA (insofar as it inserts Article 32A, which allows various parties to check whether a person is barred, into the SVGO) comes into operation, the ISA will be able to provide information about whether someone is barred (or subject to one of the disqualification regimes which preceded barring) to a person who has a 'legitimate interest' in knowing that fact. The second transitional arrangement, which is based on Article 15 of the 2009 Commencement Order, modifies section 116 of the Police Act 1997, which relates to the disclosure of Enhanced Criminal Record Certificates for Judicial appointment purposes.

7.6 The Safeguarding Vulnerable Groups (Miscellaneous Provisions) Order (Northern Ireland) 2009 (S.R. 2009 No. 304 – 'the 2009 Order') provides that the provision of any form of treatment to a child or vulnerable adult, which is generally within regulated activity, is not regulated activity in certain circumstances. The PoFA makes significant changes to this area of regulated

activity in the SVGO. It is therefore no longer necessary to retain these exceptions and this Rule revokes them.

7.7 Article 3 of the SVGO sets out the definition of 'vulnerable adult'; an activity is regulated activity relating to vulnerable adults only if it is provided to somebody falling within that definition. The 2009 Order sets out an exception to that definition. The PoFA repeals Article 3 of the SVGO, and therefore this Rule revokes the amendment to the definition of 'vulnerable adult' in the 2009 Order.

7.8 It is necessary to legislate in this area because it is necessary to amend the existing legislation in order to give effect to Schedule 7 to the PoFA.

- *Consolidation*

7.9 The Department of Health, Social Services and Public Safety does not consider it necessary to consolidate legislation at this time.

8. Consultation outcome

8.1 The repeal of the monitoring element of the Vetting and Barring Scheme and the reduction in the scope of regulated activity were amongst the conclusions of the report from the Government's Remodelling Review of the Vetting and Barring Scheme, published in February 2011. That review was the subject of extensive consultation with a range of parties, including parties in Northern Ireland. The Northern Ireland Executive and Assembly accepted the review recommendations, with some minor exceptions relating to the redefinition of regulated activity. In Northern Ireland: a children's hospital remains a specified establishment; and the roles of the Guardians Ad Litem and Inspectors (within the Education and Training Inspectorate, the Regulation and Quality Improvement Authority and the Criminal Justice Inspectorate) continue to be regulated activities.

9. Guidance

9.1 Information on the changes in the PoFA to which the changes in this Rule relate is available on departmental websites and is being communicated proactively to interested stakeholders, including in a road show which was held in Northern Ireland in June 2012.

10. Impact

10.1 The impact on business, charities and voluntary bodies of the repeal of monitoring and the reduction in the scope of regulated activity was set out in the impact assessment of Part 5 of the Protection of Freedoms Bill (Schedule 7 to the Act makes equivalent provision for Northern Ireland to that provided for England and Wales in Part 5 of the Act). Those changes will reduce the requirements on those parties.

10.2 The changes effected by this Rule will have minimal effect on the public sector.

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

11. Regulating small businesses

11.1 This Order itself has no impact on small business.

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

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