EXPLANATORY MEMORANDUM TO

THE SAFEGUARDING VULNERABLE GROUPS (SPECIFIED SCOTTISH AUTHORITY AND BARRED LISTS) ORDER (NORTHERN IRELAND) 2019

2019 No. 154

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 Rule

2.1 The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 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 Northern Ireland. The Order includes provisions setting out the relationship between the barred lists maintained under relevant legislation in England and Wales, Scotland and Northern Ireland. 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 rule.

2.2 The rule 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 Northern Ireland 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 As the rule is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Territorial Extent and Application

4.1 The extent of this rule is Northern Ireland.

4.2 The territorial application of this rule is predominantly Northern Ireland. There are minor consequential effects in England as the Order makes provision in relation to DBS operations and Scotland as 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.

4.3 The rule replicates the provisions of The Safeguarding Vulnerable Groups Act 2006 (Specified Scottish Authority and Barred Lists) Order 2019 for the purposes of

Northern Ireland legislation. The Orders specify 'a relevant Scottish authority' and 'corresponding list' in the same terms.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The DBS maintains lists of individuals barred from working with children or vulnerable adults in relation to England and Wales under the Safeguarding Vulnerable Groups Act 2006. The DBS also undertakes this function in relation to Northern Ireland under the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (the SVGO). It is a key principle that the relevant legislation in Northern Ireland is closely aligned to that in England and Wales to allow the DBS to operate a single barring process in relation to cases from both jurisdictions.

6.2 This rule is made pursuant to paragraphs 6 and 12 of Schedule 1 to the SVGO. 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.

6.3 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.

6.4 Schedule 7 of the Protection of Freedoms Act 2012 (which amends Schedule 1 to the SVGO) includes provisions to place restrictions on duplication with England and Wales and Scottish 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 England and Wales or Scotland. This is to prevent duplication between lists held in respect of England and Wales, Northern Ireland, and Scotland.

6.5 Schedule 7 also makes limited amendment to paragraphs 6 and 12. Schedule 7 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 schedule 7 is commenced.

7. Policy background

What is being done and why

7.1 The SVGO 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 SVGO. 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.

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 1 to the SVGO 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 rule are necessary to give practical effect to paragraphs 6 and 12 of Schedule 1. 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 Northern Ireland 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 rule does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This rule 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 SVGO.

11. Guidance

11.1 No additional guidance is required as this rule 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 rule 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 rule 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 rule.

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.