

# PROTECTION OF FREEDOMS ACT 2012

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## EXPLANATORY NOTES

### THE ACT

#### *Commentary on Sections*

#### **Part 5: Safeguarding vulnerable groups, criminal records etc.**

#### *Chapter 1: Safeguarding of vulnerable groups*

#### *Section 70: Information for purposes of making barring decisions*

292. *Subsection (1)* amends paragraph 19 of Schedule 3 to the SVGA which provides the ISA with the power to obtain relevant police information in relation to any individual's case it is considering. As currently drafted, paragraph 19(1) of Schedule 3 requires the police and others to provide the ISA with information about convictions and cautions relating to a person to whom any of paragraphs 1 to 5 or 7 to 11 of Schedule 3 "applies". Subsection (1) alters this test so that the duty to provide ISA with conviction data operates where any of the relevant paragraphs of Schedule 3 "applies or appears to apply". This is because it may not be clear to the ISA at the time of the referral whether the criteria for automatic or discretionary barring have been satisfied. Subsection (1) also introduces a requirement for a "reasonable belief" test to be applied by those holding criminality information in respect of the relevance of information to be provided, consistent with the revised test to be applied in relation to police intelligence information disclosed on enhanced criminal record certificates (see section 82).
293. *Subsection (2)* substitutes a new sub-paragraph (2) of paragraph 20 of Schedule 3 to the SVGA for the existing one. New paragraph 20(2) provides that when the Secretary of State refers a person to the ISA under paragraphs 1, 2, 7 or 8 of Schedule 3 (that is, because the prescribed criteria for the automatic barring provisions is triggered) and (in the case of referrals under paragraphs 2 and 8) the Secretary of State has reason to believe the person is engaging in, has engaged in, or might in the future engage in regulated activity, then the Secretary of State is also obliged to send the ISA certain information. This information will be prescribed details of a relevant matter, that is, prescribed details of convictions or cautions. This is further tempered by the ability for the type of conviction or caution information to be limited by regulations so that not all conviction or caution information will be provided by the Secretary of State to the ISA.