

EXPLANATORY MEMORANDUM TO
THE SAFEGUARDING VULNERABLE GROUPS (PRESCRIBED
CRITERIA) (FOREIGN OFFENCES) ORDER (NORTHERN IRELAND) 2009

SR 2009 No. 21

1. This explanatory memorandum has been prepared by the Department of Health, Social Services and Public Safety (DHSSPS), and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 This Order amends paragraph 24 of Schedule 1 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007¹ (“the 2007 Order”) in order to enable the Secretary of State to prescribe ‘foreign offences’ for the purposes of paragraphs 1, 2, 7 and 8 of Schedule 1 to the 2007 Order. Paragraphs 1, 2, 7 and 8 refer to the criteria that must be satisfied in order for the Independent Barring Board (IBB)² to automatically include a person in the lists established and maintained by the IBB under Article 6 of the 2007 Order (namely the children’s barred list and the adults’ barred list).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None. This Order is subject to the negative resolution procedure.
4. **Legislative Background**
 - 4.1 The 2007 Order and the Safeguarding Vulnerable Groups Act 2006³ (“the Act”) put in place a new system aimed at safeguarding vulnerable groups by building on vetting and barring arrangements now in operation under previous legislation, including the Education (Prohibition from Teaching or Working with Children) Regulations (Northern Ireland) 2007⁴ (“the Unsuitable Persons Regulations”). The Government gave a commitment to ensuring that the safeguards in the 2007 Order and the Act would not be less than those available under current legislation.
 - 4.2 The Act creates the IBB which is under a duty to establish and maintain the children’s barred list and the adults’ barred list. The IBB must determine who is to be included in the lists in accordance with Schedule 1 to the 2007 Order.
 - 4.3 Paragraphs 1, 2, 7 and 8 of Schedule 1 enable the Secretary of State to prescribe the criteria that need to be satisfied for the automatic inclusion of a person in the relevant barred list. As currently enacted, paragraph 24 of the Schedule limits the offences that can be prescribed for the purposes of paragraphs 1, 2, 7 or 8 to offences under the law in Northern Ireland and other parts of the British Islands.

¹ 2007 No. 1351 (N.I. 11).

² The IBB works under the name “Independent Safeguarding Authority” (ISA).

³ 2006 c.47.

⁴ S.R. 2007/288

- 4.4 The Unsuitable Persons Regulations provide for an automatic bar in the case of a person who had committed a specified foreign offence.
- 4.5 A power to prescribe foreign offences is necessary in order to increase the protection afforded to children and vulnerable adults under the 2007 Order and in order to honour the Government's commitment to ensure that the statutory safeguards for vulnerable groups under the 2007 Order and the Act are not less than those available under the current legislation.
- 4.6 Further details on the legislative background to the 2007 Order are in the supplement (appended to this memorandum) to the overarching explanatory memorandum on the implementation of the 2007 Order, which was submitted to Parliament in May 2008.

5. Extent

- 5.1 This statutory rule extends to Northern Ireland. A separate instrument has been made in relation to England and Wales.

6. European Convention on Human Rights

- 6.1 We consider that the provisions of this Order are compatible with the Convention rights as defined in section 1 of the Human Rights Act 1998.

7. Policy Background

- 7.1 The broader policy objectives of the 2007 Order are set out in the accompanying supplementary memorandum.
- 7.2 The 2007 Order requires IBB to automatically include a person in the children's or adults' barred lists if that person satisfies any of the criteria prescribed for the purposes of paragraphs 1, 2, 7 or 8 of Schedule 1 to the 2007 Order. The intention is that the prescribed criteria will catch people who have been convicted of offences which, of themselves, create a presumption that the offender poses a risk of harm to children or vulnerable adults. The Secretary of State proposes to prescribe criteria that include convictions for serious offences under the law of Northern Ireland, as well as equivalent offences under the law of England and Wales and of Scotland.
- 7.3 Individuals who have spent time abroad (i.e. lived or worked in or visited another country) may wish to engage in work with children or vulnerable adults in Northern Ireland. Much of this work will be caught by the definition of 'regulated activity' in the 2007 Order. Whilst abroad, such persons may have been convicted for serious criminal offences which are equivalent to the offences under the law of Northern Ireland and which are to be prescribed for the purposes of paragraphs 1, 2, 7 or 8 of Schedule 1 to the 2007 Order. It would be inconsistent with the scheme and purposes of the 2007 Order to treat that person differently from a person who had been convicted or cautioned for the equivalent offence in Northern Ireland.

- 7.4 The proposed amendment in this Order seeks to address this issue and is intended to apply to any person who has been convicted of an offence in a jurisdiction falling outside the current scope of paragraph 24 (i.e. Northern Ireland, England and Wales, Scotland, the Channel Islands and the Isle of Man). Any such offence must be broadly equivalent to an offence under the law of Northern Ireland which has been prescribed for the purposes of paragraphs 1, 2, 7 or 8 of Schedule 1 to the 2007 Order.
- 7.5 The prescribed criteria are based on a list of the most serious offences involving vulnerable groups. In so far as they relate to offences committed against children, the offences specified in the criteria will be similar to those in the Unsuitable Persons Regulations. An early draft of the list of offences was shown to Parliament in an information note from the DCSF Minister at the time of debates in March 2008 on transitional arrangements under the Act, and followed consultation on the offences during 2007.
- 7.6 A Member of Parliament asked, during the Commons Committee debate on a transitional version of these prescribed criteria⁵:
- “whether there is a definite system of notification about any EU worker coming to this country who has the same or a similar conviction”.
- 7.7 An EU Council Decision⁶ on the exchange of criminal record information was agreed in 2005. The Decision provides for a Member State’s central authority for criminal records to inform, without delay, its counterpart in another Member State if a national of that other Member State is convicted in the territory of the former Member State. The Council Decision will be replaced by a Framework Decision which builds on the earlier Decision. Under this new Decision, a standard format for exchanging information electronically is being developed. This will improve both the timeliness and accuracy of the information exchanged. The Council Decision provides for Member States to make and respond to requests for information on convictions according to national law. This enables information to be passed for criminal justice purposes and, where domestic law allows, for employment vetting purposes. The Framework Decision will make it mandatory to reply to requests for previous convictions in the context of criminal proceedings.
- 7.8 The Criminal Records Bureau (CRB) contacted all EU member states in 2007 to establish whether there was an opportunity to enter into agreements to exchange data for employment vetting purposes where national laws allowed. To date there have been positive responses from some member states: the Republic of Ireland, France, Estonia and Poland. Beyond the EU, Australia has also indicated a willingness to share information. A Home Office-chaired Steering Group has been established to oversee this project, with representatives

⁵ Third Delegated Legislation Committee debate on the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria) (Transitional Provisions) Regulations 2008; column 14 in Hansard report of Committee debate on 25th March 2008.

⁶ Council Decision 2005/876/JHA of 21st November 2005 on the exchange of information extracted from the criminal record.

including the Association of Chief Police Officers and CRB.

- 7.9 Where a foreign national is convicted or cautioned in this country, this would be recorded on police records as with any other conviction or caution here. AccessNI checks would reveal convictions or cautions by persons in those areas of work where the individual is eligible for a criminal records disclosure. Similarly, where British citizens have committed offences whilst working in EU countries, these may be recorded on central records in the UK under arrangements made between EU countries for the exchange of information. This cannot however be guaranteed and employers remain responsible for ensuring other safeguards are also followed, for example obtaining appropriate references from previous employers and, where available, police certificates of good conduct.
- 7.10 We remain committed to improving access to overseas criminal convictions data for employment vetting purposes. Even where another jurisdiction is willing to exchange such information, detailed work is still needed with each overseas jurisdiction on a range of issues including forming an understanding of offence descriptions which may differ from those used in UK jurisdictions and establishing exchange arrangements where criminal records data are not held centrally in the overseas jurisdiction or are not held electronically.
- 7.11 **Consultation:** DCSF consulted on adding foreign offences to the Education (Prohibition from Teaching or Working with Children) Regulations 2003 (“the List 99 Regulations”), in the consultation on amending those Regulations in 2006-07⁷. There were 28 responses to the consultation; including equivalent foreign offences was not among the main issues raised by respondents. The Unsuitable Persons Regulations mirror in Northern Ireland the provisions in the List 99 Regulations.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this Rule as it has no impact on business, charities or voluntary bodies.
- 8.2 There is no adverse impact on those listed under Section 75 of the Northern Ireland Act 1998 therefore a full Equality Impact Assessment is not required.

9. Contact

- 9.1 **Eilis McDaniel** at the Department of Health, Social Services and Public Safety, Tel: 028 9052 6429 or email eilis.mcdaniel@dhsspsni.gov.uk, can answer any queries regarding the Rule.

DHSSPS, January 2009

⁷. See report at <http://www.dcsf.gov.uk/consultations/conResults.cfm?consultationId=1423>.

**EXPLANATORY MEMORANDUM ON THE IMPLEMENTATION OF THE
SAFEGUARDING VULNERABLE GROUPS (NORTHERN IRELAND)
ORDER 2007**

1. The Department of Health, Social Services and Public Safety (DHSSPS) prepared this memorandum in consultation with the Northern Ireland Office, and submitted it voluntarily to Parliament.

2. Description

2.1 This is a supplement to the DHSSPS over-arching explanatory memorandum dated May 2008 which explained the context to the first set of Statutory Rules laid before Parliament under the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007⁸ (“the Order”). These (see details at 4.10 below) were:

- The Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008;
- The Safeguarding Vulnerable Groups (Barred Lists Prescribed Information) Regulations (Northern Ireland) 2008;
- The Safeguarding Vulnerable Groups (Barring Procedure) Regulations (Northern Ireland) 2008; and
- The Safeguarding Vulnerable Groups (Prescribed Criteria) (Transitional Provisions) Regulations (Northern Ireland) 2008.

2.2 This supplement explains the context to the second set of Statutory Rules to be laid before Parliament under the Order. These are:

- The Safeguarding Vulnerable Groups (Prescribed Criteria) (Foreign Offences) Order (Northern Ireland) 2009;
- The Safeguarding Vulnerable Groups (Transitory Provisions) Order (Northern Ireland) 2009;
- The Safeguarding Vulnerable Groups (Prescribed Information) Regulations (Northern Ireland) 2009;
- The Safeguarding Vulnerable Groups (Prescribed Criteria and Miscellaneous Provisions) Regulations (Northern Ireland) 2009.

These rules are described in their respective explanatory memoranda, to each of which this supplement is appended.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 All of the Statutory Rules are subject to the negative resolution procedure.

⁸ S.I. 2007 No. 1351 (N.I. 11).

4. Legislative background

Introduction

- 4.1 The Order provides for a new Vetting and Barring Scheme to replace the existing arrangements for safeguarding children and vulnerable adults⁹ from harm or the risk of harm by employees (paid or unpaid) whose work gives them significant access to these groups. A public consultation for the new Scheme, “*Making Safeguarding Everybody's Business: A Post-Bichard Vetting Scheme*” (Ref: 1485-2005DOC-EN), ran in 2005. That consultation paper and a summary of responses are at www.dcsf.gov.uk/consultations. Although led by the Department for Children, Schools and Families, the consultation extended to Northern Ireland.
- 4.2 The purpose of the new Scheme is to minimise the risk of harm to children and vulnerable adults from those who might seek to harm them through their work (paid or unpaid). It seeks to do this by barring unsuitable individuals not just on the basis of referrals, but also at the earliest possible opportunity, as part of a centralised vetting process that all those working closely with children and/ or vulnerable adults will have to go through. The new arrangements introduced by the Order will replace the existing arrangements provided for under the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (“POCVA”)¹⁰ and the Education (Prohibition from Teaching or Working with Children) Regulations (Northern Ireland) 2007 (“the Unsuitable Persons Regulations”)¹¹. The Government has announced that the new Scheme will “go live” in October 2009¹²; from that date, inclusion in a barred list will take effect to bar individuals from engaging in “regulated activity” (see 4.4.6 below).
- 4.3 The current system for vetting people who wish to work with children or vulnerable adults operates through employers obtaining criminal record

⁹ Vulnerable adult is defined at Article 3(1) of the Order as follows:

"3 Vulnerable adults

(1) A person is a vulnerable adult if he has attained the age of 18 and—

(a) he is in residential accommodation,

(b) he is in sheltered housing,

(c) he receives domiciliary care,

(d) he receives any form of health care,

(e) he is detained in lawful custody,

(f) he is by virtue of an order of a court under supervision by a probation officer,

(g) he receives a welfare service of a prescribed description,

(h) he receives any service or participates in any activity provided specifically for persons who fall within paragraph (9) [DN: Might be an idea to include the defn. from the guidance],

(i) payments are made to him (or to another on his behalf) in pursuance of arrangements under section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002 (c. 6), or

(j) he requires assistance in the conduct of his own affairs."

We have consulted publicly on minor refinements, but the definition will remain substantially as above.

¹⁰ S.I. 2003 No. 417 (N.I. 4).

¹¹ S.R. 2007/288

¹² Written Ministerial Statement on 1st April 2008 by Meg Hillier MP, Parliamentary Under Secretary of State, Home Office; see copy at Annex A, below.

certificates issued by AccessNI ("ANI disclosures") for new job applicants. ANI disclosures give employers information about an individual's criminal records or police intelligence information, which informs their assessment about the individual's suitability to work with children or vulnerable adults. They also show whether a person has been made subject to a disqualification order (see below) or is included in any of the lists, maintained by government departments, of persons barred from working with children or vulnerable adults. In Northern Ireland there are three barred lists, which are governed by different legislation, criteria and procedures. They are: the Unsuitable Persons List (kept under regulation 8 of the Unsuitable Persons Regulations), the Disqualification from Working with Children (DWC) List (kept under Article 3 of POCVA) and the Disqualification from Working with Vulnerable Adults (DWVA) List (kept under Article 35 of POCVA). Disqualification orders made by a court (under Article 23 or 24 of POCVA) also bar individuals from working with children. A reference to an 'existing restriction' in this Explanatory Memorandum should be read as a reference to being on one of these lists or being or subject to a disqualification order.

Key features of the Order

- 4.4 When implemented fully, the Order will replace the existing arrangements with a Scheme with the following key features:
- 4.4.1 an **Independent Barring Board** ("IBB"): The IBB, which trades under the name of the Independent Safeguarding Authority, was established on 2 January 2008. It is a non-departmental governmental body sponsored by the Home Office. Its primary functions will be to maintain the barred lists (see below) and to make decisions about whether individuals should be included in one or both lists;
- 4.4.2 **Barred lists**: there will be two barred lists - one of individuals barred from engaging in "regulated activity" (see below) with children (the "children's barred list"), and one of those barred from engaging in "regulated activity" with vulnerable adults (the "adults' barred list").
- 4.4.3 There will be **four routes to inclusion** in one or both barred lists:
- (i) automatic inclusion in one or both of the barred lists without the right to make representations or to appeal¹³. Inclusion in the lists on this basis will happen only where a person has been convicted of, or received a caution in relation to, one of a list of specified offences, or meets other prescribed criteria (such as being subject to an order, foreign order, or being included in a specified foreign barred list) that indicate, of themselves, that any offender would pose such a high risk to vulnerable groups that they simply could not make a case as to why they should be allowed to engage in regulated activity;
 - (ii) automatic inclusion in one or both of the barred lists with the right to make

¹³ See at Annex B, the relevant extract from a DCSF memorandum to the House of Lords Merits Committee on why the provisions described in this sub-paragraph are deemed compatible with the right to a fair trial (Article 6 of the ECHR).

representations as to why the person in question should be removed and a subsequent right of appeal following inclusion. Inclusion in the lists on this basis will happen where a person has been convicted of, or received a caution in relation to, one of a further list of specified offences or as a result of having met some other prescribed criteria;

(iii) inclusion on the basis that the person in question has engaged in “relevant conduct” i.e. broadly, that they have behaved in a way that has harmed or could have harmed a child or vulnerable adult or engaged in conduct involving child pornography or inappropriate sexual behaviour. In this case, the relevant individual will have the opportunity to make representations before they are included in a list and will have a subsequent right of appeal;

(iv) inclusion on the basis that the IBB is of the view that the person in question poses a risk of harm to children or vulnerable adults. Again, in this case the relevant individual will have the opportunity to make representations before they are included in a list and will have a subsequent right of appeal.

- 4.4.4 When IBB receives any information, it must consider whether it is relevant to IBB’s consideration of whether the individual, to which it relates, should be included in either list.
- 4.4.5 **Appeals**: there will be a right of appeal (against inclusion in a barred list as set out in 4.3.3 (ii) to (iv) above) to the Care Tribunal, with leave of the Care Tribunal, on a point of law or on a finding of fact made by IBB. On informing the barred person of IBB’s decision, it is expected that IBB will outline the factors taken into account in arriving at the decision.
- 4.4.6 **Regulated activity**: this is defined in Schedule 2 to the Order. Broadly, it covers a range of specified activities that provide an opportunity for close contact with children or vulnerable adults, other activities in key settings such as schools and care homes which provide an opportunity for contact, and key positions of responsibility such as the Commissioner for Children and Young People for Northern Ireland and a Director of Social Services of a Health and Social Services Board.
- 4.4.7 **Controlled activity**: this is defined in Articles 25 and 26 of the Order. Broadly, it covers support work in general health settings, further education settings and adult social care settings, which provide the opportunity for contact with children or vulnerable adults. It also covers work which gives a person the opportunity for access to sensitive health, educational or personal social service records about children and vulnerable adults. The Secretary of State has power to make regulations determining who may engage in controlled activity, what steps must be taken by the person permitting them to do so, and the circumstances in which a person must not allow another person to engage in controlled activity.
- 4.4.8 **Monitoring**: to become “subject to monitoring”, individuals will make an application to the Secretary of State - in practice, to AccessNI (ANI). ANI will check for any information relating to the individual and pass any that it

discovers to IBB. IBB will then consider whether the person should be barred from working with children and/ or vulnerable adults; or bar them automatically, where prescribed criteria are met. The Criminal Records Bureau (CRB), acting on behalf of England, Wales and Northern Ireland, must repeat these checks at intervals for as long as the individual remains subject to monitoring, again passing on any information that it discovers to IBB.

4.4.9 **Offences:** there will be a series of criminal offences to:

- prevent barred individuals from engaging in regulated activity in relation to children or vulnerable adults;
- ensure that people permitted to engage frequently or intensively in regulated activity in relation to children or vulnerable adults with the permission of a “regulated activity provider” (usually, the employer) are “subject to monitoring” (see above);
- ensure that relevant employers check an individual's status in the scheme before permitting an individual to engage in regulated activity in relation to children or vulnerable adults.

Transition

4.5 Schedule 6 to the Order makes provision for the transition from the current system to the new arrangements under the Order. Our aim is to ensure, as far as possible, that transition will be effective and maintain high levels of protection for vulnerable groups at every stage.

4.6 During the period leading up to the full implementation of the Order, there will be two phases of transition from existing to new arrangements. During phase one, all those who are subject to an existing restriction must be included, or considered for inclusion, in the new barred lists kept under the Order. This will be done in accordance with the Statutory Rules listed at paragraph 2.1 above, which are now in operation. During phase two, the Department of Health, Social Services and Public Safety and the Department of Education will cease making barring decisions on new referrals under the current arrangements. Instead, the law will require IBB to make barring decisions on new referrals made under the current Unsuitable Persons List, DWC List and DWVA List legislation (as listed at paragraph 4.3 above). This will be done under the Statutory Rules listed above at paragraph 2.2.

4.7 Further detail on how the new scheme will work is in the Explanatory Memorandum to the Order at http://www.opsi.gov.uk/si/si2007/em/uksiem_20071351_en.pdf (12 pages).

Grouping of implementation of secondary legislation

4.8 Secondary legislation required to give full effect to the Order will fall into one of two groups:

- The first group created IBB as a Non-Departmental Public Body and provided for people subject to existing restrictions or whose cases are being considered under the existing arrangements to be included or considered for inclusion in one or both of the two new lists;
 - The second group is required for the full commencement of the Order from the go-live date. Firstly, it will repeal the legislation underpinning the existing arrangements. Secondly, it will provide for the phasing-in of the duties and offences under the Order in relation to different groups of employees who are seeking to engage or are already engaged in regulated activity or controlled activity (see 4.2 above).
- 4.9 For each Statutory Rule (SR), we will submit an individual explanatory memorandum setting out the detail of the SR. Government consultation on policy issues in these SRs included two formal consultation documents, one in summer and one in autumn 2007. Details are set out below.
- 4.10 The Statutory Rules for the first group are as follows:
- 4.10.1 The Safeguarding Vulnerable Groups (2007 Order) (Commencement No.1) Order (Northern Ireland) 2008, S.R. 2008/127 (C.5), made on 14th March 2008, and (Commencement No.2) Order (Northern Ireland) 2008, SR 2008/233 (C.11) made on 29th May 2008;
- 4.10.2 The Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008, SR 2008/200 made on 6 May 2008, came into operation on 16 June 2008, which, as described above, requires IBB to transfer, or consider transferring, all those subject to existing restrictions to the new barred lists. Cases considered under this Order are handled in accordance with the procedural regulations referred to at paragraph 4.10.3 (and which are referred to in, and applied by, the Order) and by reference to the regulations referred to at paragraph 4.10.4;
- 4.10.3 The Safeguarding Vulnerable Groups (Barring Procedure) Regulations (Northern Ireland) 2008, SR 2008/203 made 6 May 2008, came into operation 16 June 2008, which make provision for representations to the IBB, and the periods that must elapse before a person may apply for permission to apply for a review of their inclusion in one of the barred lists;
- 4.10.4 The Safeguarding Vulnerable Groups (Prescribed Criteria) (Transitional Provisions) Regulations (Northern Ireland) 2008, SR 2008/201, made 6 May 2008, came into operation 16 June 2008, which specify the criteria which enable IBB to identify those individuals who do not have the right to make representations as to their inclusion in the new lists in accordance with the Transitional Provisions Order;
- 4.10.5 The Safeguarding Vulnerable Groups (Barred List Prescribed Information) Regulations (Northern Ireland) 2008, SR 2008/202 made 6 May 2008, came into operation 16 June 2008, which specify information which IBB must keep about people included in the barred lists; and

4.10.6 The Care Tribunal (Amendment) Regulations (Northern Ireland) 2008, SR 2008/249 made 10 June 2008 at the Northern Ireland Assembly, came into operation 21 July 2008, which set out the procedure to be followed by the Care Tribunal when considering appeals against decisions taken by IBB under the Order at 4.9.2 above.

5. Extent

5.1 The Order extends to Northern Ireland. The Order essentially mirrors those provisions set out in the Safeguarding Vulnerable Groups Act 2006 which extends to England and Wales. The Scottish Executive passed its own legislation, the Protection of Vulnerable Groups (Scotland) Act 2007, and has consulted on its implementation. The explanatory memorandum for each Rule made under the Order will set out the Rule's extent or application.

6. Policy background

6.1 The Bichard Inquiry Report (2004), at <http://www.bichardinquiry.org.uk>, identified systemic failures in current vetting and barring systems. These included:

- inconsistent decisions being made by employers on the basis of CRB disclosure information;
- CRB disclosure information accurate on the day of issue only;
- inconsistencies between current lists, which operated under different legislative procedures;
- a barring system, which was reactive to harmful behaviour rather than preventive;
- inconsistencies between police authorities in the disclosure of police information.

6.2 The aspects of policy most relevant to each of the Rules referred to at paragraph 2.1 are described in the respective Explanatory Memoranda for each Rule. In terms of the broader policy behind the Order, the intention is to address the failings identified at paragraph 6.1 and to put barring decisions into the hands of a body of experts that is independent of Government.

6.3 As described above, all those who are subject to current restrictions are to be included or considered for inclusion in the new barred lists. From the go-live date (see 4.2 above), inclusion on those lists will take effect to bar the relevant individuals from engaging in regulated activity with children and/ or vulnerable adults (the legislation does not prevent a barred individual engaging in controlled activity, though those with responsibility for managing controlled activity will be required to put in place safeguards to manage the risks posed by barred individuals).

- 6.4 It is government's intention to commence repeal (as provided for in the Order) of the current restrictions at the go-live date (subject to any savings that may be necessary).
- 6.5 Because the Government is still finalising details about the later stages of implementation, a further supplementary over-arching memorandum will be submitted once further substantive details have been finalised. In addition, the Government will publish a suite of guidance documents to help intermediary bodies, employers, employees and volunteers understand clearly their rights and responsibilities under the new scheme. This will be published well in advance of the go-live date. The guidance will take account of the outcome of the Government's most recent public consultation, see below.
- 6.6 **Public Consultation:** The Government consulted publicly in summer and autumn 2007. The results were published, first on 14 November 2007 at: <http://www.dfes.gov.uk/consultations/conResults.cfm?consultationId=1476> ; and second on 30 May 2008 (details below) at: <http://www.dcsf.gov.uk/consultations/conResults.cfm?consultationId=1516> . The explanatory memorandum with each Statutory Rule, where relevant, gives further detail on any consultation responses relevant to that SR.
- 6.7 **In 2007 and 2008 we undertook a series of stakeholder information events in Northern Ireland. Further events will be arranged between now and go-live. Information on the stakeholder events can be found at: <http://www.dhsspsni.gov.uk/svg>. That website also contains a number of fact sheets and background documents on the new Scheme. A new telephone helpline will be available to help support stakeholders across England, Wales and Northern Ireland, including employers and employees. The purpose of the helpline is to address specific stakeholder queries, to help with their understanding of the new Vetting and Barring Scheme.**
- 6.8 **The second formal consultation on implementation of the Scheme set out in detail how it is intended that the Vetting and Barring Scheme will operate. Details of the Scheme's processes are still being designed and computer systems built. This consultation invited views on a range of issues that are fundamental to implementing the Scheme. It covered:**
- **the definitions of children and of vulnerable adults;**
 - **further defining the scope of regulated activity and controlled**

- activity;
- eligibility to make checks on an employee's status in the Scheme;
- how to apply to the Scheme;
- phasing-in of applications to the Scheme;
- the application fee;
- referring information to IBB; and
- representations and appeals against barring decisions.

7. Impact

- 7.1 England and Wales have already carried out a Regulatory Impact Assessment and after consideration it was concluded that the benefits outweigh the costs. The existing published Assessment for the overall Vetting and Barring scheme, signed by a Minister in July 2006, is at: www.dfes.gov.uk/ria/index.cfm?action=assessments.view&i_assessmentID=73 . At Annex A is a copy of the announcement by the Home Office Minister, which showed revised total cost figures. We are of the view, given the similarities of the Northern Ireland scheme, that we have no reason to conclude that the impacts would be any different in Northern Ireland.

8. Contact

- 8.1 Eilis McDaniel, Department of Health, Social Services and Public Safety, Tel: 028 9052 6429 or email eilis.mcdaniel@dhsspsni.gov.uk can answer any queries.

DHSSPS, January 2009.

Annexes

- A Written Ministerial Statement by the Parliamentary Under Secretary of State for Identity (Meg Hillier), Tuesday 1 April 2008.
- B DCSF memorandum to the House of Lords Merits Committee, published in the 15th Report of Session 2007-08, 19th March 2008.

Annex A

Reference from Explanatory Memorandum para 4.2 (footnote) and 7.1

WRITTEN MINISTERIAL STATEMENT

Tuesday, 1 April 2008

HOME OFFICE INDEPENDENT SAFEGUARDING AUTHORITY

The Parliamentary Under Secretary of State for Identity (Meg Hillier): Further to the Written Statement made by my rt hon Friend the Secretary of State for Children, Schools and Families on 17 March, I am pleased to announce plans for the work of the new Independent Safeguarding Authority (ISA), together with the fee to be charged for applications.

The Independent Safeguarding Authority was established in January this year under powers in the Safeguarding Vulnerable Groups Act 2006. It will meet the aims of one of the key recommendations made by the Bichard Inquiry, which pointed to the need for a scheme to register those seeking work with children or other vulnerable groups.

The ISA's role will be to consider all relevant information relating to the risk of harm posed by persons seeking to work with children or vulnerable adults, in either a paid or voluntary capacity, and to bar those considered unsuitable for such work. The transition to the new scheme is now underway. From 31 March this year, the ISA began to advise the Secretaries of State for Children, Schools and Families and for Health in connection with new cases arising under the existing barring arrangements, in accordance with the provisions of paragraph 1 of Schedule 8 to the Safeguarding Vulnerable Groups Act. From 7 April this year, cases will be referred to the ISA under the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008, under which ISA must include, or consider including, in the new barred lists those individuals who are barred under the current schemes.

From October 2009 the new ISA scheme will "go-live". From that point, the scheme will consider new applications in relation to persons seeking work with children or vulnerable adults. The fee charged for ISA scheme applications has been set at £28. This is based on cost recovery of the operational costs for the scheme over its first five years of operation, estimated at £246m. The scheme will cost £84m to set up.

Taken together with the fee required for an enhanced Criminal Records Bureau disclosure check, the total fee for an initial application will be £64. Under the planned arrangements, the ISA element of the fee will be payable only on first joining the scheme. Once registered, employers will be able to verify an applicant's registered status in the scheme by means of a free on-line check. No fee will be payable by those in unpaid voluntary work. The need for subsequent CRB checks will remain a matter for employers, except in those sectors where it is a legal requirement.

The establishment of the ISA plays an important part in the Government's agenda to meet the Bichard recommendations and ensure the most robust procedures are in place to safeguard children and other vulnerable groups.

Annex B

Reference from Explanatory Memorandum para 4.4.3 (i) footnote

Extract from DCSF memorandum to the House of Lords Merits Committee, published in the 15th Report of Session 2007-08, pages 31-32, 19th March 2008

Q1: In order to understand why the provisions described at 4.4.3(i) of the overarching memorandum, i.e. withholding the right to make representations or appeal, are deemed compatible with the right to a fair trial (Article 6 of the ECHR), the Committee would like more information about what individuals would be covered by them, i.e. what are the offences / criteria that would place them in this category.

A1: The information requested is below.

1. By way of introduction:

[a] in the Government's view, the act of barring a person from engaging in an area of activity *automatically, without the right to make representations (as described in para. 4.4.3(i) of the Overarching Memorandum)* does not constitute the determination of a civil right. Consequently, the Government's view is that the right to a fair trial is not engaged by these Regulations. As the Minister said in his reply to the Joint Committee on Human Rights:

"Article 6(1) provides: "In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...". But these guarantees apply only where there is a *determination* of a person's civil rights. As the bar is an automatic one, arising by operation of law, there can be no dispute of law and so I am advised that article 6 has no relevance." (PUSS Parmjit Dhanda MP to Andrew Dismore MP, Chair, JCHR, 10th October 2006);

[b] paragraph 4.4.3 of the Overarching Memorandum relates to how barring will work once the Safeguarding Vulnerable Groups Act 2006 has been brought into force fully, rather than to the process of transferring everyone who is currently barred from working with children or vulnerable adults to the new lists. The intention is that the future list of offences which will lead to a person being included in a barred list without the right to make representations should be as close as possible to the list which will mean that a currently barred person has no right to make representations when transferred to new lists under the 2006 Act: see paragraph 7.5 of the Explanatory Memorandum for the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria)(Transitional Provisions) Regulations.

2. Turning to the specific information requested by the Merits Committee: as stated at para 4.9.4 of the overarching memorandum, it is the Prescribed Criteria - Transitional Provisions regulations themselves which specify the criteria which will enable the Independent Safeguarding Authority (the ISA; called IBB in the legislation) to identify" individuals who "will not have the right to make

representations". The offences and criteria are in the schedule: paragraph 1 and its table relate to children; paragraph 2 and its table relate to vulnerable adults.

3. The Committee will appreciate that the nature of the offences here is very high-risk and serious, and along with the specified circumstances of commission (e.g. where the offence was committed against a child) very specific. They are all offences of a sexual nature, involving young children, a lack of consent and/ or an abuse of a position of trust. In addition, they relate to where the offence was committed fairly recently – within the last 10 years – which places it at the high end of the risk spectrum. The Committee might wish to note that the starting point for this list of offences was the list that currently leads to an automatic direction, without the right to make representations, under section 142 of the Education Act 2002 (which governs “List 99”). To this were added some further offences, particularly offences relating to the health care sector. However, the key point that we would wish to draw to the Committee’s attention is that the concept of a scheme under which a person may be barred from working with a particular group without being given the chance to make representations in his own favour is nothing new.

Finally, the Committee may find it helpful to note that these regulations cover individuals who are already barred, and will continue to be barred on the current lists until the new scheme comes into force. The new scheme merely changes the scope of that bar. A barred individual will of course have an opportunity to apply for a review of his listing at the end of his barred period if his circumstances change. And the provisions of the associated Barring Procedure Regulations mean that this period is merely the balance of the period of his original bar.

[Ends]