

EXPLANATORY MEMORANDUM TO
THE SAFEGUARDING VULNERABLE GROUPS (PRESCRIBED CRITERIA
AND MISCELLANEOUS PROVISIONS) (AMENDMENT) REGULATIONS
(NORTHERN IRELAND) 2012

2012 No. 319

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 makes some changes to the list of criminal offences which lead to a person being barred from working with children and/or vulnerable adults by the Independent Safeguarding Authority.
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 established a unified system for barring people from working with children and vulnerable adults if those people posed a risk of harm to vulnerable groups, or are considered inappropriate to undertake such work. The Independent Barring Board, later renamed as the Independent Safeguarding Authority (ISA), was established as a central authority to make decisions about who should be barred and to maintain lists of those barred. The SVGO listed the work and roles - 'regulated activity' - which a barred person must not do
 - 4.2 The SVGO also allows the Secretary of State to prescribe the criteria which lead to someone being placed on the ISA's barred list(s). Such regulations were made in the Safeguarding Vulnerable Groups (Prescribed Criteria and Miscellaneous Provisions) Regulations (Northern Ireland) 2009 (SR. 2009. No. 39, as modified by SR 2009 No. 306 and SR 2010. No. 31). Those Regulations essentially specify the criminal offences in relation to which a conviction or caution will lead to someone being placed on the ISA's barred list(s). This Rule makes a number of amendments to those Regulations
 - 4.3 This Rule is being laid alongside a number of other Rules made under the SVGO which will also give effect to changes in the Protection of Freedoms Act 2012 ('PoFA'). Those are: the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order (Northern Ireland) 2012; the

Safeguarding Vulnerable Groups (Miscellaneous Provisions) Order (Northern Ireland) 2012; and the Safeguarding Vulnerable Groups (Miscellaneous Provisions) 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). 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 operate as an independent 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. The aim was to replace the existing disqualification systems, under which decisions about a person's suitability to work with children or vulnerable adults were taken by Secretaries of State in England and Wales, by Government Departments in Northern Ireland or by sentencing judges. In the majority of cases, a decision to bar someone under the SVGO follows from a conviction or caution for an offence specified in regulations made under that Order. The SVGO also lists the work and roles - 'regulated activity' - involving contact with children and vulnerable adults, which a person whom the ISA has barred must not do.

7.3 The policy of the current Government, supported by the Northern Ireland Assembly and Executive, is to scale back the barring arrangements to more proportionate levels. The Protection of Freedoms Act 2012 gives effect to this policy; amongst other things, it repeals the registration scheme and significantly scales back the scope of regulated activity.

7.4 These Regulations also make some changes to the regulations that specify the offences which lead to a person being barred. The current regulations essentially contain four lists of offences: those which lead to a person being barred automatically from working with children without the right to make representations, those which lead to a person being barred automatically from working with children with the right to make representations, and the two equivalent lists for work with vulnerable adults. In almost all cases, this Rule makes changes to the two lists where representations are permitted. These changes are not consequential on the changes in the Protection of Freedoms Act 2012, but are being made *in tandem* with its implementation for simplicity. The changes derive from recent changes in the law, a review of the current criteria and the need to make some technical amendments. In summary, the changes are:

a. The removal from the two ‘with representations’ lists of three offences in the Mental Health Act 1983, which do not meet the criteria for automatic bars. Those criteria are essentially that the nature of the offence suggests that an individual does pose a risk of harm to children or vulnerable adults, but that the risk of harm might not be posed in some atypical circumstances of commission.

b. The insertion into all four lists of offences from the Sexual Offences (Scotland) Act 2009, which post-dated the original regulations. Although these regulations extend only to Northern Ireland, they include English, Welsh and Scottish offences which also lead to barring by the ISA.

c. The insertion into the two ‘with representations’ lists of eleven offences which meet the criteria for automatic bars. These comprise three offences relating to female genital mutilation, two offences relating to the possession of pornographic images, two new offences related to people trafficking, one offence relating to the commission of sexual offences outside the UK and three sexual offences specific to Scottish or Northern Irish legislation.

d. The insertion into the adults’ ‘with representations’ list of a Scottish trafficking offence which is currently on the children’s ‘with representations’ list.

e. Some changes which reflect the reduction in the age of consent in Northern Ireland from 17 to 16.

f. Chapter 4 of Part 5 of the Protection of Freedoms Act 2012 also allows someone with a conviction or a caution for certain sexual offences which would not now be an offence to apply to have that conviction or caution disregarded. This Rule specifies that a disregarded conviction or caution will not lead to barring.

g. Some textual amendments which do not represent substantive changes.

7.5 It is necessary to amend the existing legislation in order to give effect to

Schedule 7 to the Protection of Freedoms Act 2012 and to incorporate changes in law in relation to automatic barring of individuals.

- *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 prescribed criteria for the offences which lead to automatic bars were the subject of a public consultation in 2007. As these changes are limited, they have not been subject to consultation, but they are informed by the work and views of the Independent Safeguarding Authority.

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. Information about the changes to the prescribed criteria is also being provided specifically to the courts.

10. Impact

10.1 The changes to the Safeguarding Vulnerable Groups (Prescribed Criteria and Miscellaneous Provisions) Regulations (Northern Ireland) 2009 will have no impact on business, charities and voluntary bodies. The impact on the public sector is very low. The will have a small impact on the workload of the Independent Safeguarding Authority. As police officers who administer a caution for a prescribed offence and judges who sentence a person for the same must inform the person that they will (or may) be barred, there will be a very minor impact on them

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

11. Regulating small businesses

11.1 This Rule itself has no impact on small business.

12. Monitoring & review

12.1 The prescribed criteria and other aspects of the barring arrangements will remain subject to internal review.

13. Contact

13.1 Eilis McDaniel at the Department of Health, Social Services and Public Safety. Telephone: 028 90 523263. Email: eilis.mcdaniel@dhsspsni.gov.uk