

## EXECUTIVE NOTE

### THE PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007 (CORRESPONDING DISQUALIFICATIONS) ORDER 2010 (SSI 2010/346)

#### **Powers under which Instrument is made**

1. The Protection of Vulnerable Groups (Scotland) Act 2007 (Corresponding Disqualifications) Order 2010 (“the Corresponding Disqualifications Order”) is made by Scottish Ministers in exercise of powers conferred by section 98(1)(b) of the Protection of Vulnerable Groups (Scotland) Act 2007 (“the PVG Act”).

#### **Parliamentary procedure**

2. This Scottish Statutory Instrument is a class 5 instrument subject to the negative resolution procedure at the Scottish Parliament.

#### **Summary of policy proposals**

##### The Protection of Vulnerable Groups (Scotland) Act 2007

3. Under Part 5 of the Police Act 1997 (“the 1997 Act”), the Scottish Ministers may carry out criminal record checks. There are currently three levels of checks: the criminal conviction certificate (basic disclosure); the criminal record certificate (standard disclosure); and the enhanced criminal record certificate (enhanced disclosure). Most enhanced checks are carried out for the purpose of assessing the suitability of a person for working with vulnerable groups. Around 700,000 people in Scotland work with vulnerable groups, either through their paid employment or as volunteers. Since April 2002, the Scottish Government and BT have worked in partnership as Disclosure Scotland to provide criminal record checks for Scotland. Since then, over 5 million applications have been made for basic, standard and enhanced disclosures. In the 2008/09 financial year<sup>1</sup>, 360,000 enhanced disclosures were processed for the purposes of working with vulnerable groups.
4. Since 10 January 2005, Scottish Ministers have kept a list of individuals who are considered unsuitable to work with children - the Disqualified from Working with Children List - introduced by the Protection of Children (Scotland) Act 2003 (“POCSA”). It is an offence for anyone on the list to work in a child care position in Scotland. In the first five years of operation, 393 individuals have been listed on DWCL.
5. The PVG Act, when it is fully commenced on 30 November 2010, will provide for a new vetting and barring scheme. This means that the use of disclosure checks under the 1997 Act for work with children and protected adults will end. They will be replaced by new types of disclosure requests under the PVG Act. For ease of reference, the Scottish Government is referring to this as the PVG Scheme. The PVG Scheme will ensure that those who either have regular contact with vulnerable groups

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<sup>1</sup> This is the financial year on which the RIA is based. The figure for the 2009/10 financial year is 350,000 enhanced disclosures.

through the workplace, or who are otherwise in regulated work, do not have a history of abusive behaviour. It will exclude people who are known to be unsuitable, on the basis of past behaviour, from working with children and/or protected adults and detect those who become unsuitable while in the workplace. The Scottish Ministers will continue to keep a list of individuals who are considered to be unsuitable to work with children (“the PVG children’s list). Under the PVG Act, the Scottish Ministers will, for the first time in Scotland, keep a list of those who are barred from working with protected adults (“the PVG adults’ list”).

6. The PVG Scheme will be managed and delivered by Disclosure Scotland as an executive agency, which will also continue to deliver the other types of disclosure (which will still be available under the 1997 Act for checks which are not for the purposes of work with children or protected adults). A new team within Disclosure Scotland will receive and consider referrals and take decisions, on behalf of Scottish Ministers, about those people who may be unsuitable to work with children or protected adults. The team will gather and assess all relevant information to make listing decisions.
7. For more information about how the PVG Scheme will work, see the guidance document<sup>2</sup> and training materials published on the Disclosure Scotland website which can be accessed through:  
[www.infoscotland.com/pvgscheme](http://www.infoscotland.com/pvgscheme)

### The Corresponding Disqualifications Order

#### *Provision in the PVG Act*

8. Sections 92(1)(a) and (2)(a) of the PVG Act make provision such that any individual who is included on the PVG children's list or PVG adults' list is barred from doing the corresponding type of regulated work. But section 92 goes further and recognizes other lists as corresponding to the PVG children's list or PVG adults' list and also leading to barring in Scotland.
9. The Safeguarding Vulnerable Groups Act 2006 (“the SVG Act”) establishes a vetting and barring scheme for England and Wales and enables such arrangements to be made for Northern Ireland. The SVG Act establishes the Independent Safeguarding Authority (“the ISA”) which makes decisions to bar individuals from working with children or vulnerable adults for England and Wales and Northern Ireland. It also establishes the SVG children’s barred list and SVG adults’ barred list for England and Wales.
10. When the PVG Act was completing its passage at the Scottish Parliament in early 2007, the SVG Act had already received Royal Assent and it was anticipated that by the time the PVG Act came into force the only barred lists for England and Wales which would require to be recognised would be the children’s barred list and adults’ barred list maintained under the SVG Act. For this reason, sections 92(1)(b) and (2)(b) make reference to the SVG barred lists. So, for example, section 92(1)(b) has

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<sup>2</sup> *Protecting Vulnerable Groups Scheme: Guidance for Individuals, Organisations and Personal Employers*, The Scottish Government, June 2010.

the effect that individuals included on the SVG children's barred list are barred from regulated work with children in Scotland.

11. The Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (SI 2003/417) (“the POCVA Order”) established lists of individuals considered unsuitable to work with children and vulnerable adults in Northern Ireland and provides that listed persons are disqualified from doing such work in Northern Ireland. The POCVA Order has been superseded by the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (“the SVG NI Order”) which establishes the SVG NI children’s barred list and SVG NI adults’ barred list for Northern Ireland.
12. However, the later timing of the SVG NI Order meant that the 2007 Act could not make reference to it and, instead, the extant POCVA Order is referred to in sections 92(1)(c) and (2)(c). However, the need to update the references at sections 92(1) and (2) was anticipated and the power to substitute them provided at sections 92(5) and (6) respectively.

*Barred lists currently in operation across the UK*

13. Currently, POCSA is the only barred list maintained in Scotland. On 30 November 2010, this will be superseded by the PVG children's list and supplemented by the PVG adults' list. The situation outside Scotland is more complicated.
14. Once the various transitional phases in England and Wales and Northern Ireland are over and case migrations are complete (see below), it is anticipated that the only other operational barred lists in the UK will be the SVG barred lists and the SVG NI barred lists. At that point, the Corresponding Disqualifications Order will be revoked and the powers at sections 92(5) and (6) exercised to substitute references to POCVA with references to the SVG NI Order. At the present time, however, a number of barred lists are still in operation across the UK:
  - (a.) The SVG children's barred list and adults barred list for England and Wales.
  - (b.) The SVG NI children's barred list and adults barred list for Northern Ireland.
  - (c.) The list kept under section 1 of the Protection of Children Act 1999 (so-called “POCA List”) which disqualifies individuals from working in certain child care positions. The ISA is considering each individual included on this list for migration to the SVG children’s barred list. This process requires case-by-case consideration with individuals either being migrated or de-barred.
  - (d.) The list of individuals subject to directions under section 142(1)(a) of the Education Act 2002 (so-called “List 99”) which disqualifies individuals from working in certain child care positions. The ISA is considering each individual included on this list for migration to the SVG children’s barred list.
  - (e.) The list kept under section 81 of the Care Standards Act 2000 (so-called “POVA List”) which disqualifies individuals from working with vulnerable adults. The ISA is considering each individual included on this list for migration to the SVG adults’ barred list.
  - (f.) The lists of individuals considered unsuitable to work with children and vulnerable adults in Northern Ireland under POCVA (so-called “POCVA Lists”). The ISA is considering each individual included on these lists for migration to the respective SVG NI barred lists.

- (g.) The list of individuals subject to disqualification orders (within the meaning of Part II (protection of children) of the Criminal Justice and Court Services Act 2000 which disqualify individuals from working in certain child care positions. The ISA is considering each individual included on this list for migration to the SVG children's barred list.
  - (h.) The list kept for the purposes of regulations made under article 70(1) or (2)(e) or 88A(1) or (2)(b) of the Education and Libraries (Northern Ireland) Order 1986 which disqualifies individuals from working in certain child care positions on the grounds that they are unsuitable to work with children ("the Education and Libraries List"). The ISA is considering each individual included on this list for migration to the SVG NI children's barred list.
  - (i.) The list of individuals subject to disqualification orders (within the meaning of articles 23 or 24 of POCVA) which disqualify individuals from working in certain child care positions. The ISA is considering each individual included on this list for migration to the SVG NI children's barred list.
15. Once the case migrations to the SVG barred lists and SVG NI barred lists are concluded, the other lists will be empty and the provisions in primary legislation will be fully repealed. For England and Wales, the Safeguarding Vulnerable Groups Act 2006 (Commencement No. 6, Transitional Provisions and Savings) Order 2009 (SI 2009/2611) commenced provision in the SVG Act which repeals relevant parts of the Protection of Children Act 1999, the Care Standards Act 2000, Criminal Justice and Court Services Act 2000 and the Education Act 2002. But, until the ISA has completed the process of migrating individuals included on these lists to the SVG barred lists, savings provisions in SI 2009/2611 preserve the POCA List, POVA List, List 99, disqualification orders and the effect of such listings for unmigrated cases.
16. For Northern Ireland, the Safeguarding Vulnerable Groups (2007 Order) (Commencement No. 5, Transitional Provisions and Savings) Order (Northern Ireland) 2009 (SR 2009/346) commenced provision in the SVG NI Order which repeals the relevant parts of the POCVA Order and the relevant parts of the regulations made under the Education and Libraries (Northern Ireland) Order 1986. But, until the ISA has completed the process of migrating individuals included on these lists to the SVG NI barred lists, savings provision in SR 2009/346 preserve the POCVA Lists, the Education and Libraries List, disqualification orders and the effect of such listings for unmigrated cases.

*Individuals barred from regulated work with children*

17. Section 17(1) of POCSA currently provides that a person is disqualified from working with children in the following circumstances:
- (a.) An individual included (otherwise than provisionally) in the list kept under section 1 of POCSA is currently barred from working in a child care position in Scotland. Section 43 of the 2007 Act provides for these individuals to be included in the PVG children's list. So they will continue to be barred from regulated work with children by virtue of section 92(1)(a) of the 2007 Act.
  - (b.) An individual included in the SVG children's barred list is currently barred from working in a child care position in Scotland. Article 4 of the Protection of Vulnerable Groups (Scotland) Act 2007 (Transitory Provisions in Consequence of the Safeguarding Vulnerable Groups Act 2006 (No. 2) Order 2009 (SSI

2009/337) modified section 17(1) of POCSA to this effect. SSI 2009/337 will expire on 30 November, when the PVG Act is substantively commenced. But such individuals will continue to be barred from regulated work with children by virtue of section 92(1)(b) of the 2007 Act.

- (c.) An individual included (otherwise than provisionally) in the list kept under section 1 of POCA (the POCA List) is currently barred from working in a child care position in Scotland. Article 2(a) of the Corresponding Disqualifications Order makes provision for this to continue to have effect by modifying the effect of section 92 of the 2007 Act as if a new subsection (1)(aa) were inserted into section 92.
  - (d.) An individual subject to a direction under section 142(1)(a) of the Education Act 2002 (List 99) given on the grounds mentioned in section 142(4)(b) not to carry on work to which that section applies is currently barred from working in a child care position in Scotland. Article 2(a) of the Corresponding Disqualifications Order makes provision for this to continue to have effect by modifying the effect of section 92 of the 2007 Act as if a new subsection (1)(ab) were inserted into section 92.
  - (e.) An individual subject to a disqualification order (within the meaning of Part II (protection of children) of the Criminal Justice and Court Services Act 2000) is currently barred from working in a child care position in Scotland. Article 2(a) of the Corresponding Disqualifications Order makes provision for this to continue to have effect by modifying the effect of section 92 of the 2007 Act as if a new subsection (1)(ac) were inserted into section 92.
  - (f.) An individual subject to a prohibition or disqualification which had been by order made to be equivalent to a disqualification under section 17(1)(a) to (b) of POCSA is also barred from working in a child care position in Scotland. Two such orders have been made, discussed at paragraphs 18 and 19 below.
18. The first order to be made was the Protection of Children (Scotland) Act 2003 (The Meaning of Disqualified from Working with Children: Corresponding Disqualifications in Northern Ireland) Order 2009 (SSI 2009/39) which came into force on 1 April 2009 and barred individuals disqualified from working with children under the POCVA Order from working in a child care position in Scotland. The effect of this Order was to disqualify individuals who, in Northern Ireland, were included (otherwise than provisionally) on the list under section 3 of POCVA, or were included in the list kept for the purposes of regulations made under article 70(1) or (2)(e) or 88A(1) or (2)(b) of the Education and Libraries (Northern Ireland) Order 1986 on the grounds that the individual was unsuitable to work with children, or were subject to a disqualification order made by a court under articles 23 or 24 of POCVA.
19. The second order to be made was the Protection of Children (Scotland) Act 2003 (The Meaning of Disqualified from Working with Children: Corresponding Disqualifications in Northern Ireland) (No. 2) Order 2009 (SSI 2009/316) which came into force on 12 October 2009 and recognised the SVG NI children's barred list so that individuals disqualified under that Order are also prohibited from working in a child care position in Scotland.
20. Article 3 of the Corresponding Disqualifications Order revokes both SSI 2009/39 and SSI 2009/316. The former SSI is superseded by provision already made at section 92(1)(c) and by virtue of articles 2(b) and (c) of the Corresponding Disqualifications

Order which modify the effect of section 92 of the 2007 Act as if new subsections (1)(ba) and (ca) were inserted into section 92. The latter SSI is superseded by virtue of article 2(c) of the Corresponding Disqualifications Order which modifies the effect of section 92 of the 2007 Act as if a new subsection (1)(cb) were inserted into section 92.

21. The fact that an individual is included on any of these lists is currently disclosed on enhanced disclosures with children's suitability statements.

#### *Individuals barred from regulated work with adults*

22. Currently, there is no adults' list maintained in Scotland nor is anybody barred from working with protected adults. However, under the PVG Act, an individual will be barred from doing regulated work with adults in the following circumstances:
  - (a.) An individual included on the PVG adults' list will be barred from regulated work with adults by virtue of section 92(2)(a).
  - (b.) An individual included in the SVG adults' barred list will be barred from regulated work with adults by virtue of section 92(2)(b).
  - (c.) An individual included (otherwise than provisionally) in the POCVA adults' barred list will be barred from regulated work with adults by virtue of section 92(2)(c).
  - (d.) An individual included (otherwise than provisionally) in the list kept under section 81 of the Care Standards Act 2000 (the POVA List) will be barred from regulated work with adults by virtue of article 2(d) of the Corresponding Disqualifications Order which modifies section 92 of the PVG Act as if a new subsection (2)(aa) were inserted into section 92.
  - (e.) An individual included in the SVG NI adults' barred list will be barred from regulated work with adults by virtue of article 2(e) of the Corresponding Disqualifications Order which modifies section 92 of the PVG Act as if a new subsection (2)(ca) were inserted into section 92.
23. The fact that an individual is included on any of these lists is currently disclosed on enhanced disclosures with adults' suitability statements.

#### **Consultation**

24. A Scottish Government consultation "*Protection of Vulnerable Groups (Scotland) Act 2007 Scottish Vetting and Barring Scheme -Consultation on Policy Proposals for Secondary Legislation*" took place between 1 November 2007 and 12 February 2008. The purpose of the written consultation was to allow respondents to inform the detail of policy proposals for secondary legislation. It set out a number of options for each major issue as well as seeking general comments on the proposals. The Scottish Government received 199 responses to the consultation.
25. The consultation was supported by seven PVG consultation events in cities across Scotland attended by 875 people and nine events provided by the Central Registered Body in Scotland (CRBS) attended by 176 people from November 2007 through to January 2008. The CRBS events were not formal consultation events, but were supported by the Scottish Government and intended to complement the PVG

consultation events. The CRBS events reached rural communities and delegates were primarily from the voluntary sector.

26. The analysis of the consultation was published in the "*Protection of Vulnerable Groups (Scotland) Act 2007, Scottish Vetting and Barring Scheme, Analysis of consultation on policy proposals for secondary legislation*" on 27 June 2008 and the Scottish Government's response was published in the "*Scottish Government response to the analysis of consultation on policy proposals for secondary legislation*" on 6 October 2008.
27. In June 2009, the Scottish Government hosted a series of eight information events to bring organisations up to speed with implementation activities and provide an opportunity to consider and discuss aspects of the PVG Scheme. The events were attended by around 1300 people from organisations that are registered with Disclosure Scotland, have a regulatory role, or that represent groups and/or organisations that work with vulnerable groups. Although not part of a formal consultation exercise, the opportunity was taken to seek feedback on policy developments around regulated work and the structure of the guidance.

#### *Issues specific to the Corresponding Disqualifications Order*

28. The Corresponding Disqualifications Order has not been subject to direct consultation. This is because the provision is effectively determined by the overarching policy objectives of recognizing other equivalent UK barred lists and maintaining the effect of current bars through the transition to the PVG Scheme. These policy objectives were established during the instruction and Parliamentary passage of the PVG Act and largely given effect in the drafting of the PVG Act. Chapter 6 of the 2007 consultation paper elaborated on the proposals for recognizing barred lists from other UK jurisdictions and respondents who commented were broadly supportive of the approach outlined.

#### **Financial effects and Regulatory Impact Assessment**

29. The *Protection of Vulnerable Groups (Scotland) Act 2007 - Secondary Legislation - Partial Regulatory Impact Assessment (RIA No. 2007/40)* was published on 15 November 2007 to accompany the consultation on secondary legislation. Although comments were invited, no specific comments were made in respect of the RIA. A revised draft RIA (RIA No. 2009/03) was published to accompany the significant draft SSIs published for consultation on 10 November 2009. Responses to the consultation exercise have been taken into account in finalising the RIA. The final RIA (also RIA No. 2009/03) can be found at: [www.scotland.gov.uk/pvglegislation](http://www.scotland.gov.uk/pvglegislation)

Scottish Government  
Children, Young People and Social Care Directorate