

EXPLANATORY MEMORANDUM TO
THE SAFEGUARDING VULNERABLE GROUPS (PRESCRIBED CRITERIA
AND MISCELLANEOUS PROVISIONS) REGULATIONS (NORTHERN
IRELAND) 2009

SR 2009 No. 39

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. These Regulations set out prescribed criteria needed for the purposes of the Safeguarding Vulnerable Groups (Transitory Provisions) Order (Northern Ireland) 2009, which is intended to come into operation on 13th March 2009; and for the purposes of the full implementation of Schedule 1 (Barred Lists) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007¹ (“the Order”). They also make amendments connected to the arrangements provided for under the Transitory Provisions Order.

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

3.1. None. These Regulations are subject to the negative resolution procedure.

4. Legislative Context

4.1. The Order reforms arrangements for safeguarding children and vulnerable adults from harm or the risk of harm by employees (paid or unpaid) whose work gives them significant access to these groups. The new arrangements it introduces will replace those provided for under the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (“the POCVA Order”) and the Education (Prohibition from Teaching or Working with Children) Regulations (Northern Ireland) 2007 (“the Unsuitable Persons Regulations”).

4.2. The Safeguarding Vulnerable Groups Act 2006 (“the Act”) creates the Independent Barring Board (IBB)² to maintain a list of individuals barred from working with these vulnerable groups, and decides whether to include an individual on one or both lists. The IBB will use its expertise to assess all available relevant information, including cautions and convictions specified under the Prescribed Criteria and Miscellaneous Provisions Regulations. The barred lists maintained by the IBB will form the means by which the scheme will keep a record of those who are not permitted to work in Regulated Activity.

¹ 2007 No. 1351 (N.I. 11).

² The IBB is established under Section 1 of the Act, and works under the name “Independent Safeguarding Authority” – ISA.

- 4.3. These Regulations follow on from Transitional Regulations made under the Order³, which set out prescribed criteria for the purpose of the IBB identifying individuals on current barred lists who do not have the right to make representations as to their inclusion on an IBB barred list in accordance with the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008 (S.R. 2008/200). These Regulations set out prescribed criteria applicable from the date when the Transitory Provisions Order comes into operation (from then, IBB will take barring decisions instead of Northern Ireland Departments), which will continue to be used after go-live of the Vetting and Barring Scheme. The prescribed criteria in relation to automatic barring without a right to representations are similar in both cases, and build on the consultation mentioned at paragraph 8 below. The Safeguarding Vulnerable Groups (Barring Procedure) Regulations (Northern Ireland) 2008 (S.R. 2008/203) make provision relating to matters such as the time in which an individual is to be allowed to make representations and the time that must elapse before he is allowed to apply for permission to apply for a review of his inclusion on a barred list.
- 4.4. Further detail on the legislative background to the Order is set out in a supplement to the previous over-arching explanatory memorandum on the implementation of the Order, at Annex 1 below.
- 4.5. These Regulations are the second set to be made under paragraphs 1(1), 7(1), and 24(1) of Schedule 1 to the Order (the first were the Transitional Regulations, mentioned at 4.3 above); and the first under paragraphs 2(1) and 8(1).

5. Territorial Extent and Application

- 5.1. This statutory rule extends to Northern Ireland. A separate instrument has been made in relation to England and Wales.
- 5.2. The list of offences includes offences under the law of Scotland, England and Wales, as do current automatic barring offences that operate for the Unsuitable Persons List under regulation 6 of the Unsuitable Persons Regulations. The Scottish Executive is introducing a parallel scheme under the Protection of Vulnerable Groups Act (Scotland) 2007. The Department for Children, Schools and Families is also legislating similarly for England and Wales under the Safeguarding Vulnerable Groups Act 2006.

6. European Convention on Human Rights

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

7. Policy Background

³ The Safeguarding Vulnerable Groups (Prescribed Criteria) (Transitional Provisions) Regulations (Northern Ireland) 2008, SR 2008/200 (“the Transitional Regulations”).

Automatic Barring and the Prescribed Criteria

- 7.1. The IBB will take decisions in relation to whether a person should be included or removed from the barred lists under the new scheme. The condition for inclusion is that an individual poses a risk of harm to children or vulnerable adults, and that risk of harm is such that the individual should be barred from working or volunteering with children and/or vulnerable adults. Whilst assessing the relevant information in relation to including an individual on one of the barred lists, the IBB will also determine whether it is appropriate to include him on the other list. If the IBB is satisfied that a case meets the condition for inclusion it will place the individual on the relevant barred list, or on both lists where appropriate.
- 7.2. Conviction or caution for some offences satisfies the barring condition. In these cases it is unnecessary for the IBB to make this decision as the outcome including the resultant bar will be the same in every case. These offences are known in the scheme as ‘automatic barring’ offences.
- 7.3. With some of these offences there is absolute certainty that there could never be any additional information that an individual could provide that will make it necessary for the IBB to consider whether the barring condition truly applied. Therefore there is little point in providing for representations with these offences. *This subset is the criteria prescribed in these Regulations which lead to automatic barring without the right to make representations.*
- 7.4. Where the certainty whether the barring condition is satisfied may not be absolute, however remote the possibility, it is necessary to make provision for representations. *This subset is the criteria prescribed in these Regulations which lead to automatic barring with the right to make representations.*
- 7.5. Where representation is allowed, this provides an opportunity for an individual to state their case in relation to the automatic barring conviction/caution within a representation period of 8 weeks. The individual will have the opportunity to apply for permission for their case to be reviewed after a specified period has elapsed following the bar (the minimum no review period).
- 7.6. Both the minimum no-review period, and the representation period (see preceding paragraph) are prescribed by Barring Procedure Regulations which came into operation in June 2008, and are explained in more detail in the explanatory memorandum to those Regulations, under SR 2008/203 at: http://www.opsi.gov.uk/sr/sr2008/pdf/nisr_20080203_en.pdf
- 7.7. Where these offences were committed against a child there may exist a very strong likelihood that the individual also poses a risk to vulnerable adults (and vice versa). For this reason, these Regulations also include offences, which relate to one vulnerable group, in the list relating to the other vulnerable group.
- 7.8. These Regulations will apply for the purposes of automatic inclusion in the children’s and the vulnerable adults’ lists with and without representation. For the most part, the criteria prescribed will be met only where the conviction or

caution occurred after 13th March 2009, the date from which the IBB starts to take barring decisions in place of Northern Ireland Departments.

- 7.9. In addition, where an individual should have been, but was not, automatically barred under the Unsuitable Persons Regulations (for example due to a late notification of an offence or Disqualification Order imposed by a Northern Ireland court to the Department of Education), the individual will meet criteria under these Regulations and be barred automatically by the IBB instead. This will ensure that there are no gaps in safeguarding when the Transitory Provisions Order (mentioned at 2.1 above) takes effect.
- 7.10. The criteria prescribed in these Regulations include the offences for which a conviction or caution currently results in automatic barring under the Unsuitable Persons Regulations.
- 7.11. The criteria prescribed in these Regulations for automatic barring without the right to representations are essentially the same as those prescribed in the Transitional Regulations (mentioned at 4.3 above). The criteria determines which of the individuals who are already barred on the Unsuitable Persons List, the DWC List or the DWVA List will be included in the IBB's new barred lists with no right to make representations. The only difference is the addition of some new Northern Ireland offences which were not on the statute book in June 2008; and of one Scottish offence, which was not in the Transitional Regulations because it was repealed before the period to which those Regulations apply (the period of up to 10 years before a case is referred to the IBB for migration).

Part 3: Miscellaneous Provisions

- 7.12. These Regulations also contain a miscellaneous provision, at Regulation 8. Regulation 8 amends the Transitional Provisions Order⁴, which requires the IBB to include or consider including in its barred lists those persons who are barred under current schemes. The amendment removes the requirement on the IBB to include in its barred lists persons who are made subject to Disqualification Orders after the start of ISA decision-making. If the criteria prescribed under these Regulations apply to individuals, who are made subject to Disqualification Orders after the start of ISA decision-making, the IBB will be required to apply the relevant criteria, automatically barring the individual with or without representations.

8. Consultation outcome

- 8.1. The offences that should lead to automatic barring were the subject of public consultation in the summer of 2007. The response to the consultation was published on 14 November 2007 at:
<http://www.dcsf.gov.uk/consultations/conDocument.cfm?consultationId=1476>.
- 8.2. The Government formally consulted on: the period in which to make representations; the minimum no-review period; the differentiation between the

⁴ SR 2008/200.

young people and adults and the age boundary in relation to the minimum no-review period and the list of automatic barring offences for the children's and adults' barred list.

- 8.3. There were 182 responses to the consultation. These came from statutory and voluntary organisations, across a range of sectors including health and social care, unions, national and professional associations, as well as parents. Respondents broadly agreed with all the proposals put forward in the consultation document. No substantive points were raised on the Prescribed Criteria.
- 8.4. The principle of including foreign offences for the purposes of automatic barring was the subject of public consultation for the purposes of the List 99 amendment regulations at:
<http://www.dcsf.gov.uk/consultations/conResults.cfm?consultationId=1423>.
- 8.5. The main response on foreign offences was that the proposed amendments to the Day Care and Child Minding (Disqualification) (England) Regulations 2005, which were also being consulted on, should also cover foreign offences to align those Regulations with the amended List 99 Regulations and reflect increasingly free movement of individuals across borders. DCSF's report on the consultation noted the comments made and strong support for the improvements to children's safeguarding that these amendments make. DCSF held meetings with some respondents who had concerns about how the amended List 99 Regulations in general could be implemented and used feedback from those meetings, together with the responses to the consultation, to inform guidance to support the amended List 99 Regulations. The Unsuitable Persons Regulations mirror in Northern Ireland the provisions in the List 99 Regulations.

9. Guidance

- 9.1. Guidance on these Regulations will be incorporated into the overall guidance and broader publicity for the Vetting and Barring Scheme (VBS) under the Order. The guidance for the VBS will be rolled out from April 2009 in order for stakeholders to have a minimum of six months to disseminate information on how the Scheme will work and what it means for those affected. Both generic and sector-specific guidance will be issued. In addition, government will host a programme of VBS awareness-raising events across Northern Ireland in advance of the Scheme going live.

10. Impact

- 10.1. No specific Equality Impact Assessment has been prepared with respect to these Regulations. However, an overall Impact Assessment was prepared in July 2006 with respect to the Vetting and Barring Scheme under the Act and this can be found at:
www.dfes.gov.uk/ria/index.cfm?action=assessments.view&i_assessmentID=73
In Northern Ireland we have determined that there was no reason to conclude that the impacts would be any different in Northern Ireland, given the

similarities between the implementation of the Scheme in England, Wales and Northern Ireland.

11. Regulating small businesses

11.1. The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to consider how any burdens falling on small businesses as a result of the Vetting and Barring Scheme can be addressed. More generally, the Vetting and Barring Scheme will apply to some small businesses working with the vulnerable groups, such as care homes for vulnerable adults. Employees of such businesses will need to register with the IBB in order to be able to engage in regulated activity and employers will be strongly encouraged to register their interest in such staff. In response to concerns raised by people operating small businesses, we have agreed that:

- In relation to under 16 year olds who are employed or undertaking regulated activities as part of work experience, there will be no requirement to register under the Scheme or for an employer to check such workers. This does not reduce safeguarding for children in the workplace but simply maintains current arrangements (namely that a barred person is not permitted to take up certain posts that involve work with children or vulnerable adults). Employers will also retain the discretion and the responsibility to decide what checks to make and who should be checked;
- Any person making a check on an individual will be able to do so by means of a quick and free on-line check which will confirm whether the individual is registered with the IBB and is, therefore, not barred;
- Employers of small and other businesses alike will be encouraged to register an interest (under Article 34 of the Order) in an individual, who they allow to engage in regulated activity. As a result, the employer will be notified if there is any change in the monitored status of the individual.

11.3 The basis for the final decision on what action to take to assist small businesses must be balanced against the government's commitment to have in place appropriate safeguards for children and vulnerable adults. These issues were also covered in the consultation referred to in paragraph 8.2 above. Paragraphs 45 to 48 of this document consist of the Government's response to the points made by businesses in relation to the issues concerning under-16s in work experience and employment.

12. Monitoring & review

12.1. Paragraphs 153 to 160 of the published Impact Assessment (see link at 10.3 above) contain details of the monitoring and review of the Vetting and Barring Scheme as a whole. The proposed revised Impact Assessment (see paragraph

10.3 above) will include a fully updated cost / benefit analysis, which will also take account of the revised costs announced by Home Office Ministers on 1 April 2008 (see Annex A of the attached overarching explanatory memorandum).

12.2 The IBB will produce statutory annual reports, and additional reports that the Home Secretary may direct it to submit on any matter regarding the exercise of its functions. The reports will contain information on the operation of the Vetting and Barring Scheme as a whole, including information on the operation of the prescribed criteria.

12.3 The IBB, as a non-departmental public body, is under the sponsorship of the Home Office, and the Home Office will exercise its responsibility as sponsor in consultation with the Government Departments which have policy responsibility for the workforces and vulnerable groups covered by the Scheme.

12.4 The IBB is committed to openness and consultation in order to provide assurance of its independence and that the Vetting and Barring Scheme is a robust one and has the confidence of the public and stakeholders.

13. Contact

13.1. Eilís 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, February 2009

**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 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 2007⁵ ("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.

4. Legislative background

Introduction

⁵ S.I. 2007 No. 1351 (N.I. 11).

- 4.1 The Order provides for a new Vetting and Barring Scheme to replace the existing arrangements for safeguarding children and vulnerable adults⁶ 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”)⁷ and the Education (Prohibition from Teaching or Working with Children) Regulations (Northern Ireland) 2007 (“the Unsuitable Persons Regulations”)⁸. The Government has announced that the new Scheme will “go live” in October 2009⁹; 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 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,

⁶ 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.

⁷ S.I. 2003 No. 417 (N.I. 4).

⁸ S.R. 2007/288

⁹ Written Ministerial Statement on 1st April 2008 by Meg Hillier MP, Parliamentary Under Secretary of State, Home Office; see copy at Annex A, below.

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 appeal¹⁰. 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 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;

¹⁰ 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).

(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 Explanatory Memorandum to the Order at http://www.opsi.gov.uk/si/si2007/em/ukxiem_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, we will submit an individual explanatory memorandum setting out the detail of the SR. Government consultation on policy issues in these S.Rs 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]