

**EXPLANATORY MEMORANDUM TO**  
**THE SAFEGUARDING VULNERABLE GROUPS (MISCELLANEOUS**  
**PROVISIONS) REGULATIONS (NORTHERN IRELAND) 2012**

**2012 No. 323**

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. The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 ('SVGO') sets out the process by which the Independent Safeguarding Authority (ISA) must bar certain people from working in 'regulated activity', which is a set of roles and activities involving work with children and vulnerable adults. The Protection of Freedoms Act 2012 ('PoFA') reduced the scope of regulated activity, repealed the provisions in the SVGO which required those who wanted to work in regulated activity to register with a central scheme and to be monitored, and made other amendments to the ISA's barring process. This Rule makes a number of changes which are consequential on the changes in the PoFA, makes some further amendments to the definition of regulated activity, fulfils a commitment that the ISA will in certain cases be able to provide to the police the information which informed its barring consideration and makes some other minor amendments.

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

3.1. None.

4. **Legislative Context**

4.1. The SVGO established a unified system for barring people from working with children and vulnerable adults if those people pose 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 a number of roles, 'regulated activity', which a barred person must not do.

4.2. The PoFA made a series of amendments to the provisions in the SVGO, including:

- various changes to the definition of regulated activity;
- the repeal of the controlled activity category, which included people such as those who have access to certain records of vulnerable groups;

- the repeal of the system under which those who wished to work in regulated activity had to register with a central scheme and be monitored for their convictions and cautions;
- a provision that representations against automatic bars (those which follow from a conviction or caution for a serious offence), when representations are permitted, can be submitted before any decision as to whether to bar a person, rather than after a barring decision, as now;
- changes to the provisions governing the passage of information from professional bodies, supervisory authorities and Health and Social Care Bodies to the ISA.

4.3 This Rule makes consequential amendments to various provisions of the orders and regulations which were previously made under the SVGO, as a result of the PoFA changes, including those listed in paragraph 4.2. It also makes a number of other changes to the barring arrangements, in line with the planned commencement of many of the changes in the PoFA on 10 September 2012. These are:

- the inclusion within regulated activity relating to vulnerable adults of the provision of psychotherapy and counselling provided in connection with a person's health care needs, in those cases where such work is not already within the new definition of regulated activity;
- the prescription, under a new enabling power, of the circumstances in which conveying adults is regulated activity (these are different to the circumstances which were prescribed under the previous enabling power);
- that the information which various parties may be required to provide to the ISA may include details of proceedings commenced under the Children (Northern Ireland) Order 1995;
- an additional reason for which the ISA can pass to the police information which it holds, namely for the disclosure of such information on an enhanced criminal record certificate. This will bring Northern Ireland into line with England and Wales, where this policy was developed in response to fulfil a commitment given by the Minister of State for Crime Prevention and Antisocial Behaviour Reduction, Lord Henley, during the Third Reading of the Protection of Freedoms Bill:  
<http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120312-0002.htm> [columns 52-3].

4.4 This Rule is being laid alongside a number of other Rules made under the SVGO which will also give effect to changes in the 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 (Prescribed Criteria and Miscellaneous Provisions) (Amendment) 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'), as that central body. An equivalent Order was made in Northern Ireland, the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (SVGO). The ISA's remit extends to Northern Ireland under section 66 of the SVGA. Its role is to act as a 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 to undertake such work. The aim was to replace the existing disqualification systems, under which decisions about a person's suitability to work with vulnerable groups were taken by Northern Ireland Government Departments or by sentencing judges. The SVGO listed 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 Coalition Government, supported by the Northern Ireland Executive and Assembly, 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 (or 'monitoring');
- significantly scales back the scope of regulated activity;
- repeals the category of 'controlled activity' (people such as hospital records clerks, whose barred status must be checked by a prospective employer before the employer decides whether or not to engage them);
- provides that, when representations may be submitted by a person whom the ISA would bar automatically, those would be submitted before any decision whether to bar the person, rather than after such a decision, as now;
- specifies that professional bodies ('keepers of registers' – for example, the Northern Ireland Social Care Council), supervisory authorities (for example,

the Regulation and Quality Improvement Authority), and Health and Social Care Bodies will have a power, rather than a duty, as now, to pass information to the ISA, unless the ISA specifically requests information.

- 7.4 This Rule amends a number of statutory rules, which were previously made under the SVGO, in consequence of the above changes.
- 7.5 Additionally, this Rule makes further provision in two respects in relation to the definition of regulated activity. Firstly, it provides that psychotherapy and counselling services which are provided in connection with a person's healthcare needs should be within regulated activity. People providing such services were in the original definition of regulated activity, but would not otherwise be in the new definition unless they are working under the direction or supervision of a health care professional. Psychotherapists and counsellors are included in the definition of regulated activity because they have unique access to adults who are in situations where they are emotionally vulnerable and/or experiencing episodes of mental illness.
- 7.6 Secondly, it prescribes the circumstances in which the conveying of an adult who needs to be conveyed by reason of age, illness or disability represents regulated activity relating to vulnerable adults. Those are:
- conveying (or assistance in providing such conveying) by hospital porters or any person employed in an Emergency Department, by drivers employed in the Ambulance Service and those employed in the Patient Transport Service; and
  - conveying (or assistance in providing such conveying) by any person, or adults to or from a place where they receive health care, relevant personal care, or relevant social work. The conveying must be on behalf of an organisation, and the purpose in the person doing the conveying must be to enable the adult to receive that health care, personal care or social work.
- 7.7 These Regulations make two further changes:
- currently, various parties may be required to provide to the ISA details of proceedings before any court, tribunal or any other person taken or to be taken (including the outcome of such proceedings) in relation to a person whom the ISA is considering barring. This Rule specifies that that, for the avoidance of doubt, includes care proceedings, under the Children (Northern Ireland) Order 1995, which will in many cases be relevant to consideration of barring.
  - the ISA is currently able to pass to the police any information which it has for the purposes of the prevention, detection and investigation of crime; the apprehension and prosecution of offenders; and (once commenced) the appointment of persons who are under the direction and control of a chief officer of police. These Regulations add an additional purpose, concerning the disclosure of information on an enhanced criminal record certificate. This is being done in response to concerns raised during the passage of the Protection of Freedoms Bill that enhanced criminal record certificates will not always contain the information which led to a bar when the post to which the application relates is not within regulated activity.

- 7.8 It is necessary to legislate in this area because it is necessary to amend the existing legislation in order to give effect to Schedule 7 to the Protection of Freedoms Act 2012.

### *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. In the main, the changes in this Rule are consequential upon or related to the changes announced in the Government's Remodelling Review of the Vetting and Barring Scheme, published in February 2011. That review involved consultation with a range of parties, including some in Northern Ireland.

## **9. Guidance**

- 9.1 Information on the changes in the Protection of Freedoms Act 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.

## **10. Impact**

- 10.1. This Rule should have no impact on business, charities, voluntary bodies or the public sector as the requirements to confirm whether an individual undertaking relevant work on their behalf is barred are unchanged.
- 10.2. The changes in the PoFA to which the changes in this Rule relate have various impacts on the public sector, in that they affect the work of the ISA, the police and Health and Social Care Bodies. The additional reason for the ISA to pass information to the police will involve a greater passage of information to the police and additional consideration of information by the police.
- 10.3. An Impact Assessment has not been prepared for this Rule as it does not make any amendments to current requirements.

## **11. Regulating small businesses**

- 11.1 The impact assessment for Part 5 of the Protection of Freedoms Bill explored the impact on small firms of the changes to which the changes in this Rule relate (Schedule 7 to the Bill replicated for Northern Ireland the provisions of Part 5 of the Bill). It found that there would be no disproportionate impact on small firms.

## **12. Monitoring & review**

- 12.1 The content of regulated activity 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](mailto:eilis.mcdaniel@dhsspsni.gov.uk)