

EXECUTIVE NOTE

THE PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007 (TRANSITORY PROVISIONS IN CONSEQUENCE OF THE SAFEGUARDING VULNERABLE GROUPS ACT 2006) ORDER 2009/4

Powers under which Instrument is made

1. Section 87(1) and (3) of the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”), enables the Scottish Ministers by order to make provision to give effect to corresponding legislation elsewhere in the UK. Section 87 was brought into force in the second Commencement Order (S.S.I. 2007/564) on 11 January 2008. Section 100(2) enables the Scottish Ministers to make such transitory provisions as they consider appropriate and came into force on Royal Assent on 18 April 2007.

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

3. Under Part 5 of the Police Act 1997, 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. The 2007 Act (when fully commenced) will provide for a new vetting and barring scheme, including new types of disclosure check which will replace these enhanced disclosure checks.
4. Similarly, the UK Government is in the process of implementing the Safeguarding Vulnerable Groups Act 2006 (“the 2006 Act”) which establishes a vetting and barring scheme for England and Wales and enables such arrangements to be made for Northern Ireland. The 2006 Act establishes the Independent Barring Board (“the IBB”) (aka Independent Safeguarding Authority) to which the responsibility for making decisions to bar individuals from working with children or vulnerable adults is being transferred from the Secretary of State in a phased transition. The IBB was established for England and Wales on 2 January 2008 by the Safeguarding Vulnerable Groups Act 2006 (Commencement No. 1) Order 2007 (SI 2007/3545) and for Northern Ireland on 31 March 2008 by the Safeguarding Vulnerable Groups Act 2006 (Commencement No. 1) (Northern Ireland) Order 2008 (SI 2008/930). The IBB currently *advises* the Secretary of State on barring decisions in respect of: working with children under the Protection of Children Act 1999 and the Education Act 2002; and working with vulnerable adults under the Care Standards Act 2000. Individuals barred under these provisions are commonly referred to as being included on the POCA list, List 99 or the POVA list respectively.
5. The UK Government has announced that the IBB will assume *responsibility* for barring decisions on new referrals under current schemes, and the Secretary of State

will have no further role in respect of those new referrals, from the coming into force of the Safeguarding Vulnerable Groups Act 2006 (Transitory Provisions) Order 2009 (SI 2009/12) on 20 January 2009. Furthermore, individuals barred by the IBB will be included on the children's and adults' barred lists established by the 2006 Act rather than POCA, POVA or List 99. The Safeguarding Vulnerable Groups Act 2006 (Transitory Provisions) Order 2009 was laid in Parliament in October 2008 and made on 13 January 2009. It will ensure that inclusion on the SVG barred lists *has the effect of* barring the individual as if they had been put on POCA or POVA until those lists are finally abolished when the 2006 Act is substantively commenced. The Scottish order ensures that individuals included on the new SVG barred lists after the Safeguarding Vulnerable Groups Act 2006 (Transitory Provisions) Order 2009 comes into force will continue to be subject to the same disclosure and barring arrangements in Scotland as they are under current arrangements.

6. The Scottish order is very important as it will prevent a loophole from emerging which would otherwise occur after the coming into force of the Safeguarding Vulnerable Groups Act 2006 (Transitory Provisions) Order 2009. Without this order, a person barred by the IBB after that date would not have that fact included on a Scottish enhanced disclosure and, in respect of inclusion on the SVG children's barred list, would not be barred from taking up a child care position in Scotland. Without this order, an individual determined to be unsuitable by the IBB could legally and undetected enter the Scottish vulnerable groups' workforce.

Consultation

7. The order has not been the subject of public consultation because it is a technical instrument absolutely necessary to preserve current disclosure and barring arrangements in Scotland.

Financial effects and Regulatory Impact Assessment

8. The order has no financial implications as it has the effect of preserving current arrangements for barring and disclosure during the transition in England and Wales to full commencement of the 2006 Act in October 2009. Since this order has absolutely no financial implications either for the Scottish Government or external organisations by virtue of simply preserving current policy and procedure, no Regulatory Impact Assessment has been prepared for this instrument.

Scottish Government
Children, Young People and Social Care Directorate