

**EXPLANATORY MEMORANDUM TO**  
**THE SAFEGUARDING VULNERABLE GROUPS ACT 2006 (REGULATED**  
**ACTIVITY, DEVOLUTION AND MISCELLANEOUS PROVISIONS) ORDER**  
**2010**

**2010 No. XXXX**

1. This explanatory memorandum has been prepared by the Department for Children, Schools, and Families and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

2.1. This Order sets out further amendments to the scope of Regulated Activity in the new Vetting and Barring Scheme (VBS) as defined in Parts 1 and 2 of Schedule 4 of the Safeguarding Vulnerable Groups Act 2006 (“the Act”) in relation to specified activities, establishments and office holders. It also amends Part 3 of Schedule 4 and sections 21 and 22 of the Act, in relation to when an activity is regulated activity (or in the case of sections 21 and 22, controlled activity) because it is intensive (meets the “period condition”). The Order also deals with an aspect of devolution alignment, and makes other minor amendments to Schedule 4 which are intended to clarify the scope of regulated activity or for the purposes of consistency with language used. All of these provisions are needed for commencement of registration with the Independent Safeguarding Authority (ISA), which will begin in July 2010.

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

3.1. This Order is subject to the affirmative resolution procedure.

4. **Legislative Context**

4.1. The Act 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 include barring and referral arrangements which, from October 2009, broadly replaced those provided for under the Protection of Children Act 1999, the Care Standards Act 2000, the Criminal Justice and Court Services Act 2000 and the Education Act 2002.

4.2. Schedule 4 of the Act defines the term “Regulated Activity”. 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.

- 4.3. Further detail on the legislative background to the Act is set out in a supplement (which has been updated for the purposes of this Memorandum) to the previous over-arching explanatory memorandum on the implementation of the Act, at Annex 1 below. The annex is a supplement to the overarching memorandum on the implementation of the Act which was submitted to Parliament in February 2008. Annex D to Annex 1 both explains the sequence of previous Statutory Instruments under the Act, and relates them to the overarching memorandum, and to supplements to that memorandum.
- 4.4. This Order is the second to include provisions made under Section 5(3) of the Act. Section 5(3) confers a power on the Secretary of State to amend the meaning of “regulated activity”. The first Order was SI 2009 / 2610, details of which are at Annex D below.

## 5. **Territorial Extent and Application**

5.1 This instrument extends to England and Wales.

5.2. The Scottish Executive is introducing a parallel scheme to that under the Act under the Protection of Vulnerable Groups Act (Scotland) 2007. A vetting and barring scheme equivalent to that under the Act is provided for in relation to Northern Ireland under the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007/1351 (N.I. 11). The Northern Ireland Office is also legislating similarly for Northern Ireland in respect of provisions in this Order.

## 6. **European Convention on Human Rights**

6.1. Baroness Morgan of Drefelin, Parliamentary Under Secretary of State for Children, Young People and Families, has made the following statement regarding Human Rights:

*In my view the provisions of The Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Devolution and Miscellaneous Provisions) Order 2010 are compatible with the Convention rights as defined in section 1 of the Human Rights Act 1998.*

## 7. **Policy Background**

- 7.1. Together, the provisions in this Order support the introduction of ISA registration, which for new entrants, and those changing employment to work for a new regulated activity provider, will be optional from July 2010, and mandatory from November 2010: a further milestone in the transition to the new Scheme.
- 7.2 Articles 2 to 10 amend or clarify the scope of regulated activity. Article 3 extends it to cover the exercise of a range of inspection and review functions where the person exercising such functions has the opportunity to have contact with children, in addition to those already listed in Schedule 4 of the Act. This Article and Article 7 also clarify the relevance of contact with the vulnerable group in question being a requirement of the specified inspection/review function falling within the scope of regulated activity. Article 7 makes similar provisions

in relation to regulated activity with vulnerable adults. The overall purpose of all these provisions is to treat all such inspection or review functions consistently under the Act. In the Act (as originally enacted), in relation to Ofsted, inspection functions that fell within the definition of regulated activity covered only its inspection functions for education and children's social care before Part 8 of the Education and Inspections Act 2006 expanded Ofsted's inspection functions in relation to children. It has long been the Government's intention, with which Ofsted fully agrees, to extend that definition to cover the full range of Ofsted inspections of children's services. Where relevant, similar amendments are made in the Order in relation to Wales.

- 7.3 Article 3 also extends regulated activity to cover users of the Contactpoint database, which contains personal information relating to children; regulated activity already covers those establishing or maintaining that database. Article 4 adds Pupil Referral Units which exclusively or mainly provide part-time education to children ("part-time Pupil Referral Units") to the list in paragraph 3 of Schedule 4, namely the establishments where all staff working frequently or intensively, with the opportunity for contact with children, are engaging in regulated activity. The list in paragraph 3(1) already includes 'full-time' Pupil Referral Units.
- 7.4 Article 5 adds to the list of office holders in paragraph 4 of Schedule 4 of the Act (a) members of and clerks to management committees of part-time Pupil Referral Units (reflecting the fact that Article 4 – see paragraph 7.3 above – adds such Units to the list of specified establishments), (b) individuals who are proprietors of or who take part in the management of an independent school (namely individuals who are not otherwise included in the existing provision in Schedule 4 which refers to a member of a governing body of an educational institution which is exclusively or mainly for the provision of full-time education to children), and (c) adoption and fostering panel members. It also removes a superfluous qualification in relation to office holders who carry on or manage an establishment or agency that is regulated under the Care Standards Act 2000.
- 7.5 Article 10 amends Part 3 of Schedule 4 to the Act and Article 11 makes similar amendments to sections 21 and 22. These amendments relate to one of the requirements that needs to be satisfied for specified activities to fall within the scope of regulated activity (or controlled activity). This is where an activity is carried out frequently or the period condition (ie the intensive criterion) is satisfied. This follows from Sir Roger Singleton's report on where to draw the line on when the new Scheme will require an individual to become registered with the ISA<sup>1</sup>. The period condition is amended to refer to an activity being carried out on more than three days in a 30-day period, instead of on more than two days in that period. This amendment brings the "intensive" criterion broadly in line with the general guidance to be issued by the Government on the "frequently" criterion to be satisfied in order for an activity to fall within the scope of regulated activity. In most cases, an activity will be considered to be carried out "frequently" if it is carried out once a week or more often, instead of

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<sup>1</sup> Sir Roger Singleton's report and the Government's response, both dated 14 December 2009, are at: [www.dcsf.gov.uk/everychildmatters/safeguardingandsocialcare/safeguardingchildren/vettingandbarring/scheme/vettingvandbarring](http://www.dcsf.gov.uk/everychildmatters/safeguardingandsocialcare/safeguardingchildren/vettingandbarring/scheme/vettingvandbarring) . See also Written Ministerial Statement of same date, Hansard col 50WS.

once a month as previously proposed. Together these two changes will significantly reduce the numbers whom the Scheme will require to ISA-register. The Government will state its policy, on when activity is frequent, in statutory guidance which is to be published shortly. Article 11 makes a similar amendment to the “intensive” criterion in relation to controlled activity.

7.6 Article 12 of the Order deals with devolution alignment and extends the scope of section 50A of the Act. Section 50(A) was inserted into the Act by the Policing and Crime Act 2009, and came into force on 30 November 2009. The power in section 50A (power of ISA to provide information to the police) currently extends only to police forces in England and Wales. The amendment enables the ISA to disclose information (which it has in relation to its functions under the Act) under section 50A of the Act to police forces in Scotland and Northern Ireland. In a similar Order to be made by the Northern Ireland Office under the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, it is planned to amend the equivalent power under Article 52A of that Order which currently enables the ISA to provide information only to the police in Northern Ireland. That amendment to Article 52A will similarly insert a reference to police forces in England, Wales and Scotland, giving the ISA the power to send information (which it has in relation to its functions under the 2007 Order) to those police forces.

## 8. Consultation outcome

8.1. The public consultation on various aspects of the Vetting and Barring Scheme in November 2007 (Government response May 2008 at [www.dcsf.gov.uk/consultations](http://www.dcsf.gov.uk/consultations)) included the Contactpoint provision in Article 3 which is implemented by this Order. The consultation invited views on issues including:

- The definition of vulnerable adult;
- The extent of regulated activity;
- Who is eligible to make checks of a person’s ISA status;
- Controlled activity;
- Applying to be monitored under the scheme;
- The phased introduction of the scheme;
- Referring information to the ISA.

8.2. The 326 responses to the consultation came from bodies including Local Authorities, Local Safeguarding Children Boards, voluntary sector organisations, unions, national and professional organisations, and health and care sector organisations, as well as parents. The opportunity to comment on the scheme in advance of implementation was welcomed, and most of the proposals within the consultation document were met with overwhelming levels of agreement. The inclusion of Contactpoint users in Regulated Activity (in Article 3 of this Order) takes into account the views given, and reflects the opinion of the overwhelming majority of the responses received, because 80% of 219 respondents agreed with including Contactpoint users due to the sensitivity of the data held, and only 2% disagreed (the rest not sure).

8.3. A separate public consultation which ran from September to December 2009,

on revising the National Minimum Standards (NMS) for Adoption, Children's Homes and Fostering, specifically asked (among other topics) about the proposal to include fostering and adoption panel members within regulated activity (see Article 5(2)(c) of the Order). Further details on that consultation overall are at [www.dcsf.gov.uk/consultations/index.cfm?action=conResults&external=no&consultationId=1662&menu=1](http://www.dcsf.gov.uk/consultations/index.cfm?action=conResults&external=no&consultationId=1662&menu=1) . Interested parties such as the British Association for Adoption and Fostering were first consulted on the general principles of this proposal and invited to comment on a range of options; and then had an opportunity to comment on a draft of the Order. Consultees were broadly supportive of this measure, with over four-fifths of 90 respondents in favour. While a minority feared that an ISA-registration requirement could deter "independent" panel members, some of that minority supported CRB-checking panel members (which over nine-tenths of ninety-five respondents favoured), and respondents who already vet all panel members did not report any difficulties.

8.4. The amendment to the "period condition" was also subject to consultation as part of the "Drawing the Line" report (see footnote to 7.5 above). Sir Roger Singleton, between September and December 2009, consulted over 90 key individuals and organisations including workforce unions, inspectorates, voluntary sector organisations, faith groups and local charities and clubs (as well as young people themselves), and reviewed more than 60 media reports, before compiling the recommendations in his report, which summarised responses by those consulted and "sought to propose adjustments and amendments which address the criticisms which have been made while minimising any additional risk to children". Generally respondents wanted "a more proportionate approach", though 76% of 1,800 parents canvassed felt registration should be required where parents are unable to select personally those caring directly for their children. In particular the amendment to the period condition responds to a wish by voluntary sector respondents to help adults "thinking of volunteering to help out" with e.g. Scouts or Guides, to observe and participate on a trial basis without having to register.

## **9. Guidance**

9.1. Comprehensive guidance about the operation of the Scheme, focusing on those parts of the Scheme that commenced in 2009, was published in October 2009 at <http://www.isa.gov.org.uk/default.aspx?page=402> . It is essential that both the nine to nine and a half million strong workforce to whom the Vetting and Barring Scheme will apply and their employers are aware of the requirements of the scheme in relation to registration to work in regulated activity, checking applicants for posts and the implications of the bar. Guidance was developed in consultation with stakeholders. At the same time, marketing and communications campaigns are publicising the scheme to stakeholders, by means of direct mailing, a programme of roadshows (more of which are to take place in spring 2010, with details advertised at [www.isa.homeoffice.gov.uk](http://www.isa.homeoffice.gov.uk) ) and various other methods including paid advertising in national daily newspapers from early 2010.

9.2. The Government has also publicised a wide-ranging list of examples of when the Scheme will not require an individual to be ISA-registered, which the Secretary of State for Children, Schools and Families sent to all MPs in December 2009 and

which is also published at:

[www.dcsf.gov.uk/news/content.cfm?landing=vetting\\_and\\_barring\\_myth\\_buster&type=3](http://www.dcsf.gov.uk/news/content.cfm?landing=vetting_and_barring_myth_buster&type=3).

9.3. The 2009 guidance mentioned at 9.1 above comprises:

- an overview of the Vetting and Barring Scheme;
- the scope of the Vetting and Barring Scheme; and
- barring arrangements.

In addition:

- ISA in 2009 published guidance for organisations which have a duty to refer individuals to the ISA for consideration for possible barring, at: [www.isa.gov.org.uk/Default.aspx?page=397](http://www.isa.gov.org.uk/Default.aspx?page=397).

Expanded guidance is being published early in 2010 in the same format and through the same channels, in order to provide more detail on the parts of the Scheme which are to commence in July and November 2010 for new entrants to the workforce, and from 2011 for existing members of the workforce, comprising in addition to the above:

- how the Vetting and Barring Scheme will affect employees and volunteers;
- how the Vetting and Barring Scheme will affect regulated activity providers;
- timescales; and
- transitional arrangements.

Work with stakeholders on sector-specific guidance is continuing.

## 10. **Impact**

10.1. This Order will, overall, contribute to a significant reduction in the impact of the new Scheme on business, charities or voluntary bodies. The Government believes that the Scheme will at the same time remain proportionate to the risks facing children and vulnerable adults, and so will not add to the cost burden on society generally which arises from cases of abuse against vulnerable groups. The reduced impact will arise mainly from the changes made by Articles 10 and 11 of this Order, alongside the forthcoming guidance on when an activity is carried out frequently in relation to the Scheme, which together will significantly reduce the number of individuals whom the Scheme will eventually require to ISA-register. This is now expected to fall from 11.3 million to between nine and nine and a half million.

10.2. The impact on the public sector is as for business, charities and voluntary bodies. The requirements on all those involved in the governing of schools are clarified. More work by Inspectorates will be brought within the scope of Regulated Activity, as will individuals who use the Contactpoint database of children's records. However, Ofsted has always worked on the basis that the VBS applies to all inspectors whose work gives them the opportunity for contact with vulnerable groups and all Contactpoint users have always been vetted (by CRB disclosures), so there will be little practical difference.

10.3. At Annex B to the attached supplementary overarching memorandum is a copy of the 1<sup>st</sup> April 2008 announcement by the Home Office Minister, which showed revised total cost figures. The Home Office is reviewing the Impact Assessment and an updated version reflecting these figures will be published once

this review is completed. 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](http://www.dfes.gov.uk/ria/index.cfm?action=assessments.view&i_assessmentID=73)

## **11. Regulating small businesses**

11.1. The legislation applies to small business.

11.2. Small businesses will benefit from the reduced impact detailed at 10.1 above. In addition, to minimise the impact of the requirements of the new Scheme on firms employing up to 20 people, the approach taken is to consider how far it is necessary that such firms comply with the same duties applying to larger firms. Generally, the requirements of the Act will apply to some small businesses that work with vulnerable groups, such as care homes for vulnerable adults. Employees of such businesses will have to register with the ISA in order 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 those working with under-16 year olds who are employed or engaged as part of work experience or otherwise in workplace settings, there will be no requirement for the employee to register under the VBS 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), including the employer retaining the discretion and the responsibility to decide what checks to make and who to check;
- once registration starts under the Scheme, any person making a check on an individual will be able to do so by means of a quick and free on-line check (with safety measures to preserve confidentiality) which will confirm whether the individual is registered with the ISA, with the assurance that an individual who is so registered is not barred;
- employers of small and other businesses alike will be encouraged to register an interest (under section 32 of the Act) in an individual that they allow to engage in regulated activity, leading to any such employer being notified if there is any change in the registration status of the individual.

11.3. The Government balanced its final decision on what action to take to help small businesses with its commitment to have in place appropriate safeguards for children and vulnerable adults. These issues were also covered in the DCSF consultation referred to in paragraph 8.1 above. Paragraphs 45 to 48 of that document gave the Government's response to points made by businesses on 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 paragraph 10.3 above) contain details of monitoring and review of the VBS 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 B to the attached overarching explanatory memorandum).

12.2. The ISA will produce statutory annual reports, and any additional reports that the Home Secretary may direct, on any aspect of the exercise of its functions. The ISA's first annual report, published in 2009, is at:  
[www.isa-gov.org.uk/Default.aspx?page=321](http://www.isa-gov.org.uk/Default.aspx?page=321) .

12.3. The ISA, as a non-departmental public body, is under the sponsorship of the Home Office, which 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. The ISA is committed to openness and consultation in order to provide an assurance of its independence and that the Vetting and Barring Scheme is robust and has the confidence of the public and stakeholders

### **13. Contact**

13.1. Toby Sims at the Department for Children, Schools, and Families.  
Telephone: 020 7783 8601. Email: toby.sims@dcsf.gsi.gov.uk

*DCSF, 21 January 2010*

Annex: over-arching supplement



## **Annex**

Supplement to Explanatory Memorandum on the Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Devolution and Miscellaneous Provisions) Order 2010 (Reference: para 4.3 of that E.M.)

### **EXPLANATORY MEMORANDUM ON THE IMPLEMENTATION OF THE SAFEGUARDING VULNERABLE GROUPS ACT 2006**

1. The Department for Children, Schools and Families (DCSF) prepared this memorandum in consultation with the Department of Health, and submitted it voluntarily to Parliament.

#### **2. Description**

2.1 This is a further supplement to DCSF's over-arching explanatory memorandum dated 27<sup>th</sup> February 2008 which explained the context to the first set of Statutory Instruments laid before Parliament under the Safeguarding Vulnerable Groups Act 2006<sup>2</sup> ("the Act"). Annex D below provides:

- a list of all sets of Statutory Instruments laid before Parliament under the Act;
- links to the over-arching explanatory memorandum or supplements to it, as published with each of those Instruments.

2.2 Where relevant, the content of the overarching explanatory memorandum, and of the previous supplements, is repeated in this supplement. This supplement explains the context to the fourth set of Statutory Instruments to be laid before Parliament under the Act. These are:

- the affirmative Order to amend the scope of regulated activity, to which this supplement is annexed;
- a forthcoming set of affirmative regulations to make interim arrangements in relation to controlled activity under the Act and to amend the Safeguarding Vulnerable Groups (Prescribed Criteria and Miscellaneous Provisions) Order 2009/37, which DCSF plans to lay in draft shortly;
- a commencement order in relation to the above controlled activity regulations; and
- two commencement orders in relation to ISA-registration provisions. The Government plans to commence those provisions to enable individuals who newly enter, or move to new posts in regulated activity from July 2010 to become ISA-registered, and to require individuals who newly enter, or move to new posts in regulated activity from November 2010 to become ISA-registered (as previously announced<sup>3</sup> and as mentioned in earlier explanatory memoranda).

All instruments (except Commencement Orders) will be described in their respective explanatory memoranda, to each of which an up-to-date version of this supplement will be appended.

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<sup>2</sup> 2006 c.47.

<sup>3</sup> Written Ministerial Statement on 19<sup>th</sup> March 2009 by Meg Hillier MP, Parliamentary Under Secretary of State, Home Office; see copy at Annex B, below.

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

- 3.1 As noted in the explanatory memorandum relating to that Instrument (to which this supplement is annexed), the draft Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Devolution and Miscellaneous Provisions) Order 2010 is subject to the affirmative resolution procedure.

### 4. Legislative background

#### Introduction

- 4.1 The Act provides for a new Vetting and Barring Scheme (VBS) to replace the existing arrangements for safeguarding children and vulnerable adults<sup>4</sup> 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](http://www.dcsf.gov.uk/consultations). In addition to further consultations on detailed aspects of implementing secondary legislation under the Act, Sir Roger Singleton consulted stakeholders in compiling his December 2009 report “Drawing the Line”, which includes a list of those consulted and reflects their views<sup>5</sup>. This led to amendments to the Scheme which will reduce its impact by reducing the number of individuals whom it requires to register. The total is expected to fall from 11.3 million to around nine to nine and a half million.
- 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

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<sup>4</sup> Vulnerable adult is defined at S.59(1) of the Act as follows:

"59 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 person exercising functions for the purposes of Part 1 of the Criminal Justice and Court Services Act 2000 (c. 43),

(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 subsection (9),

(i) payments are made to him (or to another on his behalf) in pursuance of arrangements under section 57 of the Health and Social Care Act 2001 (c. 15), 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.

<sup>5</sup> Sir Roger Singleton’s report and the Government’s response, both dated 14 December 2009, are at [www.dcsf.gov.uk/everychildmatters/safeguardingandsocialcare/safeguardingchildren/vettingandbarring/scheme/vettingvandbarring](http://www.dcsf.gov.uk/everychildmatters/safeguardingandsocialcare/safeguardingchildren/vettingandbarring/scheme/vettingvandbarring). See also Written Ministerial Statement of same date, Hansard col 50WS.

vulnerable adults will have to go through. The new arrangements introduced by the Act have since October 2009 broadly replaced previous barring arrangements provided for under the Protection of Children Act 1999, the Care Standards Act 2000, the Criminal Justice and Court Services Act 2000 and the Education Act 2002. Barring under the new Scheme went “live” on 12<sup>th</sup> October 2009: from that date, inclusion in a barred list took 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 do certain specified work with children or vulnerable adults operates through employers obtaining enhanced criminal record certificates – with the addition, in many cases, of a statement as to whether the individual is on any barred list - issued by the Criminal Records Bureau (“CRB disclosures” with “barred list checks”) for new job applicants. CRB disclosures give employers information about an individual's criminal records history, which informs their assessments about the individual's suitability to work with children or vulnerable adults. The barred list checks show whether a person is included in either of the ISA barred lists (or - in a decreasing number of cases that are yet to be considered by the ISA for inclusion in its barred lists - on any of the three lists the Government previously maintained of persons barred from working with children or vulnerable adults, or has been made subject to a disqualification order (see below), where that Order forms part of the records of a conviction).
- 4.4 The previous lists, which were each subject to different legislation, criteria and procedures, were: “List 99” (a list of those in respect of whom a direction under section 142(1) of the Education Act 2002 has been made), the Protection of Children Act (PoCA) List (kept under section 1 of the Protection of Children Act 1999) and the Protection of Vulnerable Adults (PoVA) List (kept under section 81 of the Care Standards Act 2000). Disqualification orders made by a court (under section 28, 29 or 29A of the Criminal Justice and Court Services Act 2000) also bar individuals from working with children: the repeal of the power to make new orders is to be commenced once the duty to be ISA-registered is started for new entrants. We refer below to being on one of these lists or being subject to a disqualification order as being subject to a previous restriction.

### **Key features of the Act**

- 4.5 When implemented fully, the Act will replace the previous arrangements with a Scheme with the following key features:

4.5.1 an **Independent Safeguarding Authority** (“ISA”): ISA<sup>6</sup> was established on 2<sup>nd</sup> January 2008, took all barring decisions on new referrals under previous barring schemes from 20<sup>th</sup> January 2009, and commenced its full barring functions under the VBS on 12<sup>th</sup> October 2009. It is a non-departmental governmental body sponsored by the Home Office. Its primary functions are to maintain the barred lists (see below) and to make decisions about whether individuals should be included in one or both lists;

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<sup>6</sup> “Independent Safeguarding Authority” (ISA) is now the legal name of the body which the 2006 Act previously called the Independent Barring Board (IBB).

4.5.2 **Barred lists:** there are now 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").

4.5.3 There are **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 appeal<sup>7</sup>. Inclusion in the lists on this basis happens 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 a specified order (including a foreign order) or a specified direction of a prescribed description, 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 happens 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;

(iii) inclusion at the ISA’s discretion, 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 a child or vulnerable adult, or could have done so, or in a way involving child pornography or inappropriate sexual behaviour. In this case, the relevant individual has the opportunity to make representations before they are included in a list and will have a subsequent right of appeal;

(iv) inclusion at the ISA’s discretion, on the basis that the person in question seems to ISA to pose a risk of harm to children or vulnerable adults. Again, in this case the relevant individual has the opportunity to make representations before they are included in a list and has a subsequent right of appeal.

4.5.4 When ISA receives any information, it must consider whether it is relevant to ISA’s consideration of whether the individual to which it relates should be included in either list.

4.5.5 **Appeals:** there is a right of appeal (against inclusion in a barred list) to the Upper Tribunal, with the permission of the Tribunal, on a point of law or on a finding of fact made by ISA. When the ISA is minded to bar an individual, they write to that person seeking representations, and outline in their letter the reasons behind their intention to bar, and outline the evidence they have used to reach this decision. The provision for the Upper Tribunal to hear appeals on ISA decisions is at Schedule 1 of

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<sup>7</sup> See at Annex C, 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).

the Transfer of Tribunal Functions Order 2008<sup>8</sup>. The Tribunal Procedure Committee consulted publicly on its Upper Tribunal rules, agreed by the Ministry of Justice<sup>9</sup>, which came into force on 3<sup>rd</sup> November 2008.

**4.5.6 Regulated activity:** this is defined in Schedule 4 to the Act. 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 Children's Commissioner and the Director of Adult Social Services. DCSF fully commenced the definition of regulated activity on 12 October 2009.

**4.5.7 Controlled activity:** this is defined in sections 21 and 22 of the Act. Broadly, it covers support work in general health settings, further education settings and adult social care settings. It also covers work which gives a person the opportunity for access to sensitive records about children and vulnerable adults, e.g. education or social services records. 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. DCSF commenced the definition of controlled activity on 12 October 2009 in relation to the duty to refer when there is a risk of harm. DCSF and DH plan to bring forward interim draft Regulations on controlled activity in early 2010, and (subject to the outcome of a review to be held in 2010 following the Government response to "Drawing the Line" – see earlier footnote) full Regulations for the end of the period of phasing-in of requirements to become subject to monitoring (see next paragraph). A detailed timetable for the phasing period will be announced well in advance.

**4.5.8 Monitoring:** to become "subject to monitoring" (or "ISA-registered"), individuals will make an application to the Secretary of State - in practice, to the Criminal Records Bureau (CRB). The CRB will check for any information relating to the individual and pass any that it discovers to ISA. ISA will then consider whether the person should be barred from working with children and/ or vulnerable adults. The CRB 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 ISA. Monitoring will be phased in, starting with new entrants and job movers into regulated activity. For those groups, monitoring can start from July 2010, and must start from November 2010, see Annex A.

**4.5.9 Offences:** there will be a series of criminal offences to:

- prevent barred individuals engaging in regulated activity in relation to children or vulnerable adults (in force from 12<sup>th</sup> October 2009);
- 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);

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<sup>8</sup> The S.I. is at: [www.opsi.gov.uk/si/si2008/pdf/uksi\\_20082833\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20082833_en.pdf). See also para 4.10.5 below.

<sup>9</sup> The rules are at: [www.opsi.gov.uk/si/si2008/pdf/uksi\\_20082698\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20082698_en.pdf).

- 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**

- 4.6 Schedule 8 to the Act makes provision for the transition from the previous system to the new arrangements under the Act. During the period leading up to the full implementation of the Act, this has two main elements. Firstly, all those who are subject to a previous restriction must be included, or considered for inclusion, in the new barred lists kept under the Act, in accordance with the Statutory Instruments listed at Annex D below, which are now in force. Secondly, ISA must give the Secretary of State advice, on request, in relation to outstanding cases under the existing arrangements (see paragraph 1 of Schedule 8) which were referred before 20<sup>th</sup> January 2009; since 31<sup>st</sup> March 2008, ISA has been so advising. A relatively low number of such cases are still being advised on at January 2010.
- 4.7 The Government proposes to continue managing the transition in stages, to help ensure that it will be effective and maintain high levels of protection for vulnerable groups at every stage.
- 4.8 Further detail on how the new Scheme will work is in guidance published in October 2009 at [www.isa.gov.org.uk/default.aspx?page=402](http://www.isa.gov.org.uk/default.aspx?page=402) and in Explanatory Notes to the Act at [www.opsi.gov.uk/acts/acts2006/pdf/ukpga\\_20060047\\_en.pdf](http://www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060047_en.pdf) (36 pages).

## **Grouping of implementation of secondary legislation**

- 4.9 The Government has laid before Parliament three main groups of secondary legislation in the lead-up to go-live of the new Vetting and Barring Scheme:
- The first created the ISA as a Non-Departmental Public Body and provided for people subject to previous restrictions or whose cases were being considered under the previous arrangements to be included or considered for inclusion in one or both of the two new lists;
  - The second provided for transitory arrangements under which the ISA started to take barring decisions on referrals to the old barring schemes in accordance with the Act, and provided for the commencement of automatic barring on the basis of criteria prescribed in Regulations;
  - the third provided for full commencement of barring under the Act, and the repeal (subject to transitional and saving provisions) of the legislation underpinning the previous arrangements.
- Forthcoming secondary legislation in 2010 is planned to phase in provisions under the Act in relation to different groups of employees who are seeking or engaged in regulated activity, to start to take effect from July 2010.

4.10 For each Statutory Instrument, the lead Department will submit an individual explanatory memorandum setting out the detail of the SI, and where relevant, an update of the Regulatory Impact Assessment completed for the Act. Government consultation on policy issues in these S.Is included two formal consultation documents in 2007 – details below.

4.11 Details of all previous Statutory Instruments under the Act are at Annex D to Annex 1, below.

## **5. Extent**

5.1 The Act mainly extends to England and Wales. The main provisions of the Act which also extend to Northern Ireland are section 1 and Schedule 1, which provide for the establishment of ISA. Otherwise, the provisions of the Act are essentially mirrored in the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007. 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 Instrument made under the Act will set out the Instrument's extent or application.

## **6. Policy background**

6.1 The Bichard Inquiry Report (2004), identified systemic failures in current vetting and barring systems. These included the following factors:

6.1.1 inconsistent decisions were being made by employers on the basis of CRB disclosure information;

6.1.2 CRB disclosure information is only certain to be accurate on the day of issue;

6.1.3 there are inconsistencies between List 99, and the POCA and POVA lists, which operate under different legislative procedures;

6.1.4 the current barring system is reactive to harmful behaviour rather than preventive;

6.1.5 there are inconsistencies between police authorities in the disclosure of police information.

6.2 The aspects of policy most relevant to each of the Instruments referred to at Annex D below are described in those Instruments' respective Explanatory Memoranda. Looking at the broader policy behind the Act, the intention is to address the failings identified at paragraph 6.1 and – as implemented in January 2009 - 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 were subject to previous restrictions have been included or are being considered for inclusion in the new barred lists (with a saving provision to maintain the previous restriction until such consideration is

completed). From 12 October 2009, inclusion on those lists took 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, at the end of the phasing-in period (and subject to the review mentioned above), be required to put in place safeguards to manage the risks posed by barred individuals).

- 6.4 The Government broadly repealed (as provided for in the Act) the previous restrictions at 12 October 2009 (subject to savings for any cases referred to the Secretary of State which remained unfinished at that date). In relation to people who had been on List 99 on grounds other than unsuitability to work with children (for example, professional misconduct grounds) and whom ISA has decided not to transfer to the new barred lists, where appropriate, the General Teaching Councils for England and Wales (where relevant) must make a decision as to individuals' suitability to be teachers.
- 6.5 Monitoring for new workers will be possible from July 2010, and compulsory for those who start from November 2010. The Government will issue advice in good time to regulated activity providers for the later stages of the phasing in, from April 2011 onwards, of existing workers becoming subject to monitoring. The Government has published guidance documents (see the explanatory memorandum to which this supplement is annexed) to help intermediary bodies, employers, employees and volunteers understand clearly their rights and responsibilities under the new scheme.
- 6.6 **Public Consultation:** The Government consulted publicly in 2007. The results were published, first on 14 November 2007 at: <http://www.dfes.gov.uk/consultations/conResults.cfm?consultationId=1476> ; and second on 30th May 2008 (details below) at: <http://www.dcsf.gov.uk/consultations/conResults.cfm?consultationId=1516> . The explanatory memorandum with each Statutory Instrument, where relevant, gives further detail on any consultation responses relevant to that SI.
- 6.7 In 2007, 2008 and 2009, Government officials undertook a series of stakeholder information events in major cities around England, Wales and Northern Ireland. Further events are planned for spring 2010; dates and locations will be publicised at: [www.isa.gov.org.uk](http://www.isa.gov.org.uk) . That website also contains a number of fact sheets and background documents on the new Scheme. Also, a Vetting and Barring Scheme contact centre is now live for queries about the Scheme on 0300 123 1111 (Lo-call) available Monday to Friday between 8am and 5.30pm, to help support stakeholders, including employers and employees, with their understanding of the new Scheme.
- 6.8 The second formal consultation on implementation of the Scheme, undertaken when details of the Scheme's procedures and computer systems were still to be designed or built, set out in detail how it is intended that the Scheme will operate. 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;
- eligibility to make checks on an employee's status in the Scheme;
- how to apply to be monitored under the Scheme;
- phasing-in of applications to the Scheme;
- the application fee;
- referring information to ISA; and
- representations and appeals against barring decisions.

## **7. Impact**

7.1 At Annex B is a copy of the announcement by the Home Office Minister, which showed revised total cost figures. An updated impact assessment, reflecting these figures, will be made available by the Home Office. 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](http://www.dfes.gov.uk/ria/index.cfm?action=assessments.view&i_assessmentID=73).

## **8. Contact**

8.1 Matthew Tagney, Safeguarding Vulnerable Groups Act Implementation Division, Department for Children, Schools and Families, Level 1, Sanctuary Buildings, Great Smith Street, London SW1P 3BT  
[matthew.tagney@dcsf.gsi.gov.uk](mailto:matthew.tagney@dcsf.gsi.gov.uk) tel: 020 7783 8253.

*DCSF, 21 January 2010*

### Annexes

- A Written Ministerial Statement by the Parliamentary Under Secretary of State for Identity (Meg Hillier), Thursday 19 March 2009
- B Written Ministerial Statement by the Parliamentary Under Secretary of State for Identity (Meg Hillier), Tuesday 1 April 2008.
- C DCSF memorandum to the House of Lords Merits Committee, published in the 15<sup>th</sup> Report of Session 2007-08, 19<sup>th</sup> March 2008.
- D Previous Statutory Instruments, and how they relate to the over-arching explanatory memorandum, and supplements to it.

## **Annex A**

Reference from Supplement to Explanatory Memorandum, para 4.5.8

### **WRITTEN MINISTERIAL STATEMENT**

Thursday, 19 March 2009

#### **HOME OFFICE**

##### **Vetting and Barring Scheme**

The Parliamentary Under-Secretary of State for the Home Department (Meg Hillier): Since January this year, the new Independent Safeguarding Authority (ISA) has been taking all barring decisions on new cases referred to it under the current barring provisions of POVA, POCA and List 99. This has replaced barring decisions by Ministers with independent decision making in relation to those persons considered unsuitable to work with children or vulnerable adults.

From 12 October this year, we will bring into force the barring provisions under the Safeguarding Vulnerable Groups Act 2006, significantly extending the range of activities and workplaces from which individuals may be barred to include all regulated activities, as defined by the Act. In particular, a wider range of posts and workplaces which provide for vulnerable adults will now be covered by the barring arrangements. The ISA will make independent barring decisions on cases referred to it, and bars will apply to paid employment and voluntary work in regulated activities. From this date, those barred under current arrangements who have been transferred to the new barred lists by the ISA will also be barred from the wider scope of regulated activities. It will be an offence for any barred person to work in regulated activities, and for any employer to employ someone he knows to be barred, in either a paid or voluntary capacity. Requirements will also come into force for employers to refer relevant cases to the ISA in instances of harm to the vulnerable groups.

With effect from July 2010, the final element of the new scheme will be phased in. Those wishing to work with children or vulnerable adults will be able to apply for registration with the new scheme; the ISA will consider all cases referred to it and will be able to bar those considered unsuitable for such work; and continuous monitoring of those registered with the scheme will commence. New entrants to the workforce and those changing posts will apply to the scheme first under plans to phase in the workforce gradually. In order not to disrupt normal recruitment processes over the summer period, relevant criminal offences will not be brought into force until November 2010. At this point registration with the new scheme and the requirement for employers to check registered status will become mandatory for the phased-in groups.

## **Annex B**

Reference from Supplement to Explanatory Memorandum, para 2.2 (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 C

Reference from Supplement to Explanatory Memorandum, para 4.5.3 (i) footnote

Extract from DCSF memorandum to the House of Lords Merits Committee, published in the 15<sup>th</sup> Report of Session 2007-08, pages 31-32, 19<sup>th</sup> 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]

## **Annex D**

Reference from Supplement to Explanatory Memorandum, para 2.1

### Previous Statutory Instruments under the Act, and how they relate to the over-arching explanatory memorandum and supplements to it

1. The lists below describe the previous Statutory Instruments laid before Parliament under the Act, and relate them to both the original over-arching explanatory memorandum by the Department for Children, Schools and Families, and to subsequent supplements to that memorandum. The most recent set of Instruments is described at paragraph 4 below, and the earlier sets at paragraphs 2 to 3.
2. The first set of Statutory Instruments under the Act (mentioned above at Annex 1, paragraph 2.1) were as follows, made in 2007 and 2008. The original over-arching explanatory memorandum by the Department for Children, Schools and Families is available with each Statutory Instrument (except the Commencement Orders) made by a DCSF Minister, at the link shown below.
  - a. The Safeguarding Vulnerable Groups Act 2006 (Commencement No.1) Order 2007, S.I. 2007/3545, and (Commencement No.2) Order 2008, SI 2008/1320; and The Safeguarding Vulnerable Groups Act 2006 (Barred List Prescribed Information) Regulations 2008 (these specify information which ISA must keep about people included in the barred lists);
  - b. The Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008, SI 2008/473, which requires ISA to transfer, or consider transferring, all those subject to existing restrictions to the new barred lists. Explanatory memorandum: [www.opsi.gov.uk/si/si2008/em/uksiem\\_20080473\\_en.pdf](http://www.opsi.gov.uk/si/si2008/em/uksiem_20080473_en.pdf) ;
  - c. The Safeguarding Vulnerable Groups Act 2006 (Barring Procedure) Regulations 2008, SI 2008/474. They make provision in relation to the making of representations, 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. Explanatory memorandum: [www.opsi.gov.uk/si/si2008/em/uksiem\\_20080474\\_en.pdf](http://www.opsi.gov.uk/si/si2008/em/uksiem_20080474_en.pdf) ;
  - d. The Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria) (Transitional Provisions) Regulations, SI 2008/1062. They specify the criteria which enable ISA to identify which of the people it considers in accordance with the Transitional Provisions Order do not have the right to make representations as to their inclusion in the new lists. Explanatory memorandum: [www.opsi.gov.uk/si/si2008/em/uksiem\\_20081062\\_en.pdf](http://www.opsi.gov.uk/si/si2008/em/uksiem_20081062_en.pdf) ;
  - e. The Protection of Children and Vulnerable Adults and Care Standards Tribunal (Children's and Adults' Barred Lists) (Transitional Provisions) Regulations 2008, SI 2008/1497. They set out the procedure to be followed by the relevant Tribunal when considering appeals against decisions taken by ISA under the Order at (b) above. The then role of the Care Standards Tribunal in such appeals is now with the new First-tier Tribunal.

3. The original version of the supplement to the over-arching explanatory memorandum was attached to explanatory memoranda accompanying the second set of Statutory Instruments under the Act, which comprised:

a. The Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria) (Foreign Offences) Order 2008, SI 2008/3050, in force 13<sup>th</sup> November 2008. This Order amends Schedule 3 to the Act to allow foreign offences to be prescribed as forming the basis for criteria that will cause a person to be barred automatically. It also clarifies the duty on courts under paragraph 25 of that Schedule. Explanatory memorandum:

[www.opsi.gov.uk/si/si2008/em/uksiem\\_20083050\\_en.pdf](http://www.opsi.gov.uk/si/si2008/em/uksiem_20083050_en.pdf) ;

b. The Safeguarding Vulnerable Groups Act 2006 (Prescribed Information) Regulations 2008, SI 2008/3265, which came fully into force on 12<sup>th</sup> October 2009. They prescribe the information that the ISA may demand from employers and others as well as the information that anyone must provide to the ISA when making a referral pursuant to a requirement under the Act. Explanatory memorandum:

[www.opsi.gov.uk/si/si2008/em/uksiem\\_20083265\\_en.pdf](http://www.opsi.gov.uk/si/si2008/em/uksiem_20083265_en.pdf) ;

c. the Safeguarding Vulnerable Groups Act 2006 (Transitory Provisions) Order 2009, SI 2009/12, in force 20<sup>th</sup> January 2009. This Order provided for referrals under the existing arrangements referred to at para.4.2 above to be made to the ISA rather than the Secretary of State and for the ISA to take barring decisions in relation to them in accordance with the provisions of the Act. Explanatory Memorandum:

[www.opsi.gov.uk/si/si2009/em/uksiem\\_20090012\\_en.pdf](http://www.opsi.gov.uk/si/si2009/em/uksiem_20090012_en.pdf) ,

d. The Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009, SI 2009/37, in force 20<sup>th</sup> January 2009. They prescribe the criteria (principally the fact that a person has been convicted of or received a caution in relation to one of the offences specified in the Regulations) which lead to the ISA being required to include the person in one or both of the barred lists maintained under the Act.

Explanatory Memorandum:

[www.opsi.gov.uk/si/si2009/em/uksiem\\_20090037\\_en.pdf](http://www.opsi.gov.uk/si/si2009/em/uksiem_20090037_en.pdf) ;

e. The Safeguarding Vulnerable Groups Act 2006 (Commencement No.3) Order 2009, SI 2009/39, made 14<sup>th</sup> January 2009, commenced the provisions necessary for the above instruments to have effect;

f. The Safeguarding Vulnerable Groups Act 2006 (Devolution Alignment) Order 2009, SI 2009/265, in force 13<sup>th</sup> March 2009. This bars, in England and Wales, anyone on the ISA Northern Ireland barred lists.

Explanatory Memorandum:

[www.opsi.gov.uk/si/si2009/em/uksiem\\_20090265\\_en.pdf](http://www.opsi.gov.uk/si/si2009/em/uksiem_20090265_en.pdf) .

4. The second supplement was attached to DCSF explanatory memoranda accompanying the third set of Statutory Instruments to be laid before Parliament under the Act. These comprised:
- a. the Safeguarding Vulnerable Groups Act 2006 (Commencement No.4) Order 2009, SI 2009/1503, made 17<sup>th</sup> June 2009 by Home Office to enable Home Office to make regulations to support the new VBS in time for 12<sup>th</sup> October 2009;
  - b. The Safeguarding Vulnerable Groups Act 2006 (Miscellaneous Provisions) Regulations 2009 S.I. 2009/1548, in force on 12 October 2009; which defined individuals as vulnerable adults when receiving certain welfare services, and prescribed when driving a vehicle being used only for purposes of conveying children or vulnerable adults and those caring for them, will be a regulated activity. Explanatory memorandum by the Department of Health: [www.opsi.gov.uk/si/si2009/em/uksiem\\_20091548\\_en.pdf](http://www.opsi.gov.uk/si/si2009/em/uksiem_20091548_en.pdf) ;
  - c. the Safeguarding Vulnerable Groups Act 2006 (Miscellaneous Provisions) Order 2009 S.I. 2009/1797, in force on 12 October 2009; which excepts persons from being vulnerable adults just because they receive services in relation to certain learning difficulties; excepts ancillary first aid from regulated activity; allows a local authority to place a fostered child with a barred person in limited circumstances where the child's welfare requires it; and makes devolution alignment provisions. Explanatory memorandum: [www.opsi.gov.uk/si/si2009/em/uksiem\\_20091797\\_en.pdf](http://www.opsi.gov.uk/si/si2009/em/uksiem_20091797_en.pdf) ;
  - d. the Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Miscellaneous and Transitional Provisions and Commencement No.5) Order 2009, SI 2009/2610, which contains provisions necessary for the commencement of the barring and referral aspects of the new Scheme, and transitional provisions in relation to unfinished cases under the old barring schemes. Explanatory Memorandum: [www.opsi.gov.uk/si/si2009/em/uksiem\\_20092610\\_en.pdf](http://www.opsi.gov.uk/si/si2009/em/uksiem_20092610_en.pdf) ;
  - e. the Safeguarding Vulnerable Groups Act 2006 (Commencement No.6, Transitional Provisions and Savings) Order 2009, SI 2009/2611, which brings into force the main barring and referrals provisions of the new Scheme and commences repeals of provisions relating to previous barring schemes, and makes transitional and saving provisions in relation to those schemes.
5. The Act is also amended by sections Sections 81 to 89 of the Policing and Crime Act 2009, at [www.opsi.gov.uk/acts/acts2009/pdf/ukpga\\_20090026\\_en.pdf](http://www.opsi.gov.uk/acts/acts2009/pdf/ukpga_20090026_en.pdf) .