

PROTECTION OF FREEDOMS ACT 2012

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 5: Safeguarding vulnerable groups, criminal records etc.

Chapter 1: Safeguarding of vulnerable groups

Section 77: Minor amendments

312. *Subsection (1)* repeals uncommenced amendments to the SVGA made by the Policing and Crime Act 2009 (“the 2009 Act”). *Paragraph (a)* omits section 87(2) of the 2009 Act, which would have required the notification to employers of an intention by the ISA to bar an individual, prior to the receipt of representations and a final decision as to whether to place a person on the barred lists. *Paragraph (b)* omits section 89(6) of the 2009 Act which amended the power of the Secretary of State to examine convictions or cautions in connection with criteria for the referral of individuals to the ISA under Schedule 3 to the SVGA; such referrals will now be governed by the revised arrangements in section 67.
313. *Subsection (2)* amends section 39(1) of the SVGA so as to replace the duty on a local authority to provide information to the ISA which may be relevant to a barring decision with a power to do so.
314. *Subsection (3)* amends section 50A(1) of the SVGA which governs the provision of information to the police by the ISA. The amendment enables the ISA to provide police forces with information for the purposes of recruitment to the police service and for other reasons which may be prescribed (in addition to the existing grounds of the prevention, detection and investigation of crime, or the apprehension and prosecution of offenders).
315. *Subsection (4)* places on the ISA a duty to provide, on request to any chief officer of police, information as to whether a person is on a barred list and either or both of the entire barred lists. This applies for any of the reasons for which information can be provided to the police, including the new reasons introduced by subsection (3).
316. *Subsection (4)* also provides the ISA with a power to inform the Secretary of State, in their capacity as being responsible for Her Majesty’s Prison Service, or the Probation Service, about information which the ISA reasonably believes to be relevant, provided that it is for the purpose of protecting children or vulnerable adults. This subsection also places on the ISA a duty to provide to the Secretary of State (in practice, the Prison Service) or the Probation Service, on request, information about whether a person is on a barred list, provided that it is for the purpose of protecting children or vulnerable adults.
317. **Section 64** (see paragraphs 274 to 277) specifies that certain activities that would generally constitute regulated activity relating to children will no longer be within

*These notes refer to the Protection of Freedoms Act
2012 (c.9) which received Royal Assent on 1 May 2012*

the scope of regulated activity if the person carrying out that activity is subject to regular, day to day supervision by another person who is carrying out regulated activity. *Subsection (6)* of section 77 inserts new paragraph 5A of Schedule 4 to the SVGA, which provides that the Secretary of State must publish guidance to assist regulated activity providers and personnel suppliers in deciding whether supervision is of such a kind that the person being supervised would not be engaging in regulated activity relating to children. New paragraph 5A(2) provides that the Secretary of State must consult the Welsh Ministers before issuing that guidance; and new paragraph 5A(4) requires that regulated activity providers and personnel suppliers must, in exercising any of their functions under the SVGA, have regard to that guidance.