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 67: Alteration of test for barring decisions

285.   This section amends Schedule 3 to the SVGA which sets out how someone may be referred by the Secretary of State to the ISA and included in the children's barred list (Part 1 of Schedule 3) or the adults' barred list (Part 2 of Schedule 3).

286.   *Subsection (1)* relates to the children's barred list and amends the provisions (set out in paragraphs 1(2) and (3) of Schedule 3 to the SVGA) for the automatic barring of persons who meet the prescribed criteria. The prescribed criteria are set out in regulations (the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009: SI 2009/37 (as amended) and refer to circumstances where individuals have been convicted or cautioned for a serious criminal offence, which give rise to a clear indication of risk to children or vulnerable adults. Subsection (1) substitutes new sub-paragraphs 1(2) and 1(3) for those in Schedule 3 to the SVGA to provide that when the Secretary of State has reason to believe that a person meets the criteria for automatic barring (without representations) by the ISA as prescribed in the Prescribed Criteria Regulations, the Secretary of State must refer that person to the ISA. If the ISA is satisfied that paragraph 1 applies to a person (whether or not that person was referred to them by the Secretary of State), the ISA must include that person in the children's barred list.

287.   *Subsection (2)* substitutes new sub-paragraphs (2) to (8) of paragraph 2 of Schedule 3 to the SVGA for the existing sub-paragraphs (2) to (4) which govern "automatic bars with representations". These bars are based on criminal convictions or cautions which, whilst not providing such a clear indication of risk as the criteria falling under paragraph 1 of Schedule 3, are still serious and raise the presumption of a risk of harm to children or vulnerable adults. These offences are also set out in the Prescribed Criteria Regulations. New paragraphs 2(2) to (8) of Schedule 3 amend the arrangements for the referral of these cases to the ISA by the Secretary of State so as to limit the requirement for the Secretary of State to make referrals to the ISA and limiting the ISA bars to those engaged in 'regulated activity' and those who have been or might in the future be engaged in regulated activity. New paragraph 2(4) requires the ISA to seek representations from an individual who has committed such an offence, prior to reaching a decision on whether to place them on the children's barred list. If no such representations are received within the prescribed time period, it requires the ISA to place the person on the barred list. If representations are received, then the ISA must consider whether it is appropriate to include the individual in the barred list. New

paragraphs 2(6) and (8) limit the application of such bars to those who are engaged, have been engaged or might in the future be engaged in regulated activity.

288.   *Subsections (3)* and *(4)* provide the same limitation of the bar to those who are engaged in, have been engaged in or might in the future be engaged in, regulated activity, in respect of persons referred to the ISA on the grounds of behaviour (paragraph 3 of Schedule 3 to the SVGA) or risk of harm (paragraph 5 of Schedule 3) in relation to children. These provisions ensure that only those who are engaged in regulated activity, have been engaged in regulated activity or might in the future be engaged in such activity can be placed on the children's barred list.

289.   *Subsections (5)* to *(8)* make the same changes as subsections (1) to (4) in respect of persons referred to the ISA or placed on the adults barred list (paragraphs 7 to 11 of Schedule 3 to the SVGA).