

## EXECUTIVE NOTE

### THE PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007 (TRANSITORY PROVISIONS IN CONSEQUENCE OF THE SAFEGUARDING VULNERABLE GROUPS (NORTHERN IRELAND) ORDER 2007) ORDER 2009

SSI 2009/375

#### **Powers under which Instrument is made**

1. Section 87(2) 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 in Northern Ireland. Section 87 was brought into force in the second Commencement Order (SSI 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**

##### *Current position in Scotland*

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 enhanced disclosure checks for people working with vulnerable groups.

##### *Disclosure of the Northern Ireland POCVA lists*

4. The Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (SI 2003/417) (“the POCVA Order”) establishes lists of individuals considered unsuitable to work with children and vulnerable adults in Northern Ireland and provides that listed persons are disqualified from working with children in Northern Ireland. Information about such listings are disclosed as appropriate by Disclosure Scotland using the powers at sections 113C and 113D of the Police Act 1997 and regulations 13(1)(c) and 14(b) of the Police Act 1997 (Criminal Records) (Scotland) Regulations 2006 (SSI 2006/96).

##### *Safeguarding Vulnerable Groups (Northern Ireland) Order 2007*

5. The Scottish Government, UK Government and Northern Ireland Executive are working towards establishing more coherent arrangements for vetting and barring

across the UK. The legislative underpinning for these arrangements is provided by the Protection of Vulnerable Groups (Scotland) Act 2007 (“the PVG Act”) for Scotland, the Safeguarding Vulnerable Groups Act 2006 (“the SVG Act”) for England and Wales (and, to a limited extent, Northern Ireland) and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (“the SVG NI Order”) for Northern Ireland.

6. The SVG 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 in England, Wales and Northern Ireland has been transferred from the Secretary of State in a phased transition.

#### *Recent changes in Northern Ireland*

7. The Safeguarding Vulnerable Groups (Regulated Activity, Miscellaneous and Transitional Provisions and Commencement No. 4) Order (Northern Ireland) 2009 (SR 2009/304) was made on 1 September 2009 and the Safeguarding Vulnerable Groups (Commencement No. 5, Transitional Provisions and Savings) Order (Northern Ireland) 2009 (SR 2009/346) was made on 12 October 2009; both came into force on 12 October 2009. From that date, the SVG NI barred lists have taken full effect in that individuals included on those barred lists are barred from regulated activity as defined in the SVG NI Order 2007 rather than relying on the prohibitions in the POCVA Order. The making of these NI orders enables the Scottish Ministers to make corresponding provision under section 87(2) of the PVG Act for the first time.

#### *Disclosure of the SVG NI barred lists – after 12 October*

8. The Protection of Vulnerable Groups (Scotland) Act 2007 (Transitory Provisions in Consequence of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007) Order 2009 (“the Scottish Order”) makes provision effective from 20 November 2009. The Scottish Order provides for the Police Act 1997 to have effect as if modified and amends the Police Act 1997 (Criminal Records) (Scotland) Regulations 2006 (SSI 2006/96), to allow for the disclosure of the SVG NI barred lists in the same way as other list information, including whether any appeal is pending.

#### *Why this provision is necessary*

9. The Scottish Order improves arrangements for disclosure of a person included on an SVG NI barred list. Although the Scottish Order comes into force a few weeks after the changes in Northern Ireland take effect, there is no gap in protection in the interim as arrangements exist for the disclosure of the SVG NI barred lists but the Scottish Order brings these into line with the arrangements for other barred lists.

#### **Consultation**

10. The order has not been the subject of public consultation because it is a technical instrument which improves the arrangements for disclosure of the SVG NI lists in Scotland.

## **Financial effects and Regulatory Impact Assessment**

11. The order has no financial implications as the instances of hits against SVG NI lists are extremely rare and the Scottish Order has the effect of streamlining the procedure which needs to be followed in such instances. The order will have effect until the 2007 Act is substantively commenced in 2010. Since this order has no financial implications either for the Scottish Government or external organisations, no Regulatory Impact Assessment has been prepared for this instrument.

Scottish Government  
Children, Young People and Social Care Directorate