

**EXPLANATORY MEMORANDUM TO**  
**THE EDUCATION (MISCELLANEOUS AMENDMENTS RELATING TO**  
**SAFEGUARDING CHILDREN) (WALES) REGULATIONS**  
**2009 No. 2544 (W.206)**

This Explanatory Memorandum has been prepared by the Department for Children, Education, Lifelong Learning and Skills and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

(i) **Description**

This instrument amends a series of Welsh Regulations made to various sets of regulations under the Education Act 1996, the School Standards and Framework Act 1998, and the Education Act 2002 to reflect changes that will arise as a result of the commencement on 12 October 2009 of the barring provisions in the Safeguarding Vulnerable Groups Act 2006 (“the SVGA”) and the commencement of new provisions (inserted by the SVGA) in the Police Act 1997.

(ii) **Matters of special interest to the Subordinate Legislation Committee**

These regulations are consequential amendments that will facilitate the implementation of the SVGA 2006 when it goes live on October 12 2009. This instrument mirrors parallel regulations being made in Whitehall for England.

(iii) **Legislative Background**

The Welsh Ministers may make the Regulations in exercise of the powers conferred by Sections 342(2), (4) and (5), 569 of the Education Act 1996, sections 21(5) and (6), 138(7) and (8), 72 and 138(7) of the School Standards and Framework Act 1998 and sections 12(3), 19(3), 34(5), 35(4) and (5), 36(4) and (5), 136(c), 157(1), 168(1) and (2), 210(7) and 214(1) and (2) the Education Act 2002 include provision for Welsh Ministers to make regulations in a number of areas.

(iv) **Purpose and intended effect of the legislation**

The SVGA 2006 provides for a new Vetting and Barring Scheme (VBS) to replace the existing 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 purpose of the 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 vulnerable adults will have to go through. Specifically, these Regulations update requirements in the sets of regulations being amended, to make vetting checks on a person being considered for a post working with children or vulnerable adults. The existing sets of regulations require relevant bodies to obtain information about whether a person is barred under existing barring schemes under section 142 of the Education Act 2002 (known as “List 99”), or the Protection of Children Act 1999 (PoCA). From 12 October 2009, schemes under those two Acts will broadly be repealed, and barred lists under current schemes will be replaced by a children’s barred list, for England and Wales, maintained by the Independent Safeguarding Authority (ISA)<sup>1</sup> under the SVGA 2006. These Regulations add or substitute references to ISA barred lists where there are now references to current barred lists; and make a couple of other similar consequential amendments. Similar regulations are being laid in parallel to make the same sorts of amendments to sets of regulations for social care or health establishments or agencies for children or vulnerable adults, such as fostering services or care homes.

The current Regulations, made under the Education Act 1996, the Schools Standard and Framework Act 1988 and the Education Act 2002, broadly make consequential amendments to existing sets of regulations under those Acts in order to reflect the transition from current schemes for barring persons from working with children.

The Welsh Assembly Government proposes to commence these Regulations at the same time as the commencement of barring provisions of the SVGA 2006, which are intended to come into force on 12 October 2009. Those provisions will bar persons from “regulated activity” with children or with vulnerable adults.

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

The SVG 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 will replace those provided under several Acts of parliament including 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.

Activities that fall within the definition of a “regulated activity” are specified in Schedule 4 of the SVG Act 2006. Broadly, this includes a range of 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

---

<sup>1</sup> “Independent Safeguarding Authority” (ISA) is the working name, and is now proposed as the legal name, of the body which the 2006 Act called the Independent Barring Board (IBB). The Policing and Crime Bill proposes to rename IBB as ISA, at clause 79 in the Bill as published 21 May 2009 after Lords First Reading on 20 May 2009.

an opportunity for contact with vulnerable groups, and key positions of responsibility.

Further detail on the legislative background to the Act have been produced by the Department of Children, Schools and Families (DCSF), and can be found in the Explanatory Memorandum to the Safeguarding Vulnerable Groups Act 2006 (Barring Procedure) Regulations 2008, at: [www.opsi.gov.uk/si/si2008/em/uksiem\\_20080474\\_en.pdf](http://www.opsi.gov.uk/si/si2008/em/uksiem_20080474_en.pdf) . Annexed to that Memorandum is an overarching memorandum on the implementation of the SVG Act. Supplements to that overarching memorandum, which repeat its content where relevant, have been annexed to the explanatory memorandum on each subsequent instrument under the SVG Act. The most recent is the supplement annexed to the Explanatory Memorandum to The Safeguarding Vulnerable Groups Act 2006 (Miscellaneous Provisions) Regulations 2009, SI 2009/1548, at: [www.opsi.gov.uk/si/si2009/em/uksiem\\_20091548\\_en.pdf](http://www.opsi.gov.uk/si/si2009/em/uksiem_20091548_en.pdf) . That supplement is updated with the numbers for Statutory Instruments made to date under the SVG Act, and details of more recent steps in transition to the VBS which are not directly relevant to the Regulations that are the subject of this Memorandum.

## **Extent**

The SVGA 2006 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. This instrument extends to Wales.

## **Policy Background**

The provisions in these Regulations make consequential amendments which support the commencement of the full range of barring provisions under the new Scheme, which will bring about a further milestone in transition to the full implementation of that Scheme. The Regulations do not increase the burdens on schools and others to check if a person is barred. The need for consequential amendments arises directly from the UK Government's intention to commence from 12th October 2009:

- the barring provisions in the SVGA 2006; and
- new provisions and related repeals in the Police Act 1997, both provided for by the SVGA 2006.

These regulations amend requirements on certain persons, in the existing regulations, to do vetting checks on an individual seeking to do work in relation to an organisation which works with children:

- the requirement to check whether the individual is on a children's barred list currently depends on information to which the person is entitled, for specified purposes, by the Police Act 1997, section 113C. That section refers to barred lists under current schemes. The 2006 Act included amendments to the Police Act 1997 which will repeal that section and insert equivalent new section 113BA referring to the

new ISA children's barred list<sup>2</sup>, to specify cases where a person is entitled to that information. Therefore these amendment Regulations replace each reference to the information provisions now being repealed, by a reference to the equivalent new information provisions;

- a reference to the ISA children's barred list is added alongside each existing reference to current barred lists, **in requirements to keep records** of having checked whether an individual is on a barred list, and in regulations specifying disqualifications from certain posts e.g. a school governor;
- One regulation which disqualifies a person who refuses a CRB check is amended, two from a standard to an enhanced check and one to add an enhanced check where applicable, to bring them into line with current entitlements, guidance and practice; and in one regulation, the effect of work from which an individual is barred is maintained by inserting the full definition of that work, in place of a cross-reference to a definition elsewhere which is to be repealed.

After 1<sup>st</sup> November 2010, the duty under the Act to check that anyone entering regulated activity with children or vulnerable adults is ISA registered, which will apply to entrants to most posts covered in these regulations, will completely fulfil for those posts the purpose now fulfilled by a barred list check (obtained with an enhanced disclosure) on entrants.

Regulations relating to work with children.

Regulations 2 to 8 make the above amendments to sets of regulations under:

- the Education Act 1996;
- the School Standards and Framework Act 1998; and
- the Education Act 2002.

The sets of regulations relate to (in order of appearance in these Regulations):

- Education (Special Schools) Regulations 1994
- Education (Foundation Body) (Wales) Regulations 2001
- Independent School Standards (Wales) Regulations 2003
- Independent Schools (Provision of Information) (Wales) Regulations 2003
- Government of Maintained Schools (Wales) Regulations 2005
- Staffing of Maintained Schools (Wales) Regulations 2006
- Persons Providing Education at Further Education Institutions in Wales

---

<sup>2</sup> For a transitional period until all relevant individuals on current barred lists have been considered for barring on ISA lists, it will also specify current barred lists.

(Conditions) Regulations 2007

**Miscellaneous amendments**

These Regulations also correct drafting errors in the Staffing of Maintained Schools (Wales) Regulations 2006.

(v) **Consultation**

These regulations are consequential amendments following the making of a series of other instruments by the UK Government which have undergone full consultation.

(vi) **Regulatory Impact Assessment**

An RIA has not been prepared this is in line with guidance and the reason is that these regulations are simply making consequential amendments resulting from legislation made in Parliament on an England and Wales basis together with other minor or technical amendments.