

EXPLANATORY MEMORANDUM TO
THE CHILDREN ACT 1989, CARE STANDARDS ACT 2000 AND
ADOPTION AND CHILDREN ACT 2002 (MISCELLANEOUS
AMENDMENTS) (WALES) REGULATIONS 2009

2009 No. 2541 (W.205)

This Explanatory Memorandum has been prepared by the Department for Children's Health and Social Services 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 with regard to the requirement for those working in specific activities to obtain a criminal records certificate and the provision of information relating to their suitability to work with children or vulnerable adults. These regulations are consequential amendments that will facilitate the implementation of the Safeguarding Vulnerable Groups Act 2006 (SVG Act) when it goes live on 12 October 2009. This instrument mirrors parallel regulations being made in Whitehall for England.

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

None

(iii) Legislative background

The Welsh Ministers may make the Regulations in exercise of the powers conferred by sections 68 (1) and (2) 79C (2) and (3), 79M (1) (c) and 104 (4) of and paragraph 4 of Schedule 9A to the Children Act 1989, sections 12 (2) (a), 16 (1) (a), 22(1), (2) (a), (b), (d) and (e), 48 (1) (a) and 118 (1), (6) (a) of the Care Standards Act 2000 and sections 9 (1) , 10 (1) (a), (3) (a) and (e), 140 (1) and (7) of the Adoption and Children Act 2002. The SI follows the negative resolution procedure.

(iv) Purpose and intended effect of the legislation

The SVG Act provides for a new Vetting and Barring Scheme (the Scheme) 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.

The current Regulations, made under the Children Act 1989, the Care Standards Act 2000 and the Adoption and Children 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 or vulnerable adults, to lists of persons barred from working with children or vulnerable adults under the VBS.

The Welsh Assembly Government proposes to commence these Regulations at the same time as the commencement of barring provisions of the SVG Act, 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.

(v) 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 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.

Activities that fall within the definition of a “regulated” are specified in Schedule 4 of the SVG Act. 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 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 . 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 . 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.

(vi) Extent

The SVG Act mainly extends to England and Wales. The main provisions also extend to Northern Ireland are section 1 and Schedule 1, which provide for the establishment of ISA. This instrument extends to Wales.

(vii) 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 need for consequential amendments arises directly from the UK Government's intention to commence from 12th October 2009:

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

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

- the requirement to obtain an enhanced criminal record certificate (enhanced CRB check) is expressed by a reference to a section of the Police Act 1997 that is now out of date. The amendment brings that reference up to date;
- removing references to police checks within the meaning of the Police Act 1996 as these are no longer available. References to reports of checks on the lists maintained under section 1 of the Protection of Children Act 1999 (known as the "POCA list") and under regulations made under section 218 of the Education Reform Act 1988 (known as "List 99") have also been removed as access to information on these lists can only be obtained via an enhanced criminal record certificate. The effect of these amendments is that where a person to whom the principal regulations apply is engaging in regulated activity relating to children, an enhanced criminal record certificate must be available;
- amendments which refer to notifications under the Police Act 1997 that an individual is not included on "a specified adults list". From October 2009, such notifications will include the results of checks on both the Protection of Vulnerable Adults (POVA) list maintained under section 89 of the Care Standards Act 2000 and the adults barred list under the Safeguarding Vulnerable Groups Act 2006 and will be referred to as "ISA Adults First" checks, replacing the current "POVA First" checks. The effect of the amendments is to maintain the current relaxations which allow people in certain settings to apply to be registered or work for the purposes of an agency or establishment where an enhanced criminal record certificate has

been applied for but not issued provided that such notification has been received. The amendments apply only to regulations relating to care homes, nurses agencies and private and voluntary health care settings and only where the individual will not be engaging in regulated activity relating to children.

From 1 November 2010, the duty under the SVG 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.

(viii) Regulations relating to work with children

Regulations 2 to 9 make the above amendments to sets of regulations which cover the registration of child minders and day care providers under part 10A of the Children Act 1989 and the registration of establishments and agencies (that provide services to, or in relation to, children under part 2 of the Care Standards Act 2000). The sets of regulations relate to (in alphabetical order):

- adoption agencies;
- adoption support agencies;
- children's homes;
- child minding and day care;
- disqualification from caring for children;
- fostering services;
- Local Authority adoption services; and
- residential family centres.

The requirements are to check persons who carry on, manage, or work at or for the agency or establishment. In the case of the regulations for adoption agencies and fostering services, the requirements are also to check a prospective adopter or foster parent and any other members of his or her household aged 18 or over.

These regulations also amend the Disqualification from Caring for Children (Wales) Regulations 2004/2695 to enable a person disqualified from fostering a child privately and from registration for child minding and providing day care if they are included on the new children's barred list. Also a minor amendment to correct an error and ensure that a conviction for breach of the Day Care and Childminding regulations will lead to a disqualification.

(ix) Regulations relating to work with vulnerable adults

Regulations 10 to 15 make the above amendments to sets of regulations which cover establishments and agencies (in the adult social care sector and the health sector) in respect of which specified persons must register under part 2 of the Care Standards Act 2000. The sets of regulations relate to (in alphabetical order):

- adult placement schemes;
- care homes;
- domiciliary care agencies;
- nurses agencies;
- private dentistry; and
- private and voluntary health care establishments.

In each case, the requirements are to check persons who provide, carry on, manage, or work at or for, or are supplied by, the scheme, agency or establishment.

(x) Regulation relating to common registration requirements

Regulation 16 makes the above amendments to common requirements in relation to any establishment or agency with respect to which registration is required under part 10A of the Children Act 1989 or part 2 of the Care Standards Act 2000, whether in relation to work with children or with vulnerable adults. The requirements are to check the “responsible person” for the establishment or agency, the manager, and staff who would work with vulnerable groups. The responsible person is an individual applicant; or all partners in a partnership; or (in an organisation) a director, manager, secretary or other officer of that organisation who is responsible for supervising the management of the establishment or agency.

(xi) Miscellaneous amendments

These Regulations also make amendments to certain provisions of the Children’s Homes (Wales) Regulations 2002 and the Care Homes (Wales) Regulations 2002 to remove anomalies and to correct drafting errors

(xii) Consultation

These regulations are consequential amendments following the making of a series of other instruments by the UK Government which have undergone full consultation. The Department for Children, Schools and Families held a formal consultation on the proposed scheme in November 2007 across England and Wales and the response to that consultation was published in May 2008 and can be found at;

<http://www.dcsf.gov.uk/consultations/downloadableDocs/ISA%20scheme%20consultation-%20Govt%20response%20300508.doc>

There has also been consultation between officials in Whitehall and the Assembly to develop the regulations required to implement the SVG Act. The laying of the regulations has been subject to agreement through Ministerial correspondence between the Assembly and DCSF.

(xiii) Regulatory Impact Assessment

An RIA has not been prepared. This is in line with guidance as these

Regulations only make consequential amendments resulting from legislation made in Parliament on an England and Wales basis together with other minor or technical amendments.

Registration with the scheme will cost £64 and that costs falls to the individual unless they are undertaking regulated activity solely on a voluntary basis, when registration will be free of charge. It may be that the employer of an individual engaged in regulated activity pays the registration fee but that is subject of negotiation between the parties involved.