

EXPLANATORY MEMORANDUM TO

IMPLEMENTATION OF THE SAFEGUARDING VULNERABLE GROUPS ACT 2006: THE EDUCATION (INDEPENDENT SCHOOLS) (UNSUITABLE PERSONS) (WALES) REGULATIONS 2009

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.

Description

The Education (Independent Schools) (Unsuitable Persons) (Wales) Regulations 2009 describe persons who are deemed to be unsuitable to do prescribed work in independent school in Wales.

Matters of special interest to the Subordinate Legislation Committee

None.

These regulations facilitate the implementation of the Safeguarding Vulnerable Groups Act 2006 when it goes live on 12 October 2009 by underpinning the operation of an amended section 169 of the Education Act 2002.

Legislative Background

The SVG Act reforms arrangements for safeguarding children and vulnerable adults from the risk of harm from (amongst others) employees (paid or unpaid) whose work gives them access to these groups. The Act introduces arrangements that 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.

Hitherto the Welsh Ministers have been able to shut down independent schools, by removing them from the independent school register, if persons banned under section 142 of the Education Act 2002 have worked there. The power to do this was section 169 of the same Act.

Under the SVGA, section 142 will be repealed from 12 October 2009, although the repeal will be commenced in stages, and section 169 of the Education Act 2002 amended by the Education and Inspections Act 2006 section 170(1). The amended section 169 still provides a power for Welsh Ministers to remove independent schools from the register of such schools but now the power this hangs on a person undertaking prescribed work. The Education (Independent Schools) (Unsuitable Persons) (Wales) Regulations 2009 prescribe this work. The functions of the Welsh Ministers under this section were transferred to the Welsh Ministers for Wales by paragraph 30 of schedule 11 to the Government of Wales Act 2006.

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.

From 12 October 2009, schemes under the Education Act 2002 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)¹ under the SVGA 2006.

The purpose of the VBS is to minimise the risk of harm to children and vulnerable adults. It seeks to do this by barring unsuitable individuals from being present in settings where they could come into contact with children and vulnerable adults. Independent schools are amongst those settings. The Education (Independent Schools) (Unsuitable Persons) (Wales) Regulations 2009 have an analogous effect to the powers that the Welsh Ministers had under section 142 of the Education Act 2002 when engaged with section 169 of the same Act before it was amended by the Education and Inspections Act 2006.

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 define persons deemed unsuitable to work in independent schools.

The effect of the regulations is the same as the previous legislation and does not implement a policy change. The regulations prescribe persons who are unsuitable to work in independent schools, or to have contact with students in these settings.

Regulation 3 describes the direction, orders and decisions that make a person unsuitable. Regulation 2 defines prescribed work as being work carried out regularly (meaning more than two days in any period of thirty days) which gives an unsuitable person opportunity to have contact with a student at the school. Should an independent school fail to prevent an unsuitable person from working at the school, the Welsh Ministers may remove the school from the register of independent schools in Wales. The effect of this action is to close the school.

Extent

The SVGA 2006 extends mainly 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 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 independent schools and others to check if a person is unsuitable to be in the position of proprietor if subject to a direction.

Miscellaneous amendments

None.

Consultation

There is no issue to consult stakeholders about. The regulations are required following the making of a series of other instruments by the UK Government which have undergone full consultation.

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 amendments resulting from legislation made in Parliament on an England and Wales basis.