

PROTECTION OF FREEDOMS ACT 2012

EXPLANATORY NOTES

SUMMARY

4. The Act consists of seven Parts.
5. Chapter 1 of Part 1 makes provision in respect of the retention and destruction of fingerprints, footwear impressions and DNA samples and profiles taken in the course of a criminal investigation. In particular, it replaces the existing framework, set out in Part 5 of the Police and Criminal Evidence Act 1984 (“PACE”), whereby fingerprints and DNA profiles taken from a person arrested for, charged with or convicted of a recordable offence may be retained indefinitely. Under the new scheme provided for in this Chapter, the fingerprints and DNA profiles taken from persons arrested for or charged with a minor offence will be destroyed following either a decision not to charge or following acquittal. In the case of persons charged with, but not convicted of, a serious offence, fingerprints and DNA profiles may be retained for three years, with a single two-year extension available on application by a chief officer of police to a District Judge (Magistrates’ Courts). The police will also be able to seek permission from the new independent Commissioner for the Retention and Use of Biometric Material to retain material for the same period (three plus two years) in cases where a person has been arrested for a qualifying offence but not charged. In addition, provision is made for the retention of fingerprints and DNA profiles in the case of persons convicted of an offence or given a fixed penalty notice and for extended retention on national security grounds.
6. Chapter 2 of Part 1 imposes a requirement on schools and further education colleges to obtain the consent of parents of children under 18 years of age attending the school or college, before the school or college can process a child’s biometric information.
7. Chapter 1 of Part 2 makes provision for the further regulation of Closed Circuit Television (“CCTV”), Automatic Number Plate Recognition (“ANPR”) and other surveillance camera technology operated by the police and local authorities. The provisions will require the Secretary of State to publish a code of practice in respect of the development and use of surveillance camera systems and provide for the appointment of a Surveillance Camera Commissioner to monitor the operation of the code.
8. Chapter 2 of Part 2 amends the Regulation of Investigatory Powers Act 2000 (“RIPA”) so as to require local authorities to obtain judicial approval for the use of any one of the three covert investigatory techniques available to them under the Act, namely the acquisition and disclosure of communications data, and the use of directed surveillance and covert human intelligence sources (“CHIS”).
9. Chapter 1 of Part 3 makes provision in respect of powers to enter land or other premises. The provisions enable a Minister of the Crown (or the Welsh Ministers), by order, to repeal unnecessary powers of entry, to add safeguards in respect of the exercise of such powers, or to replace such powers with new powers subject to additional safeguards. Each Cabinet Minister is placed under a duty to review existing powers of entry with a view to considering whether to exercise any of the aforementioned order-making

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powers. Provision is also made for the exercise of powers of entry to be subject to the provisions of a code of practice.

10. Chapter 2 of Part 3 makes provision in respect of parking enforcement. It makes it a criminal offence to immobilise a vehicle, move a vehicle or restrict the movement of a vehicle without lawful authority. Further provision is made to extend the power to make regulations for the police and others to remove vehicles that are illegally, dangerously or obstructively parked. Provision is also made so that the keeper (or in some circumstances the hirer) of a vehicle can be held liable for unpaid parking charges where the identity of the driver is not known.
11. **Part 4** makes provision in respect of counter-terrorism powers. Sections 57 and 58 reduce the maximum period of pre-charge detention for terrorist suspects from 28 to 14 days whilst introducing a power for the Secretary of State to increase the limit to 28 days for a period of three months in circumstances where Parliament is dissolved or in the period before the first Queen's Speech of the new Parliament. Sections 59 to 63 relate to stop and search powers. They confer a power on a constable to search a vehicle if he or she reasonably suspects that a vehicle is being used for the purposes of terrorism; replace the powers to stop and search persons and vehicles without reasonable suspicion in sections 44 to 47 of the Terrorism Act 2000 ("the 2000 Act") with a power that is exercisable in more restricted circumstances; and similarly restrict the operation of the power to search persons and vehicles for munitions and transmitters without reasonable suspicion in Schedule 3 to the Justice and Security (Northern Ireland) Act 2007.
12. Chapter 1 of Part 5 amends the Safeguarding of Vulnerable Groups Act 2006 ("SVGA") which provides the framework for the vetting and barring scheme operated by the Independent Safeguarding Authority ("ISA") in England and Wales. The amendments, in particular, repeal the provisions of the SVGA which provide for the monitoring by the Secretary of State of persons engaging in regulated activity. This Chapter also provides for broadly similar changes to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 ("SVGO") which provides the framework for the vetting and barring scheme in Northern Ireland.
13. Chapter 2 of Part 5 makes amendments to Part 5 of the Police Act 1997 ("the 1997 Act") which sets out the framework for the operation of the Criminal Records Bureau ("CRB") and the disclosure of criminal convictions and other relevant information in certificates issued by the CRB to support the assessment of a person's suitability for employment and other roles.
14. Chapter 3 of Part 5 establishes a new organisation, to be known as the Disclosure and Barring Service ("DBS"), which will replace and combine the functions of the ISA and the CRB.
15. Chapter 4 of Part 5 provides for a person to apply to the Secretary of State for a conviction or caution for an offence under section 12 or 13 of the Sexual Offences Act 1956 ("the 1956 Act"), and certain associated offences, involving consensual gay sex with another person aged 16 or over, to become a disregarded conviction or caution. This Chapter further provides for such disregarded convictions and cautions to be deleted from the Police National Computer ("PNC") and other police records so that they no longer show up on criminal record checks.
16. **Part 6** makes amendments to the Freedom of Information Act 2000 ("FOIA") and the Data Protection Act 1998 ("DPA"). The changes are fourfold. First, they amend the FOIA to make provision for the re-use of datasets by public authorities subject to that Act. Second, they amend the definition of a publicly owned company for the purposes of the FOIA so that it includes companies owned by two or more public authorities. Third, they extend to Northern Ireland amendments made to the FOIA by the Constitutional Reform and Governance Act 2010. Finally, they amend the FOIA and DPA to revise the arrangements in respect of the appointment and tenure of the office of the Information

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Commissioner and to make changes to the role of the Secretary of State in relation to the exercise of certain functions by the Information Commissioner.

17. **Part 7** makes two principal changes to existing criminal offences on human trafficking. First, it expands the existing trafficking offences, currently set out in sections 57 to 59 of the Sexual Offences Act 2003 and in section 4 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004, which make it an offence to traffick a person into, within, or out of the United Kingdom for the purposes of exploitation. Part 7 will, in addition, make it an offence for a UK national to traffick a person for sexual exploitation or for the purpose of labour or other exploitation regardless of where in the world the trafficking occurs or is intended to occur; and regardless of where the facilitation or arrangement of the trafficking takes place. Secondly, Part 7 amends the 2004 Act so that it is an offence where the trafficking of a person for the purpose of labour or other exploitation takes place wholly within the United Kingdom.
18. **Part 7** introduces into the Protection from Harassment Act 1997 two new offences of stalking (a summary only offence) and stalking involving fear of violence or serious alarm or distress (an either way offence). It also introduces a power of entry in relation to the summary only offence of stalking that would confer on the police a power, subject to the authorisation of a magistrate, to enter and search premises if there are reasonable grounds for believing that there is material on the premises which is likely to be of substantial value to the investigation of the offence.
19. **Part 7** also contains two repeals of enactments. It repeals section 43 of the Criminal Justice Act 2003 (“the 2003 Act”), which makes provision for certain fraud trials to be conducted without a jury, and removes the restrictions on the times when a marriage or civil partnership can take place. This Part also contains consequential amendments and repeals, makes provision for transitional arrangements, determines the extent of the provisions in the Act and provides for commencement.