
EXPLANATORY NOTE

(This note is not part of the Order)

Part 2 of this Order transfers the functions of the Independent Safeguarding Authority (“ISA”) under the Safeguarding Vulnerable Groups Act 2006 (“the 2006 Act”), the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (“the 2007 Order”), the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008 (“the 2008 Transitional Provisions Order”) and the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) (“the 2008 Northern Ireland Transitional Provisions Order”) to the Disclosure and Barring Service (“DBS”) which is established under section 87(1) of the Protection of Freedoms Act 2012. The ISA was originally called the Independent Barring Board, but it was renamed the Independent Safeguarding Authority by virtue of section 81 of the Policing and Crime Act 2009.

The ISA is the body in England, Wales and Northern Ireland which is responsible for maintaining the barred lists under section 2 of and Schedule 3 to the 2006 Act and Article 6 of and Schedule 1 to the 2007 Order. The children’s barred list is a list of those persons who are barred from engaging in regulated activity relating to children; the adults’ barred list is a list of those persons who are barred from engaging in regulated activity relating to vulnerable adults. The ISA also has functions in relation to exchanging information with providers of regulated activity (frequently the employer), personnel supplies (for example agencies), local authorities, professional bodies (for example the General Medical Council), supervisory authorities (for example Her Majesty’s Chief Inspector of Schools in England) and the police.

The ISA also has functions under the 2008 Transitional Provisions Order and the 2008 Northern Ireland Transitional Provisions Order which set out the system whereby the ISA considers any person for barring who was included in the predecessor lists. The predecessor lists in England and Wales are those kept under section 1 of the Protection of Children Act 1999 (c. 14), section 81 of the Care Standards Act 2000 (c. 14) and those persons subject to a direction under section 142 of the Education Act 2002 (c. 32). The predecessor lists in Northern Ireland are those kept under Articles 3 and 35 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (S.I. 2003/417 (N.I. 4)) (“the 2003 Order”) and the list kept for the purposes of the Education (Prohibition from Teaching or Working with Children) Regulations (Northern Ireland) 2007 (S.R. 2007/288). The 2008 Transitional Provisions Order also sets out the system whereby the ISA considers any person for barring who was subject to a disqualification order under sections 28, 29 of 29A of the Criminal Justice and Court Service Act 2000 (c. 43). The 2008 Northern Ireland Transitional Provisions Order also sets out the system whereby the ISA considers any person for barring who was subject to a disqualification order under Articles 23 or 24 of the 2003 Order. There are still some persons who are being considered or are yet to be considered under the 2008 Northern Ireland Transitional Provisions Order and the 2008 Transitional Provisions Order.

All the ISA’s functions under the 2006 Act, the 2007 Order, the 2008 Transitional Provisions Order and the 2008 Northern Ireland Transitional Provisions Order, with the exception of the obligation to establish the barred lists, are transferred to the DBS under article 2 of this Order.

Chapter 2 makes amendments to the principal enactments which are consequential on this transfer of functions and Chapter 3 makes amendments to other enactments which are consequential on this transfer of functions. Chapter 4 makes supplemental provision.

Part 3 of this Order transfers the functions of the Secretary of State in England and Wales which are exercised by the Criminal Records Bureau under Part 5 of the Police Act 1997 to the Disclosure and Barring Service. The functions of Access Northern Ireland, which operates on behalf of the

Northern Ireland Department of Justice under Part 5 of the 1997 Act, are not being transferred to the DBS. Articles 35 to 46 do this by amending Part 5 of the 1997 Act. Functions such as making regulations (for example under section 113B(2) of the 1997 Act) or issuing guidance (for example under section 113B(4A) of the 1997 Act) remain with the Secretary of State. The CRB also carries out functions under the 2006 Act and the 2007 Order, mainly in relation to sharing information with bodies including professional bodies and supervisory authorities. These functions are transferred to the DBS under articles 47 and 48 of this Order. Chapter 4 makes amendments to the main enactments which are consequential on this transfer of functions and Chapter 5 makes amendments to other enactments which are consequential on this transfer of functions. Chapter 6 makes supplemental provision.

Part 4 of this Order contains transitional provisions in light of the transfer of functions to the DBS. Articles 101 and 102 ensure that litigation which was being dealt with by the ISA will subsequently be dealt with by the DBS. Article 103 ensures that all information held by the ISA (for example, case files) will be passed to the DBS. Article 104 ensures that any representations made to the ISA and not yet dealt with at the time functions are transferred will be dealt with by the DBS and article 105 makes similar provision for representations made to the Secretary of State. Articles 106 and 107 ensure that any reviews being carried out, or any applications for reviews received, by the ISA at the time functions are transferred will be dealt with by the DBS. Article 108 provides that the DBS will take over the functions of preparing accounts and reports from the ISA at the time functions are transferred. Article 109 ensures that advice requested from the ISA in relation to predecessor lists will be dealt with by DBS when functions are transferred. Article 110 provides that any person registered with the CRB, for the purpose of counter-signing or transmitting applications under Part 5 of the 1997 Act, will have their registration automatically transferred to the DBS at the time functions are transferred.

Having transferred the ISA's functions to the DBS, Part 5 of this Order dissolves the ISA under section 88(3) of the Protection of Freedoms Act 2012.