
DRAFT STATUTORY INSTRUMENTS

2012 No.

**The Protection of Freedoms Act 2012 (Disclosure and
Barring Service Transfer of Functions) Order 2012**

PART 3

Transfer of the Secretary of State's functions

CHAPTER 1

Transfer of the Secretary of State's functions under Part 5 of the 1997 Act

Amendment of Part 5 of the 1997 Act

36. The 1997 Act is amended as follows.

37. In the following provisions for “the Secretary of State” and “The Secretary of State”, in each place where it occurs, substitute “DBS”—

- (a) section 112(1) (but not paragraph (b) of subsection (1)) and (4);
- (b) section 113A(1), (2A), (4), (5) and (9)(1);
- (c) section 113B(1), (2A), (4), (6), (7), (8), (9) and (12)(2);
- (d) section 113E(2) and (4)(3);
- (e) section 114(1) (but not paragraph (b) of subsection (1));
- (f) section 116(1) (but not paragraph (b) of subsection (1));
- (g) section 116A(1), (2), (4), (5) and (7)(4);
- (h) section 117(1), (1A), (1B) and (2)(5);
- (i) section 117A(5) and (6)(6);
- (j) section 118(1), (2), (2ZA), (2A) (but not paragraph (d) of subsection (2A)), (3A) and (3B)(7);

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- (1) Section 113A was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c. 15) and amended by section 63(1) of, and paragraph 14 of Schedule 9 to, the Safeguarding Vulnerable Groups Act 2006, section 50 of the Criminal Justice and Immigration Act 2008 (c. 4), S.I. 2009/203, and sections 79(2), 80(1) and 115(1) and (2) of, and paragraphs 35 and 36 of Schedule 9 and Parts 5 and 6 of Schedule 10 to, the Protection of Freedoms Act 2012.
 - (2) Section 113B was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 and amended by section 63(1) of, and paragraph 14 of Schedule 9 to, the Safeguarding Vulnerable Groups Act 2006, section 50 of the Criminal Justice and Immigration Act 2008, S.I. 2009/203, and sections 79(2), 80(1), 82 and 115(1) and (2) of, and paragraphs 35 and 37 of Schedule 9 and Parts 5 and 6 of Schedule 10 to, the Protection of Freedoms Act 2012.
 - (3) Section 113E was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005.
 - (4) Section 116A was prospectively inserted by section 83 of the Protection of Freedoms Act 2012.
 - (5) Section 117(1A) was inserted by section 82(4) of the Protection of Freedoms Act; section 117(1B) was prospectively inserted by section 115(1) of, and paragraphs 104 and 108 of Schedule 9 to, the Protection of Freedoms Act 2012.
 - (6) Section 117A was inserted by section 82(5) of the Protection of Freedoms Act 2012.
 - (7) Section 118(2ZA) was prospectively inserted by section 85 of the Policing and Crime Act 2009; section 118(2A) was inserted by section 164 of the Serious Organised Crime and Police Act 2005; section 118(3A) and (3B) was prospectively inserted by section 115(1) of, and paragraphs 104 and 109(1) and (3) of Schedule 9 to, the Protection of Freedoms Act 2012.

- (k) section 119(1), (1B), (3), (4), (5) and (8)(8);
- (l) section 119B(5)(ca)(9);
- (m) section 120(1), (2), (5) and (6);
- (n) section 120ZA(2), (3) and (4)(10);
- (o) section 120A(1), (2), (3) and (4)(11);
- (p) section 120AA(1), (2), (3) and (6)(12);
- (q) section 120AB(1), (2), (3), (4), (5), (6) and (8)(13);
- (r) section 120AC(1), (3), (4), (5), (6) and (7)(14);
- (s) section 120AD(1) and (2)(15);
- (t) section 122(3), (3A) and (3B)(16);
- (u) section 124A(1)(17);
- (v) section 125B(1)(18).

38. In section 113A(5)—

- (a) in paragraph (a) for “his” substitute “its”; and
- (b) in paragraph (b) for “him” substitute “it”.

39. In section 113B—

- (a) in subsection (7) for “his” substitute “its”; and
- (b) in subsection (8) for “he” substitute “it”.

40. In section 117(2) for “he” in both places where it occurs substitute “it”.

41. In section 118—

- (a) in subsection (1) for “he” substitute “it”; and
- (b) in subsection (2A) for “he” substitute “it”.

42. In section 119—

- (a) in subsection (1) for “him” substitute “it”; and
- (b) in subsection (1B) for “he” substitute “it”;

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- (8) Section 119(1B) was inserted by section 63(1) of, and paragraph 14 of Schedule 9 to, the Safeguarding Vulnerable Groups Act 2006.
 - (9) Section 119B was inserted by section 28 of the Safeguarding Vulnerable Groups Act 2006; section 119B(5)(ca) was prospectively inserted by section 115(1) of, and paragraphs 104 and 111 of Schedule 9 to, the Protection of Freedoms Act 2012.
 - (10) Section 120ZA was inserted by section 328 of, and paragraph 1 and 7 of Schedule 35 to, the Criminal Justice Act 2003 (c. 44) and amended by section 163(3) of, and paragraphs 1 and 7 of Schedule 9 to, the Safeguarding Vulnerable Groups Act 2006 and S.I. 2009/203.
 - (11) Section 120A was inserted by section 134(1) of the Criminal Justice and Police Act 2001 (c. 16) and amended by S.I. 2009/203, sections 163(3) and 165(2) of, and paragraphs 1 and 8 of Schedule 14 to, the Serious Organised Crime and Police Act 2005, section 96 of the Policing and Crime Act 2009 and section 115(1) and (2) of, and paragraphs 35 and 42 to Schedule 9 and Part 5 of Schedule 10 to, the Protection of Freedoms Act 2012.
 - (12) Section 120AA was inserted by section 328 of, and paragraphs 1 and 9 of Schedule 35 to, the Criminal Justice Act 2003 and amended by S.I. 2009/203 and section 81 of the Protection of Freedoms Act 2012.
 - (13) Section 120AB was inserted by section 328 of, and paragraphs 1 and 9 of Schedule 35 to, the Criminal Justice Act 2003 and amended by S.I. 2009/203.
 - (14) Section 120AC was prospectively inserted by section 79(3) of the Protection of Freedoms Act 2012.
 - (15) Section 120AD was prospectively inserted by section 79(3) of the Protection of Freedoms Act 2012.
 - (16) Section 122(3A) and (3B) was inserted by section 29(1) and (4) of the Safeguarding Vulnerable Groups Act 2006.
 - (17) Section 124A was inserted by section 328 of, and paragraphs 1 and 11 of Schedule 35 to, the Criminal Justice Act 2003 and amended by section 165(3) of the Serious Organised Crime and Police Act 2005 and was prospectively amended by section 115(1) and (2) of, and paragraphs 104 and 116 of Schedule 9 to and Part 6 of Schedule 10 to, the Protection of Freedoms Act 2012.
 - (18) Section 125B was inserted by section 97(1) of the Policing and Crime Act 2009 and prospectively amended by section 115(1) of, and paragraphs 104 and 117 of Schedule 9 to, the Protection of Freedoms Act 2012.

- (c) in subsection (3) for “he” substitute “the Secretary of State”;
 - (d) in subsection (4)—
 - (i) for “him” substitute “it”; and
 - (ii) for “his” substitute “its”; and
 - (e) in subsection (5) for “him” substitute “it”.
- 43.** In section 120(2)(a) for “him” substitute “it”.
- 44.** In section 120A(1) for “him” substitute “it”.
- 45.** In section 120AB—
- (a) in subsection (1) for “his” substitute “its”; and
 - (b) in subsection (4)(b) for “he” substitute “it”.
- 46.** In section 122(3B) for “he” substitute “it”.
- 47.** In section 126(1) after the definition of “chief officer” insert—
- ““DBS” means the Disclosure and Barring Service established by section 87(1) of the Protection of Freedoms Act 2012;”

CHAPTER 2

Transfer of the Secretary of State’s functions under the 2006 Act

- 48.** In the following provisions of the 2006 Act for “the Secretary of State” and “The Secretary of State”, in each place where it occurs, substitute “DBS”—
- (a) section 30A(1), (6) and (7)(**19**);
 - (b) section 30B(1), (2), (5), (9) and (10)(**20**);
 - (c) section 33(3), (3A), (3D), (4) and (5)(**21**);
 - (d) section 43(1), (2), (5A), (5B), (5C), and (5F)(**22**);
 - (e) section 47(7);
 - (f) section 48(1), (2), (2A), (3), (4), (5) and (8)(**23**);
 - (g) section 49(1), (2), (2A), (3), (4), (5) and (8)(**24**);
 - (h) section 50(5)(**25**);
 - (i) paragraphs 19(7) and 22 of Schedule 3.

CHAPTER 3

Transfer of the Secretary of State’s functions under the 2007 Order

- 49.** In the following provisions of the 2007 Order for “the Secretary of State” and “The Secretary of State”, in each place where it occurs, substitute “DBS”—
- (a) Article 32A(1), (6) and (7)(**26**);

(19) Section 30A was prospectively inserted by section 72(1) of the Protection of Freedoms Act 2012.

(20) Section 30B was prospectively inserted by section 72(1) of the Protection of Freedoms Act 2012.

(21) Section 33(3A) and (3D) was prospectively inserted by section 72(2) of the Protection of Freedoms Act 2012.

(22) Section 43 was prospectively amended by section 75(3) of the Protection of Freedoms Act 2012.

(23) Section 48(2A) was prospectively inserted by section 76(3) of the Protection of Freedoms Act 2012.

(24) Section 49(2A) was prospectively inserted by section 74(4) of the Protection of Freedoms Act 2012.

(25) Section 50(5) was inserted by section 76(5)(c) of the Protection of Freedoms Act 2012.

(26) Article 32A was prospectively inserted by section 78 of, and paragraph 9(1) of Schedule 7 to, the Protection of Freedoms Act 2012.

- (b) Article 32B(1), (2), (5), (9) and (10)(**27**);
- (c) Article 35(3), (3A), (3D), (4) and (5)(**28**);
- (d) Article 45(1), (2), (5A), (5B), (5C), and (5F)(**29**);
- (e) Article 49(7);
- (f) Article 50(1), (2), (2A), (3), (4), (5) and (8)(**30**);
- (g) Article 51(1), (2), (2A), (3), (4), (5) and (8)(**31**);
- (h) Article 52(5)(**32**);
- (i) paragraph 22 of Schedule 1.

CHAPTER 4

Consequential amendments to the 1997 Act, the 2006 Act and the 2007 Order

Consequential amendments to the 1997 Act in England and Wales

- 50.**—(1) Section 119 of the 1997 Act is amended as follows—
- (2) Omit subsection (1A).
 - (3) After subsection (4) insert—
 - “(4A) DBS may require the Secretary of State to provide it with the information and advice specified in section 113CD(2) to (6) for the purpose of enabling DBS to carry out its functions under section 113CD.”
- 51.** Omit section 122A(**33**) of the 1997 Act.

Consequential amendments to the 1997 Act in Northern Ireland

- 52.**—(1) Section 119 of the 1997 Act is amended as follows.
- (2) After subsection (1) insert—
 - “(1ZA) Any person who holds records of convictions or cautions for the use of police forces generally must make those records available to the Disclosure and Barring Service for the purpose of enabling it to carry out its functions under paragraph 1, 2, 7 or 8 of Schedule 1 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.”
 - (3) In subsection (5)—
 - (a) after “Secretary of State” insert “or the Disclosure and Barring Service”, and
 - (b) after “him” insert “or it”.
 - (4) Omit subsection (8)(d).
- 53.** In section 126A of the 1997 Act omit—
- (a) subsections (2)(b) and (3), and

(27) Article 32B was prospectively inserted by section 78 of, and paragraph 9(1) of Schedule 7 to, the Protection of Freedoms Act 2012.

(28) Article 35(3A) and (3D) was prospectively inserted by section 78 of, and paragraph 9(2) of Schedule 7 to, the Protection of Freedoms Act 2012.

(29) Article 45 was prospectively amended by section 78 of, and paragraph 12(2) and (3) of Schedule 7 to, the Protection of Freedoms Act 2012.

(30) Article 50(2A) was prospectively inserted by section 78 of, and paragraph 13(3) of Schedule 7 to, the Protection of Freedoms Act 2012.

(31) Article 51(2A) was prospectively inserted by section 78 of, and paragraph 13(4) of Schedule 7 to, the Protection of Freedoms Act 2012.

(32) Article 52(5) was inserted by section 78 of, and paragraph 13(5)(c) of Schedule 7 to, the Protection of Freedoms Act 2012.

(33) Section 122A was inserted by section 328 of, and paragraphs 1 and 10 of Schedule 25 to, the Criminal Justice Act 2003.

(b) in subsection (2)(d) “section 119 or”.

Consequential amendments to the 2006 Act

- 54.** In section 43(5E) of the 2006 Act omit “or (as the case may be) the Secretary of State”.
- 55.** Schedule 3 to the 2006 Act is amended as follows.
- 56.** For sub-paragraphs (2) and (3) of paragraph 1 substitute—
“(2) If DBS is satisfied that this paragraph applies to a person, it must include the person in the children’s barred list.”
- 57.** For sub-paragraphs (2) and (3) of paragraph 2 substitute—
“(2) Sub-paragraph (4) applies if it appears to DBS that—
(a) this paragraph applies to a person, and
(b) the person is or has been, or might in future be, engaged in regulated activity relating to children.”
- 58.** For sub-paragraphs (2) and (3) of paragraph 7 substitute—
“(2) If DBS is satisfied that this paragraph applies to a person, it must include the person in the adults’ barred list.”
- 59.** For sub-paragraphs (2) and (3) of paragraph 8 substitute—
“(2) Sub-paragraph (4) applies if it appears to DBS that—
(a) this paragraph applies to a person, and
(b) the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults.”
- 60.** Omit paragraph 19(8).
- 61.** Omit paragraph 20(2).

Consequential amendments to the 2007 Order

- 62.** In Article 45(5E) of the 2007 Order omit “or (as the case may be) the Secretary of State”.
- 63.** Schedule 1 to the 2007 Order is amended as follows.
- 64.** For sub-paragraphs (2) and (3) of paragraph 1 substitute—
“(2) If DBS is satisfied that this paragraph applies to a person, it must include the person in the children’s barred list.”
- 65.** For sub-paragraphs (2) and (3) of paragraph 2 substitute—
“(2) Sub-paragraph (4) applies if it appears to DBS that—
(a) this paragraph applies to a person, and
(b) the person is or has been, or might in future be, engaged in regulated activity relating to children.”
- 66.** For sub-paragraphs (2) and (3) of paragraph 7 substitute—
“(2) If DBS is satisfied that this paragraph applies to a person, it must include the person in the adults’ barred list.”
- 67.** For sub-paragraphs (2) and (3) of paragraph 8 substitute—
“(2) Sub-paragraph (4) applies if it appears to DBS that—

- (a) this paragraph applies to a person, and
- (b) the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults.”

68. Omit paragraph 20(3).

CHAPTER 5

Consequential amendments to other enactments

Consequential amendments to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975

- 69. The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 is amended as follows.
- 70. In article 3(1)(34) for “Secretary of State” substitute “Disclosure and Barring Service”.
- 71. In Part II of Schedule 1 omit paragraph 44(35).

Consequential amendments to the Data Protection Act 1998

- 72. The Data Protection Act 1998(36) is amended as follows.
- 73. In entry 2 in the table in section 56(6) omit paragraphs (f) and (g).
- 74. In entry 4 in the table in section 56(6)—
 - (a) before “Its functions” insert “(a)”;
 - (b) after “Order 2007” insert—
 - “(b) Its functions under Part 5 of the Police Act 1997.”
- 75. In section 75(4) omit “by the Secretary of State”.

Consequential amendments to the Police Act 1997 (Criminal Records) Regulations 2002

- 76. The Police Act 1997 (Criminal Records) Regulations 2002(37) are amended as follows.
- 77. In regulation 5A(38) omit paragraph (z).
- 78. In regulation 11(1), (1)(b), (2), (2A)(39), (3) and (4) for “Secretary of State” substitute “Disclosure and Barring Service”.

Consequential amendments to the Independent Schools (Provision of Information) (Wales) Regulations 2003

- 79. The Independent Schools (Provision of Information) (Wales) Regulations 2003(40) are amended as follows.
- 80. In paragraph 3(16) of the Schedule for “Criminal Records Bureau” substitute “Disclosure and Barring Service”.

(34) Article 3(l) was inserted by [S.I. 2007/2149](#).

(35) Paragraph 44 was inserted by [S.I. 2009/1818](#).

(36) [1998 c. 29](#). Entry 2(g) and entry 4 were inserted by section 63(1) of, and paragraph 15 of Schedule 9 to, the 2006 Act and entry 4 was amended by Article 60(1) of, and paragraph 4 of Schedule 7 to, the 2007 Order.

(37) [S.I. 2002/233](#).

(38) Regulation 5A was inserted by [S.I. 2006/748](#) and paragraph (z) was inserted by [S.I. 2009/1882](#).

(39) Paragraph (2A) was inserted by [S.I. 2009/460](#).

(40) [S.I. 2003/3230 \(W. 310\)](#). Paragraphs 7(d) and 10(d) of the English language text and paragraphs 7(ch) and 10(ch) of the Welsh language text were substituted by [S.I. 2007/947 \(W. 81\)](#).

81. In paragraphs 7(d) and 10(d) of the Schedule for “Secretary of State” substitute “Disclosure and Barring Service”.

82. In paragraph 3(16) of the Schedule, in the Welsh language text of those Regulations (Rheoliadau Ysgolion Annibynnol (Darparu Gwybodaeth) (Cymru) 2003), for “Swyddfa Cofnodion Troseddol” substitute “Gwasanaeth Datgelu a Gwahardd”.

83. In paragraphs 7(ch) and 10(ch) of the Schedule, in the Welsh language text for “Ysgrifennydd Gwladol” substitute “Gwasanaeth Datgelu a Gwahardd”.

Consequential amendments to the Pensions Act 2004

84. At the end of the table in Schedule 3 to the Pensions Act 2004(41) insert—

“Disclosure and Barring Service	Functions under Part 5 of the Police Act 1997”
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85. At the end of the table in Schedule 8 to the Pensions Act 2004 insert—

“Disclosure and Barring Service	Functions under Part 5 of the Police Act 1997”
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Consequential amendments to the Police Act 1997 (Criminal Records) (Registration) Regulations 2006

86. The Police Act 1997 (Criminal Records) (Registration) Regulations 2006(42) are amended as follows.

87. In regulation 2 after the definition of the “1997 Act” insert—

““DBS” means the Disclosure and Barring Service established by section 87(1) of the Protection of Freedoms Act 2012;”

88. In the following provisions for “the Secretary of State” substitute “DBS”—

- (a) regulation 2;
- (b) regulation 3(1)(a), (1)(e)(ii) and (1)(f)(i);
- (c) regulation 4(2), (3), (4) and (5);
- (d) regulation 7(b), (c), (d)(i), (e), (e)(i), (f), (g)(iii), (j), (k) and (m);
- (e) regulation 8(1), (2) and (4);
- (f) regulation 9;
- (g) regulation 10(1), (2) and (3).

Consequential amendments to the Local Authority Adoption Service (Wales) Regulations 2007

89. The Local Authority Adoption Service (Wales) Regulations 2007(43) are amended as follows.

90. In regulation 16(3)(e) for “CRB” each time it occurs substitute “Disclosure and Barring Service”.

(41) 2004 c. 35.

(42) S.I. 2006/750 as amended by S.I. 2009/203.

(43) S.I. 2007/1357 (W. 128).

91. In paragraph 5 of Schedule 4 for “Criminal Records Bureau” substitute “Disclosure and Barring Service”.

92. In regulation 16(3)(d), in the Welsh language text of those Regulations (Rheoliadau Gwasanaeth Mabwysiadu Awdurdodau Lleol (Cymru) 2007), for “SCT (CRB)” each time it occurs substitute “Gwasanaeth Datgelu a Gwahardd”.

93. In paragraph 5 of Schedule 4, in the Welsh language text, for “Swyddfa Cofnodion Troseddol” substitute “Gwasanaeth Datgelu a Gwahardd”.

Consequential amendments to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007

94. In Part 1 of the Schedule to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007(44) for “Criminal Records Bureau” substitute “Disclosure and Barring Service”.

Consequential amendments to the Special Educational Needs Tribunal for Wales Regulations 2012

95. The Special Educational Needs Tribunal for Wales Regulations 2012(45) are amended as follows.

96. In regulation 66(4) for “Criminal Records Bureau” substitute “Disclosure and Barring Service”.

97. In regulation 66(4), in the Welsh language text of those Regulations (Rheoliadau Tribiwnlys Anghenion Addysgol Arbennig Cymru 2012), for “Swyddfa Cofnodion Troseddol” substitute “Gwasanaeth Datgelu a Gwahardd”.

CHAPTER 6

Supplemental provisions

Supplemental provisions relating to Secretary of State functions

98. Anything which is being done by or in relation to the Secretary of State, when the Secretary of State’s functions under Part 5 of the 1997 Act, the 2006 Act and the 2007 Order are transferred to DBS by this Order, may, so far as it relates to those functions, be continued by, or in relation to, DBS.

99. Anything done before the coming into force of this Order by or in relation to the Secretary of State under Part 5 of the 1997 Act, the 2006 Act and the 2007 Order, in relation to a function of the Secretary of State transferred to DBS by this Order, has effect, so far as necessary for continuing its effect after those functions are transferred by this Order, as if done by, or in relation to, DBS.

100. Any enactment or instrument passed or made before the coming into force of this Order has effect, so far as is necessary for the purposes of or in consequence of the transfer of a function of the Secretary of State to DBS by this Order, as if references to the Secretary of State were or included references to DBS.

(44) S.I. 2007/3544 as amended by S.I. 2009/2981.

(45) S.I. 2012/322 (W. 53).