

EXPLANATORY MEMORANDUM TO
THE PROTECTION OF FREEDOMS ACT 2012 (DISCLOSURE AND
BARRING SERVICE TRANSFER OF FUNCTIONS) ORDER 2012

2012 No. [XXXX]

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Protection of Freedoms Act 2012 (“the Act”) provides for the formation and constitution of a body corporate known as the Disclosure and Barring Service (“DBS”). This Order transfers all of the functions of the Independent Safeguarding Authority (“ISA”) and the functions of the Secretary of State under Part 5 of the Police Act 1997, (“the 1997 Act”) the Safeguarding Vulnerable Groups Act 2006 (“the 2006 Act”) and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (“the 2007 Order”), to the DBS, in accordance with section 88 of the Act.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Section 87 of the Act establishes the DBS.

4.2 Section 88 of the Act enables an order to be made transferring the functions of the ISA and the functions of the Secretary of State under Part 5 of the 1997 Act, the 2006 Act and the 2007 Order to the newly created DBS.

4.3 This Order is made under section 88 of the Act and:

- Transfers the functions of the Independent Safeguarding Authority to the DBS;
- Transfers the functions of the Secretary of State under Part 5 of the 1997 Act, the 2006 Act and the 2007 Order to the DBS;
- Makes amendments to the principle enactments and other enactments which are consequential to the transfer of those functions;
- Provides for transitional provisions in light of the transfer of functions; and
- Dissolves the ISA, under section 88(3) of the Act.

4.4 Section 90 of the Act enables a transfer scheme to be made which transfers staff and property from the Criminal Records Bureau (CRB), acting as the Secretary of State, and ISA to the DBS. Such a scheme has been developed and will be laid before Parliament in accordance with section 90(6) of the Act.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales and Northern Ireland.

6. European Convention on Human Rights

The Parliamentary Under-Secretary for Criminal Information, Lord Taylor, has made the following statement regarding Human Rights:

In my view the provisions of the Protection of Freedoms Act 2012 (Disclosure and Barring Service Transfer of Functions) Order 2012 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 As part of the coalition agreement, the government committed to reviewing and reforming the Vetting and Barring Scheme and criminal records regime, scaling them back to common sense levels.

7.2 This was to ensure that there is a continued service to help safeguard vulnerable groups including children from those people who work or volunteer with them who pose a risk of harm, while operating in a way that reduces the burden on employers and better respects the civil liberties of the individual.

7.3 The Government review of the Vetting and Barring Scheme reported in February 2011, and recommended the creation of a new streamlined organisation to oversee a scaled-back criminal records checking and barring system which would transfer the functions of both the CRB and ISA to a new single body. The new organisation is the DBS and will be a Non-Departmental Public Body (NDPB) of the Home Office.

7.4 The DBS will implement a range of reforms to the criminal record checking system, which will see the number of posts requiring checks reduced from 9.3 million to 5 million.

7.5 This Order sets out the functions which are to be transferred and in effect determines the “go-live” date for the new organisation. Functions to be transferred are those relating to the criminal records disclosure scheme currently managed by the CRB, and the barring regime managed by the ISA, through which unsuitable persons may be barred from working closely (in

“regulated activity”, as defined under the 2006 Act) with children or other vulnerable groups. The DBS will then be responsible for obtaining and disclosing criminal records information under the 1997 Act, and for taking barring decisions under the 2006 Act and the 2007 Order.

Consolidation

7.6 The Home Office does not consider it necessary to consolidate legislation at this time.

8. Consultation outcome

8.1 In the main, the changes in this instrument are consequential upon or form part of the changes announced in the Government’s Remodelling Review of the Vetting and Barring Scheme, published in February 2011. That review involved consultation with a range of parties.

8.2 The transfer of staff takes place in accordance with the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector (COSOP). To support the transfer, a full list of terms and conditions, policies and procedures were developed by the CRB and ISA. Documents were formally shared with the Trade Union Side representatives in both organisations and a staff consultation period was held. All staff are transferring on their current terms and conditions.

9. Guidance

9.1 Information on the changes in the Act to which this instrument relate is available on departmental websites and is being communicated proactively to interested parties, including in a series of road shows which were held around the UK in June and July 2012.

10. Impact

10.1 The impact on business, charities and voluntary bodies of the changes in the Act to which this instrument relate was set out in the impact assessment relating to Part 5 of the Protection of Freedoms Bill. The changes are concerned with who will provide services as opposed to any procedural change for customers.

10.2 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The impact assessment for Part 5 of the Protection of Freedoms Bill explored the impact on small firms of the changes to which this instrument relate. It found that there would be no disproportionate impact on small firms.

12. Monitoring & review

12.1 The establishment of the DBS will be subject to internal review.

13. Contact

Stewart Baxter at the Home Office Tel: 020 7035 3265 or email:
Stewart.Baxter2@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.