



# Protection of Freedoms Act 2012

## 2012 CHAPTER 9

### PART 5

SAFEGUARDING VULNERABLE GROUPS, CRIMINAL RECORDS ETC.

### CHAPTER 3

THE DISCLOSURE AND BARRING SERVICE

#### *Supplementary*

#### **89 Orders under section 88**

- (1) Any power to make an order under section 88—
  - (a) is exercisable by statutory instrument,
  - (b) includes power to make consequential, supplementary, incidental, transitional, transitory or saving provision,
  - (c) may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under an enactment (whenever passed or made and including this Act).
- (2) Subject to subsection (3), a statutory instrument containing an order under section 88 is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (3) A statutory instrument containing an order under section 88 which neither amends nor repeals any provision of primary legislation is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) If a draft of an instrument containing an order under section 88 (alone or with other provision) would, apart from this subsection, be treated as a hybrid instrument for the purposes of the standing orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.

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*Status: This is the original version (as it was originally enacted).*

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(5) In this section—

“enactment” includes a Measure or Act of the National Assembly for Wales and Northern Ireland legislation,

“primary legislation” means—

- (a) a public general Act,
- (b) a Measure or Act of the National Assembly for Wales, and
- (c) Northern Ireland legislation.

## **90      Transfer schemes in connection with orders under section 88**

(1) The Secretary of State may, in connection with an order under section 88, make a scheme for the transfer to DBS of property, rights or liabilities of ISA or the Secretary of State.

(2) The things that may be transferred under a transfer scheme include—

- (a) property, rights and liabilities which could not otherwise be transferred,
- (b) property acquired, and rights and liabilities arising, after the making of the scheme.

(3) A transfer scheme may make consequential, supplementary, incidental, transitional, transitory or saving provision and may, in particular—

- (a) create rights, or impose liabilities, in relation to property or rights transferred,
- (b) make provision about the continuing effect of things done by, on behalf of or in relation to the transferor in respect of anything transferred,
- (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the transferor in respect of anything transferred,
- (d) make provision for references to the transferor in an instrument or other document in respect of anything transferred to be treated as references to the transferee,
- (e) make provision for the shared ownership or use of property,
- (f) if the TUPE regulations do not apply in relation to the transfer, make provision which is the same or similar.

(4) A transfer scheme may provide—

- (a) for modification by agreement,
- (b) for modifications to have effect from the date when the original scheme came into effect.

(5) A transfer scheme may confer a discretion on the Secretary of State to pay compensation to any person whose interests are adversely affected by the scheme.

(6) A transfer scheme may be included in an order under section 88 but, if not so included, must be laid before Parliament after being made.

(7) For the purposes of this section—

- (a) references to rights and liabilities of ISA include references to rights and liabilities of ISA relating to a contract of employment, and
- (b) references to rights and liabilities of the Secretary of State include references to rights and liabilities of the Crown relating to the terms of employment of individuals in the civil service.

- (8) Accordingly, a transfer scheme may, in particular, provide—
- (a) for an employee of ISA or (as the case may be) an individual employed in the civil service to become an employee of DBS,
  - (b) for the individual's contract of employment with ISA or (as the case may be) terms of employment in the civil service to have effect (subject to any necessary modifications) as the terms of the individual's contract of employment with DBS,
  - (c) for the transfer to DBS of rights and liabilities of ISA or (as the case may be) the Crown under or in connection with the individual's terms of employment.
- (9) In this section—
- “civil service” means the civil service of the State,
  - “ISA” means the Independent Safeguarding Authority,
  - “TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 ([S.I. 2006/246](#)),
- references to the transfer of property include the grant of a lease.

## **91 Tax in connection with transfer schemes**

- (1) The Treasury may by order make provision varying the way in which a relevant tax has effect in relation to—
- (a) anything transferred under a transfer scheme, or
  - (b) anything done for the purposes of, or in relation to, a transfer under a transfer scheme.
- (2) The provision which may be made under subsection (1)(a) includes, in particular, provision for—
- (a) a tax provision not to apply, or to apply with modifications, in relation to anything transferred,
  - (b) anything transferred to be treated in a specified way for the purposes of a tax provision,
  - (c) the Secretary of State to be required or permitted to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything transferred.
- (3) The provision which may be made under subsection (1)(b) includes, in particular, provision for—
- (a) a tax provision not to apply, or to apply with modifications, in relation to anything done for the purposes of, or in relation to, the transfer,
  - (b) anything done for the purposes of, or in relation to, the transfer to have or not have a specified consequence or be treated in a specified way,
  - (c) the Secretary of State to be required or permitted to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything done for the purposes of, or in relation to, the transfer.
- (4) The power to make an order under this section—
- (a) is exercisable by statutory instrument,
  - (b) includes power to make consequential, supplementary, incidental, transitional, transitory or saving provision,

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- (c) may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under an enactment (whenever passed or made).
- (5) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of the House of Commons.
- (6) In this section—
  - “enactment” includes an Act of the Scottish Parliament, a Measure or Act of the National Assembly for Wales and Northern Ireland legislation,
  - “relevant tax” means income tax, corporation tax, capital gains tax, stamp duty, stamp duty reserve tax or stamp duty land tax,
  - “tax provision” means any provision—
    - (a) about a relevant tax, and
    - (b) made by or under an enactment,
  - “transfer scheme” means a transfer scheme under section 88,and references to the transfer of property include the grant of a lease.