



Protection of Freedoms Act 2012

2012 CHAPTER 9

PART 5

SAFEGUARDING VULNERABLE GROUPS, CRIMINAL RECORDS ETC.

CHAPTER 3

THE DISCLOSURE AND BARRING SERVICE

Supplementary

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,

Status: This is the original version (as it was originally enacted).

- (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.