



# Protection of Freedoms Act 2012

## 2012 CHAPTER 9

VALID FROM 01/10/2012

### PART 1

#### REGULATION OF BIOMETRIC DATA

### CHAPTER 1

#### DESTRUCTION, RETENTION AND USE OF FINGERPRINTS ETC.

VALID FROM 31/10/2013

#### *Destruction rule for fingerprints and DNA profiles subject to PACE*

### **1 Destruction of fingerprints and DNA profiles**

After section 63C of the Police and Criminal Evidence Act 1984 insert—

#### **“63D Destruction of fingerprints and DNA profiles**

- (1) This section applies to—
- (a) fingerprints—
    - (i) taken from a person under any power conferred by this Part of this Act, or
    - (ii) taken by the police, with the consent of the person from whom they were taken, in connection with the investigation of an offence by the police, and
  - (b) a DNA profile derived from a DNA sample taken as mentioned in paragraph (a)(i) or (ii).

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- (2) Fingerprints and DNA profiles to which this section applies (“section 63D material”) must be destroyed if it appears to the responsible chief officer of police that—
- (a) the taking of the fingerprint or, in the case of a DNA profile, the taking of the sample from which the DNA profile was derived, was unlawful, or
  - (b) the fingerprint was taken, or, in the case of a DNA profile, was derived from a sample taken, from a person in connection with that person's arrest and the arrest was unlawful or based on mistaken identity.
- (3) In any other case, section 63D material must be destroyed unless it is retained under any power conferred by sections 63E to 63O (including those sections as applied by section 63P).
- (4) Section 63D material which ceases to be retained under a power mentioned in subsection (3) may continue to be retained under any other such power which applies to it.
- (5) Nothing in this section prevents a speculative search, in relation to section 63D material, from being carried out within such time as may reasonably be required for the search if the responsible chief officer of police considers the search to be desirable.”

VALID FROM 31/10/2013

*Modification of rule for particular circumstances*

**2 Material retained pending investigation or proceedings**

After section 63D of the Police and Criminal Evidence Act 1984 (for which see section 1) insert—

**“63E Retention of section 63D material pending investigation or proceedings**

- (1) This section applies to section 63D material taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of an offence in which it is suspected that the person to whom the material relates has been involved.
- (2) The material may be retained until the conclusion of the investigation of the offence or, where the investigation gives rise to proceedings against the person for the offence, until the conclusion of those proceedings.”

**3 Persons arrested for or charged with a qualifying offence**

After section 63E of the Police and Criminal Evidence Act 1984 (for which see section 2) insert—

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**“63F Retention of section 63D material: persons arrested for or charged with a qualifying offence**

- (1) This section applies to section 63D material which—
  - (a) relates to a person who is arrested for, or charged with, a qualifying offence but is not convicted of that offence, and
  - (b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.
- (2) If the person has previously been convicted of a recordable offence which is not an excluded offence, or is so convicted before the material is required to be destroyed by virtue of this section, the material may be retained indefinitely.
- (3) Otherwise, material falling within subsection (4) or (5) may be retained until the end of the retention period specified in subsection (6).
- (4) Material falls within this subsection if it—
  - (a) relates to a person who is charged with a qualifying offence but is not convicted of that offence, and
  - (b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.
- (5) Material falls within this subsection if—
  - (a) it relates to a person who is arrested for a qualifying offence but is not charged with that offence,
  - (b) it was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence, and
  - (c) the Commissioner for the Retention and Use of Biometric Material has consented under section 63G to the retention of the material.
- (6) The retention period is—
  - (a) in the case of fingerprints, the period of 3 years beginning with the date on which the fingerprints were taken, and
  - (b) in the case of a DNA profile, the period of 3 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken).
- (7) The responsible chief officer of police or a specified chief officer of police may apply to a District Judge (Magistrates' Courts) for an order extending the retention period.
- (8) An application for an order under subsection (7) must be made within the period of 3 months ending on the last day of the retention period.
- (9) An order under subsection (7) may extend the retention period by a period which—
  - (a) begins with the end of the retention period, and

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- (b) ends with the end of the period of 2 years beginning with the end of the retention period.
- (10) The following persons may appeal to the Crown Court against an order under subsection (7), or a refusal to make such an order—
- (a) the responsible chief officer of police;
  - (b) a specified chief officer of police;
  - (c) the person from whom the material was taken.
- (11) In this section—
- “excluded offence”, in relation to a person, means a recordable offence—
- (a) which—
    - (i) is not a qualifying offence,
    - (ii) is the only recordable offence of which the person has been convicted, and
    - (iii) was committed when the person was aged under 18, and
  - (b) for which the person was not given a relevant custodial sentence of 5 years or more,
 

“relevant custodial sentence” has the meaning given by section 63K(6),

“a specified chief officer of police” means—

    - (a) the chief officer of the police force of the area in which the person from whom the material was taken resides, or
    - (b) a chief officer of police who believes that the person is in, or is intending to come to, the chief officer's police area.

**63G Retention of section 63D material by virtue of section 63F(5): consent of Commissioner**

- (1) The responsible chief officer of police may apply under subsection (2) or (3) to the Commissioner for the Retention and Use of Biometric Material for consent to the retention of section 63D material which falls within section 63F(5)(a) and (b).
- (2) The responsible chief officer of police may make an application under this subsection if the responsible chief officer of police considers that the material was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of an offence where any alleged victim of the offence was, at the time of the offence—
  - (a) under the age of 18,
  - (b) a vulnerable adult, or
  - (c) associated with the person to whom the material relates.
- (3) The responsible chief officer of police may make an application under this subsection if the responsible chief officer of police considers that—
  - (a) the material is not material to which subsection (2) relates, but
  - (b) the retention of the material is necessary to assist in the prevention or detection of crime.

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- (4) The Commissioner may, on an application under this section, consent to the retention of material to which the application relates if the Commissioner considers that it is appropriate to retain the material.
- (5) But where notice is given under subsection (6) in relation to the application, the Commissioner must, before deciding whether or not to give consent, consider any representations by the person to whom the material relates which are made within the period of 28 days beginning with the day on which the notice is given.
- (6) The responsible chief officer of police must give to the person to whom the material relates notice of—
  - (a) an application under this section, and
  - (b) the right to make representations.
- (7) A notice under subsection (6) may, in particular, be given to a person by—
  - (a) leaving it at the person's usual or last known address (whether residential or otherwise),
  - (b) sending it to the person by post at that address, or
  - (c) sending it to the person by email or other electronic means.
- (8) The requirement in subsection (6) does not apply if the whereabouts of the person to whom the material relates is not known and cannot, after reasonable inquiry, be ascertained by the responsible chief officer of police.
- (9) An application or notice under this section must be in writing.
- (10) In this section—

“victim” includes intended victim,  
“vulnerable adult” means a person aged 18 or over whose ability to protect himself or herself from violence, abuse or neglect is significantly impaired through physical or mental disability or illness, through old age or otherwise,

and the reference in subsection (2)(c) to a person being associated with another person is to be read in accordance with section 62(3) to (7) of the Family Law Act 1996.”

#### **4 Persons arrested for or charged with a minor offence**

After section 63G of the Police and Criminal Evidence Act 1984 (for which see section 3) insert—

##### **“63H Retention of section 63D material: persons arrested for or charged with a minor offence**

- (1) This section applies to section 63D material which—
  - (a) relates to a person who—
    - (i) is arrested for or charged with a recordable offence other than a qualifying offence,

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- (ii) if arrested for or charged with more than one offence arising out of a single course of action, is not also arrested for or charged with a qualifying offence, and
  - (iii) is not convicted of the offence or offences in respect of which the person is arrested or charged, and
  - (b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence or offences in respect of which the person is arrested or charged.
- (2) If the person has previously been convicted of a recordable offence which is not an excluded offence, the material may be retained indefinitely.
- (3) In this section “excluded offence” has the meaning given by section 63F (11).”

## 5 Persons convicted of a recordable offence

After section 63H of the Police and Criminal Evidence Act 1984 (for which see section 4) insert—

### “63I Retention of material: persons convicted of a recordable offence

- (1) This section applies, subject to subsection (3), to—
- (a) section 63D material which—
    - (i) relates to a person who is convicted of a recordable offence, and
    - (ii) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence, or
  - (b) material taken under section 61(6) or 63(3B) which relates to a person who is convicted of a recordable offence.
- (2) The material may be retained indefinitely.
- (3) This section does not apply to section 63D material to which section 63K applies.”

## 6 Persons convicted of an offence outside England and Wales

After section 63I of the Police and Criminal Evidence Act 1984 (for which see section 5) insert—

### “63J Retention of material: persons convicted of an offence outside England and Wales

- (1) This section applies to material falling within subsection (2) relating to a person who is convicted of an offence under the law of any country or territory outside England and Wales.
- (2) Material falls within this subsection if it is—

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- (a) fingerprints taken from the person under section 61(6D) (power to take fingerprints without consent in relation to offences outside England and Wales), or
- (b) a DNA profile derived from a DNA sample taken from the person under section 62(2A) or 63(3E) (powers to take intimate and non-intimate samples in relation to offences outside England and Wales).

(3) The material may be retained indefinitely.”

## 7 Persons under 18 convicted of first minor offence

After section 63J of the Police and Criminal Evidence Act 1984 (for which see section 6) insert—

### “63K Retention of section 63D material: exception for persons under 18 convicted of first minor offence

- (1) This section applies to section 63D material which—
  - (a) relates to a person who—
    - (i) is convicted of a recordable offence other than a qualifying offence,
    - (ii) has not previously been convicted of a recordable offence, and
    - (iii) is aged under 18 at the time of the offence, and
  - (b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.
- (2) Where the person is given a relevant custodial sentence of less than 5 years in respect of the offence, the material may be retained until the end of the period consisting of the term of the sentence plus 5 years.
- (3) Where the person is given a relevant custodial sentence of 5 years or more in respect of the offence, the material may be retained indefinitely.
- (4) Where the person is given a sentence other than a relevant custodial sentence in respect of the offence, the material may be retained until—
  - (a) in the case of fingerprints, the end of the period of 5 years beginning with the date on which the fingerprints were taken, and
  - (b) in the case of a DNA profile, the end of the period of 5 years beginning with—
    - (i) the date on which the DNA sample from which the profile was derived was taken, or
    - (ii) if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken.
- (5) But if, before the end of the period within which material may be retained by virtue of this section, the person is again convicted of a recordable offence, the material may be retained indefinitely.
- (6) In this section, “relevant custodial sentence” means any of the following—



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- (a) a custodial sentence within the meaning of section 76 of the Powers of Criminal Courts (Sentencing) Act 2000;
- (b) a sentence of a period of detention and training (excluding any period of supervision) which a person is liable to serve under an order under section 211 of the Armed Forces Act 2006 or a secure training order.”

## 8 Persons given a penalty notice

After section 63K of the Police and Criminal Evidence Act 1984 (for which see section 7) insert—

### “63L Retention of section 63D material: persons given a penalty notice

- (1) This section applies to section 63D material which—
  - (a) relates to a person who is given a penalty notice under section 2 of the Criminal Justice and Police Act 2001 and in respect of whom no proceedings are brought for the offence to which the notice relates, and
  - (b) was taken (or, in the case of a DNA profile, derived from a sample taken) from the person in connection with the investigation of the offence to which the notice relates.
- (2) The material may be retained—
  - (a) in the case of fingerprints, for a period of 2 years beginning with the date on which the fingerprints were taken,
  - (b) in the case of a DNA profile, for a period of 2 years beginning with—
    - (i) the date on which the DNA sample from which the profile was derived was taken, or
    - (ii) if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken.”

## 9 Material retained for purposes of national security

After section 63L of the Police and Criminal Evidence Act 1984 (for which see section 8) insert—

### “63M Retention of section 63D material for purposes of national security

- (1) Section 63D material may be retained for as long as a national security determination made by the responsible chief officer of police has effect in relation to it.
- (2) A national security determination is made if the responsible chief officer of police determines that it is necessary for any section 63D material to be retained for the purposes of national security.
- (3) A national security determination—



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- (a) must be made in writing,
- (b) has effect for a maximum of 2 years beginning with the date on which it is made, and
- (c) may be renewed.”

## **10 Material given voluntarily**

After section 63M of the Police and Criminal Evidence Act 1984 (for which see section 9) insert—

### **“63N Retention of section 63D material given voluntarily**

- (1) This section applies to the following section 63D material—
  - (a) fingerprints taken with the consent of the person from whom they were taken, and
  - (b) a DNA profile derived from a DNA sample taken with the consent of the person from whom the sample was taken.
- (2) Material to which this section applies may be retained until it has fulfilled the purpose for which it was taken or derived.
- (3) Material to which this section applies which relates to—
  - (a) a person who is convicted of a recordable offence, or
  - (b) a person who has previously been convicted of a recordable offence (other than a person who has only one exempt conviction),may be retained indefinitely.
- (4) For the purposes of subsection (3)(b), a conviction is exempt if it is in respect of a recordable offence, other than a qualifying offence, committed when the person is aged under 18.”

## **11 Material retained with consent**

After section 63N of the Police and Criminal Evidence Act 1984 (for which see section 10) insert—

### **“63O Retention of section 63D material with consent**

- (1) This section applies to the following material—
  - (a) fingerprints (other than fingerprints taken under section 61(6A)) to which section 63D applies, and
  - (b) a DNA profile to which section 63D applies.
- (2) If the person to whom the material relates consents to material to which this section applies being retained, the material may be retained for as long as that person consents to it being retained.
- (3) Consent given under this section—
  - (a) must be in writing, and
  - (b) can be withdrawn at any time.”

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## **12 Material obtained for one purpose and used for another**

After section 63O of the Police and Criminal Evidence Act 1984 (for which see section 11) insert—

### **“63P Section 63D material obtained for one purpose and used for another**

- (1) Subsection (2) applies if section 63D material which is taken (or, in the case of a DNA profile, derived from a sample taken) from a person in connection with the investigation of an offence leads to the person to whom the material relates being arrested for or charged with, or convicted of, an offence other than the offence under investigation.
- (2) Sections 63E to 63O and sections 63Q and 63T have effect in relation to the material as if the material was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence in respect of which the person is arrested or charged.”

## **13 Destruction of copies**

After section 63P of the Police and Criminal Evidence Act 1984 (for which see section 12) insert—

### **“63Q Destruction of copies of section 63D material**

- (1) If fingerprints are required by section 63D to be destroyed, any copies of the fingerprints held by the police must also be destroyed.
- (2) If a DNA profile is required by that section to be destroyed, no copy may be retained by the police except in a form which does not include information which identifies the person to whom the DNA profile relates.”

VALID FROM 31/10/2013

*Destruction rules for samples and impressions of footwear subject to PACE*

## **14 Destruction of samples**

After section 63Q of the Police and Criminal Evidence Act 1984 (for which see section 13) insert—

### **“63R Destruction of samples**

- (1) This section applies to samples—
  - (a) taken from a person under any power conferred by this Part of this Act, or

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- (b) taken by the police, with the consent of the person from whom they were taken, in connection with the investigation of an offence by the police.
- (2) Samples to which this section applies must be destroyed if it appears to the responsible chief officer of police that—
  - (a) the taking of the samples was unlawful, or
  - (b) the samples were taken from a person in connection with that person's arrest and the arrest was unlawful or based on mistaken identity.
- (3) Subject to this, the rule in subsection (4) or (as the case may be) (5) applies.
- (4) A DNA sample to which this section applies must be destroyed—
  - (a) as soon as a DNA profile has been derived from the sample, or
  - (b) if sooner, before the end of the period of 6 months beginning with the date on which the sample was taken.
- (5) Any other sample to which this section applies must be destroyed before the end of the period of 6 months beginning with the date on which it was taken.
- (6) The responsible chief officer of police may apply to a District Judge (Magistrates' Courts) for an order to retain a sample to which this section applies beyond the date on which the sample would otherwise be required to be destroyed by virtue of subsection (4) or (5) if—
  - (a) the sample was taken from a person in connection with the investigation of a qualifying offence, and
  - (b) the responsible chief officer of police considers that the condition in subsection (7) is met.
- (7) The condition is that, having regard to the nature and complexity of other material that is evidence in relation to the offence, the sample is likely to be needed in any proceedings for the offence for the purposes of—
  - (a) disclosure to, or use by, a defendant, or
  - (b) responding to any challenge by a defendant in respect of the admissibility of material that is evidence on which the prosecution proposes to rely.
- (8) An application under subsection (6) must be made before the date on which the sample would otherwise be required to be destroyed by virtue of subsection (4) or (5).
- (9) If, on an application made by the responsible chief officer of police under subsection (6), the District Judge (Magistrates' Courts) is satisfied that the condition in subsection (7) is met, the District Judge may make an order under this subsection which—
  - (a) allows the sample to be retained for a period of 12 months beginning with the date on which the sample would otherwise be required to be destroyed by virtue of subsection (4) or (5), and
  - (b) may be renewed (on one or more occasions) for a further period of not more than 12 months from the end of the period when the order would otherwise cease to have effect.

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- (10) An application for an order under subsection (9) (other than an application for renewal)—
- (a) may be made without notice of the application having been given to the person from whom the sample was taken, and
  - (b) may be heard and determined in private in the absence of that person.
- (11) A sample retained by virtue of an order under subsection (9) must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken.
- (12) A sample that ceases to be retained by virtue of an order under subsection (9) must be destroyed.
- (13) Nothing in this section prevents a speculative search, in relation to samples to which this section applies, from being carried out within such time as may reasonably be required for the search if the responsible chief officer of police considers the search to be desirable.”

## 15 Destruction of impressions of footwear

After section 63R of the Police and Criminal Evidence Act 1984 (for which see section 14) insert—

### “63S Destruction of impressions of footwear

- (1) This section applies to impressions of footwear—
- (a) taken from a person under any power conferred by this Part of this Act, or
  - (b) taken by the police, with the consent of the person from whom they were taken, in connection with the investigation of an offence by the police.
- (2) Impressions of footwear to which this section applies must be destroyed unless they are retained under subsection (3).
- (3) Impressions of footwear may be retained for as long as is necessary for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution.”

VALID FROM 31/10/2013

*Supplementary provision for material subject to PACE*

## 16 Use of retained material

After section 63S of the Police and Criminal Evidence Act 1984 (for which see section 15) insert—

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### “63T Use of retained material

- (1) Any material to which section 63D, 63R or 63S applies must not be used other than—
  - (a) in the interests of national security,
  - (b) for the purposes of a terrorist investigation,
  - (c) for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or
  - (d) for purposes related to the identification of a deceased person or of the person to whom the material relates.
- (2) Material which is required by section 63D, 63R or 63S to be destroyed must not at any time after it is required to be destroyed be used—
  - (a) in evidence against the person to whom the material relates, or
  - (b) for the purposes of the investigation of any offence.
- (3) In this section—
  - (a) the reference to using material includes a reference to allowing any check to be made against it and to disclosing it to any person,
  - (b) the reference to crime includes a reference to any conduct which—
    - (i) constitutes one or more criminal offences (whether under the law of England and Wales or of any country or territory outside England and Wales), or
    - (ii) is, or corresponds to, any conduct which, if it all took place in England and Wales, would constitute one or more criminal offences, and
  - (c) the references to an investigation and to a prosecution include references, respectively, to any investigation outside England and Wales of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside England and Wales.”

## 17 Exclusions for certain regimes

After section 63T of the Police and Criminal Evidence Act 1984 (for which see section 16) insert—

### “63U Exclusions for certain regimes

- (1) Sections 63D to 63T do not apply to material to which paragraphs 20A to 20J of Schedule 8 to the Terrorism Act 2000 (destruction, retention and use of material taken from terrorist suspects) apply.
- (2) Any reference in those sections to a person being arrested for, or charged with, an offence does not include a reference to a person—
  - (a) being arrested under section 41 of the Terrorism Act 2000, or
  - (b) being charged with an offence following an arrest under that section.

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- (3) Sections 63D to 63T do not apply to material to which paragraph 8 of Schedule 4 to the International Criminal Court Act 2001 (requirement to destroy material) applies.
- (4) Sections 63D to 63T do not apply to material to which paragraph 6 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011 (requirement to destroy material) applies.
- (5) Sections 63D to 63Q, 63S and 63T do not apply to material which is, or may become, disclosable under—
  - (a) the Criminal Procedure and Investigations Act 1996, or
  - (b) a code of practice prepared under section 23 of that Act and in operation by virtue of an order under section 25 of that Act.
- (6) Sections 63D to 63T do not apply to material which—
  - (a) is taken from a person, but
  - (b) relates to another person.
- (7) Nothing in sections 63D to 63T affects any power conferred by—
  - (a) paragraph 18(2) of Schedule 2 to the Immigration Act 1971 (power to take reasonable steps to identify a person detained), or
  - (b) section 20 of the Immigration and Asylum Act 1999 (disclosure of police information to the Secretary of State for use for immigration purposes).”

## **18 Interpretation and minor amendments of PACE**

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) In section 65(1) (interpretation of Part 5)—
  - (a) after the definition of “appropriate consent” insert—
    - ““DNA profile” means any information derived from a DNA sample;
    - “DNA sample” means any material that has come from a human body and consists of or includes human cells;”
  - (b) after the definition of “registered health care professional” insert—
    - ““the responsible chief officer of police”, in relation to material to which section 63D or 63R applies, means the chief officer of police for the police area—
      - (a) in which the material concerned was taken, or
      - (b) in the case of a DNA profile, in which the sample from which the DNA profile was derived was taken;
    - “section 63D material” means fingerprints or DNA profiles to which section 63D applies;”, and
  - (c) after the definition of “terrorism” insert—
    - ““terrorist investigation” has the meaning given by section 32 of that Act;”.

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(3) After section 65(2) (meaning of references to a sample's proving insufficient) insert—

“(2A) In subsection (2), the reference to the destruction of a sample does not include a reference to the destruction of a sample under section 63R (requirement to destroy samples).

(2B) Any reference in sections 63F, 63H, 63P or 63U to a person being charged with an offence includes a reference to a person being informed that the person will be reported for an offence.”

(4) In section 65A(2) (list of “qualifying offences” for purposes of Part 5), in paragraph (j) (offences under the Theft Act 1968), for “section 9” substitute “section 8, 9”.

(5) After section 65A insert—

**“65B Persons convicted of an offence”**

(1) For the purposes of this Part, any reference to a person who is convicted of an offence includes a reference to—

- (a) a person who has been given a caution in respect of the offence which, at the time of the caution, the person has admitted,
- (b) a person who has been warned or reprimanded under section 65 of the Crime and Disorder Act 1998 for the offence,
- (c) a person who has been found not guilty of the offence by reason of insanity, or
- (d) a person who has been found to be under a disability and to have done the act charged in respect of the offence.

(2) This Part, so far as it relates to persons convicted of an offence, has effect despite anything in the Rehabilitation of Offenders Act 1974.

(3) But a person is not to be treated as having been convicted of an offence if that conviction is a disregarded conviction or caution by virtue of section 92 of the Protection of Freedoms Act 2012.

(4) If a person is convicted of more than one offence arising out of a single course of action, those convictions are to be treated as a single conviction for the purposes of calculating under sections 63F, 63H and 63N whether the person has been convicted of only one offence.

(5) See also section 65(3) (which deals with findings equivalent to those mentioned in subsection (1)(c) or (d) by courts which exercise jurisdiction under the laws of countries or territories outside England and Wales).”



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VALID FROM 31/10/2013

*Amendments of regimes other than PACE*

**19 Amendments of regimes other than PACE**

Schedule 1 (which amends regimes other than the regime in the Police and Criminal Evidence Act 1984 amended by sections 1 to 18) has effect.

*The Commissioner for the Retention and Use of Biometric Material*

**20 Appointment and functions of Commissioner**

- (1) The Secretary of State must appoint a Commissioner to be known as the Commissioner for the Retention and Use of Biometric Material (referred to in this section and section 21 as “the Commissioner”).
- (2) It is the function of the Commissioner to keep under review—
  - (a) every national security determination made or renewed under—
    - (i) section 63M of the Police and Criminal Evidence Act 1984 (section 63D material retained for purposes of national security),
    - (ii) paragraph 20E of Schedule 8 to the Terrorism Act 2000 (paragraph 20A material retained for purposes of national security),
    - (iii) section 18B of the Counter-Terrorism Act 2008 (section 18 material retained for purposes of national security),
    - (iv) paragraph 11 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011 (paragraph 6 material retained for purposes of national security),
    - (v) section 18G of the Criminal Procedure (Scotland) Act 1995 (certain material retained for purposes of national security), and
    - (vi) paragraph 7 of Schedule 1 to this Act (material subject to the Police and Criminal Evidence (Northern Ireland) Order 1989 retained for purposes of national security),
  - (b) the uses to which material retained pursuant to a national security determination is being put.
- (3) It is the duty of every person who makes or renews a national security determination under a provision mentioned in subsection (2)(a) to—
  - (a) send to the Commissioner a copy of the determination or renewed determination, and the reasons for making or renewing the determination, within 28 days of making or renewing it, and
  - (b) disclose or provide to the Commissioner such documents and information as the Commissioner may require for the purpose of carrying out the Commissioner's functions under subsection (2).
- (4) If, on reviewing a national security determination made or renewed under a provision mentioned in subsection (2)(a), the Commissioner concludes that it is not necessary for any material retained pursuant to the determination to be so retained,

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the Commissioner may order the destruction of the material if the condition in subsection (5) is met.

- (5) The condition is that the material retained pursuant to the national security determination is not otherwise capable of being lawfully retained.
- (6) The Commissioner also has the function of keeping under review—
- (a) the retention and use in accordance with sections 63A and 63D to 63T of the Police and Criminal Evidence Act 1984 of—
    - (i) any material to which section 63D or 63R of that Act applies (fingerprints, DNA profiles and samples), and
    - (ii) any copies of any material to which section 63D of that Act applies (fingerprints and DNA profiles),
  - (b) the retention and use in accordance with paragraphs 20A to 20J of Schedule 8 to the Terrorism Act 2000 of—
    - (i) any material to which paragraph 20A or 20G of that Schedule applies (fingerprints, relevant physical data, DNA profiles and samples), and
    - (ii) any copies of any material to which paragraph 20A of that Schedule applies (fingerprints, relevant physical data and DNA profiles),
  - (c) the retention and use in accordance with sections 18 to 18E of the Counter-Terrorism Act 2008 of—
    - (i) any material to which section 18 of that Act applies (fingerprints, DNA samples and DNA profiles), and
    - (ii) any copies of fingerprints or DNA profiles to which section 18 of that Act applies,
  - (d) the retention and use in accordance with paragraphs 5 to 14 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011 of—
    - (i) any material to which paragraph 6 or 12 of that Schedule applies (fingerprints, relevant physical data, DNA profiles and samples), and
    - (ii) any copies of any material to which paragraph 6 of that Schedule applies (fingerprints, relevant physical data and DNA profiles).
- (7) But subsection (6) does not apply so far as the retention or use of the material falls to be reviewed by virtue of subsection (2).
- (8) In relation to Scotland—
- (a) the reference in subsection (6)(b) to use of material, or copies of material, in accordance with paragraphs 20A to 20J of Schedule 8 to the Terrorism Act 2000 includes a reference to use of material, or copies of material, in accordance with section 19C(2)(c) and (d) of the Criminal Procedure (Scotland) Act 1995, and
  - (b) the reference in subsection (6)(d) to use of material, or copies of material, in accordance with paragraphs 5 to 14 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011 is to be read as a reference to use only for a purpose mentioned in paragraph 13(1)(a) or (b) of that Schedule to that Act.
- (9) The Commissioner also has functions under sections 63F(5)(c) and 63G (giving of consent in relation to the retention of certain section 63D material).

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- (10) The Commissioner is to hold office in accordance with the terms of the Commissioner's appointment; and the Secretary of State may pay in respect of the Commissioner any expenses, remuneration or allowances that the Secretary of State may determine.
- (11) The Secretary of State may, after consultation with the Commissioner, provide the Commissioner with—
- (a) such staff, and
  - (b) such accommodation, equipment and other facilities,
- as the Secretary of State considers necessary for the carrying out of the Commissioner's functions.

VALID FROM 31/10/2013

## 21 Reports by Commissioner

- (1) The Commissioner must make a report to the Secretary of State about the carrying out of the Commissioner's functions as soon as reasonably practicable after the end of—
  - (a) the period of 9 months beginning when this section comes into force, and
  - (b) every subsequent 12 month period.
- (2) The Commissioner may also, at any time, make such report to the Secretary of State on any matter relating to the Commissioner's functions as the Commissioner considers appropriate.
- (3) The Secretary of State may at any time require the Commissioner to report on any matter relating to the Commissioner's functions.
- (4) On receiving a report from the Commissioner under this section, the Secretary of State must—
  - (a) publish the report, and
  - (b) lay a copy of the published report before Parliament.
- (5) The Secretary of State may, after consultation with the Commissioner, exclude from publication any part of a report under this section if, in the opinion of the Secretary of State, the publication of that part would be contrary to the public interest or prejudicial to national security.

### *Other provisions*

## 22 Guidance on making national security determinations

- (1) The Secretary of State must give guidance about making or renewing national security determinations under a provision mentioned in section 20(2)(a).
- (2) Any person authorised to make or renew any such national security determination must have regard to any guidance given under this section.
- (3) The Secretary of State may give different guidance for different purposes.

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- (4) In the course of preparing the guidance, or revising guidance already given, the Secretary of State must consult the Commissioner for the Retention and Use of Biometric Material and the Lord Advocate.
- (5) Before giving guidance under this section, or revising guidance already given, the Secretary of State must lay before Parliament—
  - (a) the proposed guidance or proposed revisions, and
  - (b) a draft of an order providing for the guidance, or revisions to the guidance, to come into force.
- (6) The Secretary of State must make the order, and issue the guidance or (as the case may be) make the revisions to the guidance, if the draft of the order is approved by a resolution of each House of Parliament.
- (7) Guidance, or revisions to guidance, come into force in accordance with an order under this section.
- (8) Such an order—
  - (a) is to be a statutory instrument, and
  - (b) may contain transitional, transitory or saving provision.
- (9) The Secretary of State must publish any guidance given or revised under this section.

VALID FROM 31/10/2013

## **23 Inclusion of DNA profiles on National DNA Database**

After section 63A of the Police and Criminal Evidence Act 1984 insert—

### **“63AA Inclusion of DNA profiles on National DNA Database**

- (1) This section applies to a DNA profile which is derived from a DNA sample and which is retained under any power conferred by any of sections 63E to 63L (including those sections as applied by section 63P).
- (2) A DNA profile to which this section applies must be recorded on the National DNA Database.”

VALID FROM 31/10/2013

## **24 National DNA Database Strategy Board**

After section 63AA of the Police and Criminal Evidence Act 1984 (for which see section 23) insert—

### **“63AB National DNA Database Strategy Board**

- (1) The Secretary of State must make arrangements for a National DNA Database Strategy Board to oversee the operation of the National DNA Database.

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- (2) The National DNA Database Strategy Board must issue guidance about the destruction of DNA profiles which are, or may be, retained under this Part of this Act.
- (3) A chief officer of a police force in England and Wales must act in accordance with guidance issued under subsection (2).
- (4) The National DNA Database Strategy Board may issue guidance about the circumstances in which applications may be made to the Commissioner for the Retention and Use of Biometric Material under section 63G.
- (5) Before issuing any such guidance, the National DNA Database Strategy Board must consult the Commissioner for the Retention and Use of Biometric Material.
- (6) The Secretary of State must publish the governance rules of the National DNA Database Strategy Board and lay a copy of the rules before Parliament.
- (7) The National DNA Database Strategy Board must make an annual report to the Secretary of State about the exercise of its functions.
- (8) The Secretary of State must publish the report and lay a copy of the published report before Parliament.
- (9) The Secretary of State may exclude from publication any part of the report if, in the opinion of the Secretary of State, the publication of that part would be contrary to the public interest or prejudicial to national security.”

VALID FROM 31/10/2013

## 25 Material taken before commencement

- (1) The Secretary of State must by order make such transitional, transitory or saving provision as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Chapter.
- (2) The Secretary of State must, in particular, provide for the destruction or retention of PACE material taken, or (in the case of a DNA profile) derived from a sample taken, before the commencement day in connection with the investigation of an offence.
- (3) Such provision must, in particular, ensure—
  - (a) in the case of material taken or derived 3 years or more before the commencement day from a person who—
    - (i) was arrested for, or charged with, the offence, and
    - (ii) has not been convicted of the offence,
 the destruction of the material on the coming into force of the order if the offence was a qualifying offence,
  - (b) in the case of material taken or derived less than 3 years before the commencement day from a person who—

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- (i) was arrested for, or charged with, the offence, and  
(ii) has not been convicted of the offence,  
the destruction of the material within the period of 3 years beginning with the day on which the material was taken or derived if the offence was a qualifying offence, and  
(c) in the case of material taken or derived before the commencement day from a person who—  
(i) was arrested for, or charged with, the offence, and  
(ii) has not been convicted of the offence,  
the destruction of the material on the coming into force of the order if the offence was an offence other than a qualifying offence.
- (4) An order under this section may, in particular, provide for exceptions to provision of the kind mentioned in subsection (3).
- (5) Subsection (6) applies if an order under section 113(1) of the Police and Criminal Evidence Act 1984 (application of that Act to Armed Forces) makes provision equivalent to sections 63D to 63U of that Act.
- (6) The power to make an order under section 113(1) of the Act of 1984 includes the power to make provision of the kind that may be made by an order under this section; and the duties which apply to the Secretary of State under this section in relation to an order under this section apply accordingly in relation to an order under section 113(1) of that Act.
- (7) An order under this section is to be made by statutory instrument.
- (8) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) In this section—  
“the commencement day” means the day on which section 1 comes into force,  
“PACE material” means material that would have been material to which section 63D or 63R of the Police and Criminal Evidence Act 1984 applied if those provisions had been in force when it was taken or derived.

VALID FROM 01/09/2013

## CHAPTER 2

### PROTECTION OF BIOMETRIC INFORMATION OF CHILDREN IN SCHOOLS ETC.

#### 26 Requirement to notify and obtain consent before processing biometric information

- (1) This section applies in relation to any processing of a child's biometric information by or on behalf of the relevant authority of—  
(a) a school,  
(b) a 16 to 19 Academy, or



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- (c) a further education institution.
- (2) Before the first processing of a child's biometric information on or after the coming into force of subsection (3), the relevant authority must notify each parent of the child—
  - (a) of its intention to process the child's biometric information, and
  - (b) that the parent may object at any time to the processing of the information.
- (3) The relevant authority must ensure that a child's biometric information is not processed unless—
  - (a) at least one parent of the child consents to the information being processed, and
  - (b) no parent of the child has withdrawn his or her consent, or otherwise objected, to the information being processed.
- (4) Section 27 makes further provision about the requirement to notify parents and the obtaining and withdrawal of consent (including when notification and consent are not required).
- (5) But if, at any time, the child—
  - (a) refuses to participate in, or continue to participate in, anything that involves the processing of the child's biometric information, or
  - (b) otherwise objects to the processing of that information,
 the relevant authority must ensure that the information is not processed, irrespective of any consent given by a parent of the child under subsection (3).
- (6) Subsection (7) applies in relation to any child whose biometric information, by virtue of this section, may not be processed.
- (7) The relevant authority must ensure that reasonable alternative means are available by which the child may do, or be subject to, anything which the child would have been able to do, or be subject to, had the child's biometric information been processed.

## **27 Exceptions and further provision about consent and notification**

- (1) For the purposes of section 26(2) and (3), the relevant authority is not required to notify a parent, or obtain the consent of a parent, if the relevant authority is satisfied that—
  - (a) the parent cannot be found,
  - (b) the parent lacks capacity (within the meaning of the Mental Capacity Act 2005) to object or (as the case may be) consent to the processing of the child's biometric information,
  - (c) the welfare of the child requires that the parent is not contacted, or
  - (d) it is otherwise not reasonably practicable to notify the parent or (as the case may be) obtain the consent of the parent.
- (2) A notification under section 26(2) must be given in writing, and any objection to the processing of a child's biometric information must be made in writing.
- (3) Consent under section 26(3) may be withdrawn at any time.
- (4) Consent under section 26(3) must be given, and (if withdrawn) withdrawn, in writing.



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- (5) Section 26 and this section are in addition to the requirements of the Data Protection Act 1998.

## 28 Interpretation: Chapter 2

- (1) In this Chapter—

“biometric information” is to be read in accordance with subsections (2) to (4),

“child” means a person under the age of 18,

“further education institution” means an institution within the further education sector (within the meaning given by section 91(3)(a) to (c) of the Further and Higher Education Act 1992),

“parent” is to be read in accordance with subsections (5) to (8),

“parental responsibility” is to be read in accordance with the Children Act 1989,

“processing” has the meaning given by section 1(1) of the Data Protection Act 1998,

“proprietor”, in relation to a school or 16 to 19 Academy, has the meaning given by section 579(1) of the Education Act 1996, subject to the modification in subsection (9),

“relevant authority” means—

- (a) in relation to a school, the proprietor of the school,
- (b) in relation to a 16 to 19 Academy, the proprietor of the Academy,
- (c) in relation to a further education institution, the governing body of the institution (within the meaning given by paragraphs (a), (c) and (d) of the definition of “governing body” in section 90(1) of the Further and Higher Education Act 1992),

“school” has the meaning given by section 4 of the Education Act 1996, subject to the modification in subsection (10),

“16 to 19 Academy” has the meaning given by section 1B of the Academies Act 2010.

- (2) “Biometric information” means information about a person's physical or behavioural characteristics or features which—

- (a) is capable of being used in order to establish or verify the identity of the person, and
- (b) is obtained or recorded with the intention that it be used for the purposes of a biometric recognition system.

- (3) Biometric information may, in particular, include—

- (a) information about the skin pattern and other physical characteristics or features of a person's fingers or palms,
- (b) information about the features of an iris or any other part of the eye, and
- (c) information about a person's voice or handwriting.

- (4) In subsection (2) “biometric recognition system” means a system which, by means of equipment operating automatically—

- (a) obtains or records information about a person's physical or behavioural characteristics or features, and

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- (b) compares the information with stored information that has previously been so obtained or recorded, or otherwise processes the information, for the purpose of establishing or verifying the identity of the person, or otherwise determining whether the person is recognised by the system.
- (5) “Parent” means a parent of the child and any individual who is not a parent of the child but who has parental responsibility for the child.
- (6) In a case where the relevant authority is satisfied that, by virtue of section 27(1), there is no person falling within subsection (5) who must be notified or whose consent is required, “parent” is to be read as including each individual who has care of the child, but this is subject to subsections (7) and (8).
- (7) In a case to which subsection (6) applies where the child is looked after by a local authority (within the meaning given by section 22(1) of the Children Act 1989), “parent” is to be read as meaning the local authority looking after the child.
- (8) In a case to which subsection (6) applies where the child is not looked after by a local authority (within the meaning given by section 22(1) of the Children Act 1989) but a voluntary organisation has provided accommodation for the child in accordance with section 59(1) of that Act by—
- (a) placing the child with a foster parent, or
  - (b) maintaining the child in a children's home,
- “parent” is to be read as meaning the voluntary organisation that so placed or maintains the child.
- (9) A reference to the proprietor of a school is to be read, in relation to a pupil referral unit for which there is a management committee established by virtue of paragraph 15 of Schedule 1 to the Education Act 1996, as a reference to that committee; and for this purpose “pupil referral unit” has the meaning given by section 19(2) of that Act.
- (10) A reference to a school is to be read as if it included a reference to any independent educational institution (within the meaning given by section 92 of the Education and Skills Act 2008).

## PART 2

### REGULATION OF SURVEILLANCE

#### CHAPTER 1

##### REGULATION OF CCTV AND OTHER SURVEILLANCE CAMERA TECHNOLOGY

###### *Code of practice*

### 29 Code of practice for surveillance camera systems

- (1) The Secretary of State must prepare a code of practice containing guidance about surveillance camera systems.

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- (2) Such a code must contain guidance about one or more of the following—
  - (a) the development or use of surveillance camera systems,
  - (b) the use or processing of images or other information obtained by virtue of such systems.
- (3) Such a code may, in particular, include provision about—
  - (a) considerations as to whether to use surveillance camera systems,
  - (b) types of systems or apparatus,
  - (c) technical standards for systems or apparatus,
  - (d) locations for systems or apparatus,
  - (e) the publication of information about systems or apparatus,
  - (f) standards applicable to persons using or maintaining systems or apparatus,
  - (g) standards applicable to persons using or processing information obtained by virtue of systems,
  - (h) access to, or disclosure of, information so obtained,
  - (i) procedures for complaints or consultation.
- (4) Such a code—
  - (a) need not contain provision about every type of surveillance camera system,
  - (b) may make different provision for different purposes.
- (5) In the course of preparing such a code, the Secretary of State must consult—
  - (a) such persons appearing to the Secretary of State to be representative of the views of persons who are, or are likely to be, subject to the duty under section 33(1) (duty to have regard to the code) as the Secretary of State considers appropriate,
  - (b) the Association of Chief Police Officers,
  - (c) the Information Commissioner,
  - (d) the Chief Surveillance Commissioner,
  - (e) the Surveillance Camera Commissioner,
  - (f) the Welsh Ministers, and
  - (g) such other persons as the Secretary of State considers appropriate.
- (6) In this Chapter “surveillance camera systems” means—
  - (a) closed circuit television or automatic number plate recognition systems,
  - (b) any other systems for recording or viewing visual images for surveillance purposes,
  - (c) any systems for storing, receiving, transmitting, processing or checking images or information obtained by systems falling within paragraph (a) or (b),  
or
  - (d) any other systems associated with, or otherwise connected with, systems falling within paragraph (a), (b) or (c).
- (7) In this section—

“the Chief Surveillance Commissioner” means the Chief Commissioner appointed under section 91(1) of the Police Act 1997,

“processing” has the meaning given by section 1(1) of the Data Protection Act 1998.

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#### Commencement Information

**II** S. 29 in force at 1.7.2012 by [S.I. 2012/1205](#), [art. 3\(a\)](#)

### *Procedural requirements*

## 30 Issuing of code

- (1) The Secretary of State must lay before Parliament—
  - (a) a code of practice prepared under section 29, and
  - (b) a draft of an order providing for the code to come into force.
- (2) The Secretary of State must make the order and issue the code if the draft of the order is approved by a resolution of each House of Parliament.
- (3) The Secretary of State must not make the order or issue the code unless the draft of the order is so approved.
- (4) The Secretary of State must prepare another code of practice under section 29 if—
  - (a) the draft of the order is not so approved, and
  - (b) the Secretary of State considers that there is no realistic prospect that it will be so approved.
- (5) A code comes into force in accordance with an order under this section.
- (6) Such an order—
  - (a) is to be a statutory instrument, and
  - (b) may contain transitional, transitory or saving provision.
- (7) If a draft of an instrument containing an order under this section 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.

#### Commencement Information

**I2** S. 30 in force at 1.7.2012 by [S.I. 2012/1205](#), [art. 3\(b\)](#)

## 31 Alteration or replacement of code

- (1) The Secretary of State—
  - (a) must keep the surveillance camera code under review, and
  - (b) may prepare an alteration to the code or a replacement code.
- (2) Before preparing an alteration or a replacement code, the Secretary of State must consult the persons mentioned in section 29(5).
- (3) The Secretary of State must lay before Parliament an alteration or a replacement code prepared under this section.

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- (4) If, within the 40-day period, either House of Parliament resolves not to approve the alteration or the replacement code, the Secretary of State must not issue the alteration or code.
- (5) If no such resolution is made within that period, the Secretary of State must issue the alteration or replacement code.
- (6) The alteration or replacement code—
  - (a) comes into force when issued, and
  - (b) may include transitional, transitory or saving provision.
- (7) Subsection (4) does not prevent the Secretary of State from laying a new alteration or replacement code before Parliament.
- (8) In this section “the 40-day period” means the period of 40 days beginning with the day on which the alteration or replacement code is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the two days on which it is laid).
- (9) In calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (10) In this Chapter “the surveillance camera code” means the code of practice issued under section 30(2) (as altered or replaced from time to time).

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**Commencement Information**

**I3** S. 31 in force at 1.7.2012 by S.I. 2012/1205, art. 3(c)

### **32 Publication of code**

- (1) The Secretary of State must publish the code issued under section 30(2).
- (2) The Secretary of State must publish any replacement code issued under section 31(5).
- (3) The Secretary of State must publish—
  - (a) any alteration issued under section 31(5), or
  - (b) the code or replacement code as altered by it.

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**Commencement Information**

**I4** S. 32 in force at 1.7.2012 by S.I. 2012/1205, art. 3(d)

### *Enforcement and Commissioner*

### **33 Effect of code**

- (1) A relevant authority must have regard to the surveillance camera code when exercising any functions to which the code relates.

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- (2) A failure on the part of any person to act in accordance with any provision of the surveillance camera code does not of itself make that person liable to criminal or civil proceedings.
- (3) The surveillance camera code is admissible in evidence in any such proceedings.
- (4) A court or tribunal may, in particular, take into account a failure by a relevant authority to have regard to the surveillance camera code in determining a question in any such proceedings.
- (5) In this section “relevant authority” means—
  - (a) a local authority within the meaning of the Local Government Act 1972,
  - (b) the Greater London Authority,
  - (c) the Common Council of the City of London in its capacity as a local authority,
  - (d) the Sub-Treasurer of the Inner Temple or the Under-Treasurer of the Middle Temple, in their capacity as a local authority,
  - (e) the Council of the Isles of Scilly,
  - (f) a parish meeting constituted under section 13 of the Local Government Act 1972,
  - (g) a police and crime commissioner,
  - (h) the Mayor's Office for Policing and Crime,
  - (i) the Common Council of the City of London in its capacity as a police authority,
  - (j) any chief officer of a police force in England and Wales,
  - (k) any person specified or described by the Secretary of State in an order made by statutory instrument.
- (6) An order under subsection (5) may, in particular—
  - (a) restrict the specification or description of a person to that of the person when acting in a specified capacity or exercising specified or described functions,
  - (b) contain transitional, transitory or saving provision.
- (7) So far as an order under subsection (5) contains a restriction of the kind mentioned in subsection (6)(a) in relation to a person, the duty in subsection (1) applies only to the person in that capacity or (as the case may be) only in relation to those functions.
- (8) Before making an order under subsection (5) in relation to any person or description of persons, the Secretary of State must consult—
  - (a) such persons appearing to the Secretary of State to be representative of the views of the person or persons in relation to whom the order may be made as the Secretary of State considers appropriate,
  - (b) the Association of Chief Police Officers,
  - (c) the Information Commissioner,
  - (d) the Chief Surveillance Commissioner,
  - (e) the Surveillance Camera Commissioner,
  - (f) the Welsh Ministers, and
  - (g) such other persons as the Secretary of State considers appropriate.
- (9) No instrument containing an order under subsection (5) is to be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.

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- (10) If a draft of an instrument containing an order under subsection (5) 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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**Commencement Information**

**I5** S. 33 in force at 1.7.2012 by [S.I. 2012/1205](#), [art. 3\(e\)](#)

### 34 Commissioner in relation to code

- (1) The Secretary of State must appoint a person as the Surveillance Camera Commissioner (in this Chapter “the Commissioner”).
- (2) The Commissioner is to have the following functions—
- (a) encouraging compliance with the surveillance camera code,
  - (b) reviewing the operation of the code, and
  - (c) providing advice about the code (including changes to it or breaches of it).
- (3) The Commissioner is to hold office in accordance with the terms of the Commissioner's appointment; and the Secretary of State may pay in respect of the Commissioner any expenses, remuneration or allowances that the Secretary of State may determine.
- (4) The Secretary of State may, after consultation with the Commissioner, provide the Commissioner with—
- (a) such staff, and
  - (b) such accommodation, equipment and other facilities,
- as the Secretary of State considers necessary for the carrying out of the Commissioner's functions.

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**Commencement Information**

**I6** S. 34 in force at 1.7.2012 by [S.I. 2012/1205](#), [art. 3\(f\)](#)

### 35 Reports by Commissioner

- (1) As soon as reasonably practicable after the end of each reporting period—
- (a) the Commissioner must—
    - (i) prepare a report about the exercise by the Commissioner during that period of the functions of the Commissioner, and
    - (ii) give a copy of the report to the Secretary of State,
  - (b) the Secretary of State must lay a copy of the report before Parliament, and
  - (c) the Commissioner must publish the report.
- (2) The reporting periods are—
- (a) the period—



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- (i) beginning with the surveillance camera code first coming into force or the making of the first appointment as Commissioner (whichever is the later), and
  - (ii) ending with the next 31 March or, if the period ending with that date is 6 months or less, ending with the next 31 March after that date, and
- (b) each succeeding period of 12 months.

**Commencement Information**

**17** S. 35 in force at 1.7.2012 by S.I. 2012/1205, art. 3(g)

*Interpretation*

**36 Interpretation: Chapter 1**

In this Chapter—

- “the Commissioner” has the meaning given by section 34(1),
- “surveillance camera code” has the meaning given by section 31(10),
- “surveillance camera systems” has the meaning given by section 29(6).

**Commencement Information**

**18** S. 36 in force at 1.7.2012 by S.I. 2012/1205, art. 3(h)

VALID FROM 01/11/2012

**CHAPTER 2**

SAFEGUARDS FOR CERTAIN SURVEILLANCE UNDER RIPA

**37 Judicial approval for obtaining or disclosing communications data**

After section 23 of the Regulation of Investigatory Powers Act 2000 (form and duration of authorisations and notices for obtaining and disclosing communications data) insert—

**“23A Authorisations requiring judicial approval**

- (1) This section applies where a relevant person has—
  - (a) granted or renewed an authorisation under section 22(3), (3B) or (3F), or
  - (b) given or renewed a notice under section 22(4).
- (2) The authorisation or notice is not to take effect until such time (if any) as the relevant judicial authority has made an order approving the grant or renewal of the authorisation or (as the case may be) the giving or renewal of the notice.

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- (3) The relevant judicial authority may give approval under this section to the granting or renewal of an authorisation under section 22(3), (3B) or (3F) if, and only if, the relevant judicial authority is satisfied that—
- (a) at the time of the grant or renewal—
    - (i) there were reasonable grounds for believing that the requirements of section 22(1) and (5) were satisfied in relation to the authorisation, and
    - (ii) the relevant conditions were satisfied in relation to the authorisation, and
  - (b) at the time when the relevant judicial authority is considering the matter, there remain reasonable grounds for believing that the requirements of section 22(1) and (5) are satisfied in relation to the authorisation.
- (4) The relevant judicial authority may give approval under this section to the giving or renewal of a notice under section 22(4) if, and only if, the relevant judicial authority is satisfied that—
- (a) at the time of the giving or renewal of the notice—
    - (i) there were reasonable grounds for believing that the requirements of section 22(1) and (5) were satisfied in relation to the notice, and
    - (ii) the relevant conditions were satisfied in relation to the notice, and
  - (b) at the time when the relevant judicial authority is considering the matter, there remain reasonable grounds for believing that the requirements of section 22(1) and (5) are satisfied in relation to the notice.
- (5) For the purposes of subsections (3) and (4) the relevant conditions are—
- (a) in relation to any grant, giving or renewal by an individual holding an office, rank or position in a local authority in England, Wales or Scotland, that—
    - (i) the individual was a designated person for the purposes of this Chapter,
    - (ii) the grant, giving or renewal was not in breach of any restrictions imposed by virtue of section 25(3), and
    - (iii) any other conditions that may be provided for by an order made by the Secretary of State were satisfied,
  - (b) in relation to a grant, giving or renewal, for any purpose relating to a Northern Ireland excepted or reserved matter, by an individual holding an office, rank or position in a district council in Northern Ireland, that—
    - (i) the individual was a designated person for the purposes of this Chapter,
    - (ii) the grant, giving or renewal was not in breach of any restrictions imposed by virtue of section 25(3), and
    - (iii) any other conditions that may be provided for by an order made by the Secretary of State were satisfied, and

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- (c) in relation to any other grant, giving or renewal by a relevant person, that any conditions that may be provided for by an order made by the Secretary of State were satisfied.

(6) In this section—

“local authority in England” means—

- (a) a district or county council in England,
- (b) a London borough council,
- (c) the Common Council of the City of London in its capacity as a local authority, or
- (d) the Council of the Isles of Scilly,

“local authority in Scotland” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994,

“local authority in Wales” means any county council or county borough council in Wales,

“Northern Ireland excepted or reserved matter” means an excepted or reserved matter (within the meaning of section 4(1) of the Northern Ireland Act 1998),

“Northern Ireland transferred matter” means a transferred matter (within the meaning of section 4(1) of the Act of 1998),

“relevant judicial authority” means—

- (a) in relation to England and Wales, a justice of the peace,
- (b) in relation to Scotland, a sheriff, and
- (c) in relation to Northern Ireland, a district judge (magistrates' courts) in Northern Ireland,

“relevant person” means—

- (a) an individual holding—
  - (i) an office, rank or position in a local authority in England or Wales, or
  - (ii) an office, rank or position in a local authority in Scotland (other than an office, rank or position in a fire and rescue authority),
- (b) also, in relation to a grant, giving or renewal for any purpose relating to a Northern Ireland excepted or reserved matter, an individual holding an office, rank or position in a district council in Northern Ireland, and
- (c) also, in relation to any grant, giving or renewal of a description that may be prescribed for the purposes of this subsection by an order made by the Secretary of State or every grant, giving or renewal if so prescribed, a person of a description so prescribed.

(7) No order of the Secretary of State—

- (a) may be made under subsection (6) unless a draft of the order has been laid before Parliament and approved by a resolution of each House;
- (b) may be made under this section so far as it makes provision which, if it were contained in an Act of the Northern Ireland Assembly, would be within the legislative competence of the Northern Ireland

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Assembly and would deal with a Northern Ireland transferred matter.

### **23B Procedure for judicial approval**

- (1) The public authority with which the relevant person holds an office, rank or position may apply to the relevant judicial authority for an order under section 23A approving the grant or renewal of an authorisation or (as the case may be) the giving or renewal of a notice.
- (2) The applicant is not required to give notice of the application to—
  - (a) any person to whom the authorisation or notice which is the subject of the application relates, or
  - (b) such a person's legal representatives.
- (3) Where, on an application under this section, the relevant judicial authority refuses to approve the grant or renewal of the authorisation concerned or (as the case may be) the giving or renewal of the notice concerned, the relevant judicial authority may make an order quashing the authorisation or notice.
- (4) In this section “relevant judicial authority” and “relevant person” have the same meaning as in section 23A.”

## **38 Judicial approval for directed surveillance and covert human intelligence sources**

- (1) After section 32 of the Regulation of Investigatory Powers Act 2000 (authorisation of surveillance and human intelligence sources: intrusive surveillance) insert—

*“Authorisations requiring judicial approval*

### **32A Authorisations requiring judicial approval**

- (1) This section applies where a relevant person has granted an authorisation under section 28 or 29.
- (2) The authorisation is not to take effect until such time (if any) as the relevant judicial authority has made an order approving the grant of the authorisation.
- (3) The relevant judicial authority may give approval under this section to the granting of an authorisation under section 28 if, and only if, the relevant judicial authority is satisfied that—
  - (a) at the time of the grant—
    - (i) there were reasonable grounds for believing that the requirements of section 28(2) were satisfied in relation to the authorisation, and
    - (ii) the relevant conditions were satisfied in relation to the authorisation, and
  - (b) at the time when the relevant judicial authority is considering the matter, there remain reasonable grounds for believing that the requirements of section 28(2) are satisfied in relation to the authorisation.

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- (4) For the purposes of subsection (3) the relevant conditions are—
- (a) in relation to a grant by an individual holding an office, rank or position in a local authority in England or Wales, that—
    - (i) the individual was a designated person for the purposes of section 28,
    - (ii) the grant of the authorisation was not in breach of any restrictions imposed by virtue of section 30(3), and
    - (iii) any other conditions that may be provided for by an order made by the Secretary of State were satisfied,
  - (b) in relation to a grant, for any purpose relating to a Northern Ireland excepted or reserved matter, by an individual holding an office, rank or position in a district council in Northern Ireland, that—
    - (i) the individual was a designated person for the purposes of section 28,
    - (ii) the grant of the authorisation was not in breach of any restrictions imposed by virtue of section 30(3), and
    - (iii) any other conditions that may be provided for by an order made by the Secretary of State were satisfied, and
  - (c) in relation to any other grant by a relevant person, that any conditions that may be provided for by an order made by the Secretary of State were satisfied.
- (5) The relevant judicial authority may give approval under this section to the granting of an authorisation under section 29 if, and only if, the relevant judicial authority is satisfied that—
- (a) at the time of the grant—
    - (i) there were reasonable grounds for believing that the requirements of section 29(2), and any requirements imposed by virtue of section 29(7)(b), were satisfied in relation to the authorisation, and
    - (ii) the relevant conditions were satisfied in relation to the authorisation, and
  - (b) at the time when the relevant judicial authority is considering the matter, there remain reasonable grounds for believing that the requirements of section 29(2), and any requirements imposed by virtue of section 29(7)(b), are satisfied in relation to the authorisation.
- (6) For the purposes of subsection (5) the relevant conditions are—
- (a) in relation to a grant by an individual holding an office, rank or position in a local authority in England or Wales, that—
    - (i) the individual was a designated person for the purposes of section 29,
    - (ii) the grant of the authorisation was not in breach of any prohibition imposed by virtue of section 29(7)(a) or any restriction imposed by virtue of section 30(3), and
    - (iii) any other conditions that may be provided for by an order made by the Secretary of State were satisfied,

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- (b) in relation to a grant, for any purpose relating to a Northern Ireland excepted or reserved matter, by an individual holding an office, rank or position in a district council in Northern Ireland, that—
  - (i) the individual was a designated person for the purposes of section 29,
  - (ii) the grant of the authorisation was not in breach of any prohibition imposed by virtue of section 29(7)(a) or any restriction imposed by virtue of section 30(3), and
  - (iii) any other conditions that may be provided for by an order made by the Secretary of State were satisfied, and
- (c) in relation to any other grant by a relevant person, that any conditions that may be provided for by an order made by the Secretary of State were satisfied.

(7) In this section—

“local authority in England” means—

- (a) a district or county council in England,
- (b) a London borough council,
- (c) the Common Council of the City of London in its capacity as a local authority, or
- (d) the Council of the Isles of Scilly,

“local authority in Wales” means any county council or county borough council in Wales,

“Northern Ireland excepted or reserved matter” means an excepted or reserved matter (within the meaning of section 4(1) of the Northern Ireland Act 1998),

“Northern Ireland transferred matter” means a transferred matter (within the meaning of section 4(1) of the Act of 1998),

“relevant judicial authority” means—

- (a) in relation to England and Wales, a justice of the peace,
- (b) in relation to Scotland, a sheriff, and
- (c) in relation to Northern Ireland, a district judge (magistrates' courts) in Northern Ireland,

“relevant person” means—

- (a) an individual holding an office, rank or position in a local authority in England or Wales,
- (b) also, in relation to a grant for any purpose relating to a Northern Ireland excepted or reserved matter, an individual holding an office, rank or position in a district council in Northern Ireland, and
- (c) also, in relation to any grant of a description that may be prescribed for the purposes of this subsection by an order made by the Secretary of State or every grant if so prescribed, a person of a description so prescribed.

(8) No order of the Secretary of State—

- (a) may be made under subsection (7) unless a draft of the order has been laid before Parliament and approved by a resolution of each House;

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- (b) may be made under this section so far as it makes provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of the Scottish Parliament;
- (c) may be made under this section so far as it makes provision which, if it were contained in an Act of the Northern Ireland Assembly, would be within the legislative competence of the Northern Ireland Assembly and would deal with a Northern Ireland transferred matter.

### **32B Procedure for judicial approval**

- (1) The public authority with which the relevant person holds an office, rank or position may apply to the relevant judicial authority for an order under section 32A approving the grant of an authorisation.
  - (2) The applicant is not required to give notice of the application to—
    - (a) any person to whom the authorisation relates, or
    - (b) such a person's legal representatives.
  - (3) Where, on an application under this section, the relevant judicial authority refuses to approve the grant of the authorisation concerned, the relevant judicial authority may make an order quashing the authorisation.
  - (4) In this section “relevant judicial authority” and “relevant person” have the same meaning as in section 32A.”
- (2) In section 43 of that Act (general rules about grant, renewal and duration of authorisations)—
- (a) after subsection (6) insert—
    - “(6A) The relevant judicial authority (within the meaning given by subsection (7) of section 32A) shall not make an order under that section approving the renewal of an authorisation for the conduct or the use of a covert human intelligence source unless the relevant judicial authority—
      - (a) is satisfied that a review has been carried out of the matters mentioned in subsection (7) below, and
      - (b) has, for the purpose of deciding whether to make the order, considered the results of that review.”, and
  - (b) in subsection (7) for “subsection (6)” substitute “subsections (6) and (6A)”.



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## PART 3

### PROTECTION OF PROPERTY FROM DISPROPORTIONATE ENFORCEMENT ACTION

#### CHAPTER 1

##### POWERS OF ENTRY

*Repealing, adding safeguards or rewriting powers of entry*

#### 39 Repealing etc. unnecessary or inappropriate powers of entry

- (1) The appropriate national authority may by order repeal any power of entry or associated power which the appropriate national authority considers to be unnecessary or inappropriate.
- (2) Schedule 2 (which contains repeals etc. of certain powers of entry) has effect.

#### Commencement Information

- I9** S. 39 partly in force; s. 39(2) in force for specified purposes at 1.7.2012 see s. 120(4)(a)  
**I10** S. 39(1) in force at 1.7.2012 by S.I. 2012/1205, art. 3(i)

#### 40 Adding safeguards to powers of entry

- (1) The appropriate national authority may by order provide for safeguards in relation to any power of entry or associated power.
- (2) Such safeguards may, in particular, include—
  - (a) restrictions as to the premises over which the power may be exercised,
  - (b) restrictions as to the times at which the power may be exercised,
  - (c) restrictions as to the number or description of persons who may exercise the power,
  - (d) a requirement for a judicial or other authorisation before the power may be exercised,
  - (e) a requirement to give notice within a particular period before the power may be exercised,
  - (f) other conditions which must be met before the power may be exercised,
  - (g) modifications of existing conditions which must be met before the power may be exercised,
  - (h) other restrictions on the circumstances in which the power may be exercised,
  - (i) new obligations on the person exercising the power which must be met before, during or after its exercise,
  - (j) modifications of existing obligations which must be met by the person exercising the power before, during or after its exercise,
  - (k) restrictions on any power to use force, or any other power, which may be exercised in connection with the power of entry or associated power.

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#### Commencement Information

**III** S. 40 in force at 1.7.2012 by S.I. 2012/1205, art. 3(j)

### 41 Rewriting powers of entry

- (1) The appropriate national authority may by order rewrite, with or without modifications—
  - (a) powers of entry, associated powers or any aspects of any such powers, or
  - (b) enactments relating to, or connected with, any such powers or aspects.
- (2) The power under subsection (1) to rewrite a power of entry or associated power includes, in particular, the power to remove an aspect of such a power without replacing it.
- (3) But no order under this section may alter the effect of—
  - (a) a power of entry,
  - (b) any associated power connected with it, or
  - (c) any safeguard relating to, but not forming part of, the power of entry or associated power,

unless, on and after the changes made by the order, the safeguards in relation to the power of entry and associated powers connected with it, taken together, provide a greater level of protection than any safeguards applicable immediately before the changes.

#### Commencement Information

**III2** S. 41 in force at 1.7.2012 by S.I. 2012/1205, art. 3(k)

### 42 Duty to review certain existing powers of entry

- (1) Each Minister of the Crown who is a member of the Cabinet must, within the relevant period—
  - (a) review relevant powers of entry, and relevant associated powers, for which the Minister is responsible with a view to deciding whether to make an order under section 39(1), 40 or 41 in relation to any of them,
  - (b) prepare a report of that review, and
  - (c) lay a copy of the report before Parliament.

- (2) A failure by a Minister of the Crown to comply with a duty under subsection (1) in relation to a power of entry or associated power does not affect the validity of the power.

- (3) In this section—

“relevant associated power” means any associated power in a public general Act or a statutory instrument made under such an Act,

“the relevant period” means the period of two years beginning with the day on which this Act is passed,

“relevant power of entry” means any power of entry in a public general Act or a statutory instrument made under such an Act.

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#### Commencement Information

**I13** S. 42 in force at 1.7.2012 by S.I. 2012/1205, art. 3(l)

### 43 Consultation requirements before modifying powers of entry

Before making an order under section 39(1), 40 or 41 in relation to a power of entry or associated power, the appropriate national authority must consult—

- (a) such persons appearing to the appropriate national authority to be representative of the views of persons entitled to exercise the power of entry or associated power as the appropriate national authority considers appropriate, and
- (b) such other persons as the appropriate national authority considers appropriate.

#### Commencement Information

**I14** S. 43 in force at 1.7.2012 by S.I. 2012/1205, art. 3(m)

### 44 Procedural and supplementary provisions

- (1) An order under section 39(1), 40 or 41—
  - (a) is to be made by statutory instrument,
  - (b) may modify any enactment,
  - (c) may include such incidental, consequential, supplementary, transitory, transitional or saving provision as the appropriate national authority considers appropriate (including provision modifying any enactment).
- (2) Subject to subsection (4), no instrument containing an order of a Minister of the Crown under section 39(1), 40 or 41 is to be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.
- (3) If a draft of an instrument containing an order of a Minister of the Crown under section 39(1), 40 or 41 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.
- (4) An instrument containing an order of a Minister of the Crown under section 39(1), 40 or 41 which neither amends nor repeals any provision of primary legislation is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In subsection (4) “primary legislation” means—
  - (a) a public general Act,
  - (b) an Act of the Scottish Parliament,
  - (c) a Measure or Act of the National Assembly for Wales, and
  - (d) Northern Ireland legislation.
- (6) Subject to subsection (7), no instrument containing an order of the Welsh Ministers under section 39(1), 40 or 41 is to be made unless a draft of it has been laid before, and approved by a resolution of, the National Assembly for Wales.

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- (7) An instrument containing an order of the Welsh Ministers under section 39(1), 40 or 41 which neither amends nor repeals any provision of primary legislation is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (8) In subsection (7) “primary legislation” means—
- (a) a public general Act, and
  - (b) a Measure or Act of the National Assembly for Wales.

#### Commencement Information

**I15** S. 44 in force at 1.7.2012 for specified purposes by S.I. 2012/1205, art. 3(n)

## 45 Devolution: Scotland and Northern Ireland

- (1) An order under section 39(1), 40 or 41 may not make provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of the Scottish Parliament.
- (2) An order under section 39(1), 40 or 41 may not make provision which, if it were contained in an Act of the Northern Ireland Assembly, would be within the legislative competence of the Northern Ireland Assembly and would deal with a transferred matter without being ancillary to other provision (whether in that Act or previously enacted) which deals with an excepted or reserved matter.
- (3) In subsection (2) “excepted matter”, “reserved matter” and “transferred matter” have the meaning given by section 4(1) of the Northern Ireland Act 1998.

#### Commencement Information

**I16** S. 45 in force at 1.7.2012 by S.I. 2012/1205, art. 3(o)

## 46 Sections 39 to 46: interpretation

In sections 39 to 45 and this section—

“appropriate national authority” means—

- (a) in relation to the making of any provision which would be within the legislative competence of the National Assembly for Wales, the Welsh Ministers,
  - (b) in any other case, a Minister of the Crown,
- “associated power” means any power which—
- (a) is contained in an enactment,
  - (b) is connected with a power of entry, and
  - (c) is a power—
    - (i) to do anything on, or in relation to, the land or other premises entered in pursuance of the power of entry,
    - (ii) to do anything in relation to any person, or anything, found on the land or other premises entered in pursuance of the power of entry, or
    - (iii) otherwise to do anything in connection with the power of entry,

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- and includes any safeguard which forms part of the associated power;
- “enactment” includes—
- (a) an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978),
  - (b) an enactment comprised in, or in an instrument made under—
    - (i) an Act of the Scottish Parliament,
    - (ii) Northern Ireland legislation, or
    - (iii) a Measure or Act of the National Assembly for Wales,
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975,
- “modify” includes amend or repeal (and “modifications” is to be read accordingly),
- “off-shore installation” has the same meaning as in the Mineral Workings (Offshore Installations) Act 1971 (see section 12 of that Act),
- “power of entry” means a power (however expressed) in any enactment to enter land or other premises; and includes any safeguard which forms part of the power,
- “premises” includes any place and, in particular, includes—
- (a) any vehicle, vessel, aircraft or hovercraft,
  - (b) any off-shore installation,
  - (c) any renewable energy installation,
  - (d) any tent or movable structure,
- “renewable energy installation” has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004 (see section 104 of that Act),
- “repeal” includes revoke.

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#### Commencement Information

**117** S. 46 in force at 1.7.2012 for specified purposes by [S.I. 2012/1205](#), [art. 3\(p\)](#)

### *Codes of practice in relation to powers of entry*

#### **47 Code of practice in relation to non-devolved powers of entry**

- (1) The Secretary of State must prepare a code of practice containing guidance about the exercise of powers of entry and associated powers.
- (2) Such a code may, in particular, include provision about—
  - (a) considerations before exercising, or when exercising, the powers,
  - (b) considerations after exercising the powers (such as the retention of records, or the publication of information, about the exercise of the powers).
- (3) Such a code—
  - (a) must not contain provision about devolved powers of entry and devolved associated powers,
  - (b) need not contain provision about every other type of power of entry or associated power,
  - (c) may make different provision for different purposes.

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- (4) In the course of preparing such a code in relation to any powers, the Secretary of State must consult—
- (a) the Lord Advocate,
  - (b) such persons appearing to the Secretary of State to be representative of the views of persons entitled to exercise the powers concerned as the Secretary of State considers appropriate, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (5) In this section “devolved powers of entry and devolved associated powers” means powers of entry and associated powers—
- (a) in relation to which the Welsh Ministers may issue a code under Schedule 3,
  - (b) which, if it were contained in an Act of the Scottish Parliament, would be within the legislative competence of that Parliament, or
  - (c) which, if it were contained in an Act of the Northern Ireland Assembly, would be within the legislative competence of that Assembly and would deal with a transferred matter (within the meaning given by section 4(1) of the Northern Ireland Act 1998) without being ancillary to other provision (whether in the Act of the Northern Ireland Assembly or previously enacted) which deals with an excepted or reserved matter (within the meaning given by section 4(1) of the Northern Ireland Act 1998).

#### Commencement Information

**I18** S. 47 in force at 1.7.2012 by S.I. 2012/1205, art. 3(q)

## 48 Issuing of code

- (1) The Secretary of State must lay before Parliament—
- (a) a code of practice prepared under section 47, and
  - (b) a draft of an order providing for the code to come into force.
- (2) The Secretary of State must make the order and issue the code if the draft of the order is approved by a resolution of each House of Parliament.
- (3) The Secretary of State must not make the order or issue the code unless the draft of the order is so approved.
- (4) The Secretary of State must prepare another code of practice under section 47 if—
- (a) the draft of the order is not so approved, and
  - (b) the Secretary of State considers that there is no realistic prospect that it will be so approved.
- (5) A code comes into force in accordance with an order under this section.
- (6) Such an order—
- (a) is to be a statutory instrument, and
  - (b) may contain transitional, transitory or saving provision.
- (7) If a draft of an instrument containing an order under this section would, apart from this subsection, be treated as a hybrid instrument for the purposes of the standing orders

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of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.

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**Commencement Information**

**I19** S. 48 in force at 1.7.2012 by S.I. 2012/1205, art. 3(r)

#### **49 Alteration or replacement of code**

- (1) The Secretary of State—
  - (a) must keep the powers of entry code under review, and
  - (b) may prepare an alteration to the code or a replacement code.
- (2) Before preparing an alteration or a replacement code in relation to any powers, the Secretary of State must consult—
  - (a) the Lord Advocate,
  - (b) such persons appearing to the Secretary of State to be representative of the views of persons entitled to exercise the powers concerned as the Secretary of State considers appropriate, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (3) The Secretary of State must lay before Parliament an alteration or a replacement code prepared under this section.
- (4) If, within the 40-day period, either House of Parliament resolves not to approve the alteration or the replacement code, the Secretary of State must not issue the alteration or code.
- (5) If no such resolution is made within that period, the Secretary of State must issue the alteration or replacement code.
- (6) The alteration or replacement code—
  - (a) comes into force when issued, and
  - (b) may include transitional, transitory or saving provision.
- (7) Subsection (4) does not prevent the Secretary of State from laying a new alteration or replacement code before Parliament.
- (8) In this section “the 40-day period” means the period of 40 days beginning with the day on which the alteration or replacement code is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the two days on which it is laid).
- (9) In calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (10) In this section “the powers of entry code” means the code of practice issued under section 48(2) (as altered or replaced from time to time).

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**Commencement Information**

**I20** S. 49 in force at 1.7.2012 by S.I. 2012/1205, art. 3(s)



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## 50 Publication of code

- (1) The Secretary of State must publish the code issued under section 48(2).
- (2) The Secretary of State must publish any replacement code issued under section 49(5).
- (3) The Secretary of State must publish—
  - (a) any alteration issued under section 49(5), or
  - (b) the code or replacement code as altered by it.

### Commencement Information

**I21** S. 50 in force at 1.7.2012 by S.I. 2012/1205, art. 3(t)

## 51 Effect of code

- (1) A relevant person must have regard to the powers of entry code when exercising any functions to which the code relates.
- (2) A failure on the part of any person to act in accordance with any provision of the powers of entry code does not of itself make that person liable to criminal or civil proceedings.
- (3) The powers of entry code is admissible in evidence in any such proceedings.
- (4) A court or tribunal may, in particular, take into account a failure by a relevant person to have regard to the powers of entry code in determining a question in any such proceedings.
- (5) In this section “relevant person” means any person specified or described by the Secretary of State in an order made by statutory instrument.
- (6) An order under subsection (5) may, in particular—
  - (a) restrict the specification or description of a person to that of the person when acting in a specified capacity or exercising specified or described functions,
  - (b) contain transitional, transitory or saving provision.
- (7) So far as an order under subsection (5) contains a restriction of the kind mentioned in subsection (6)(a) in relation to a person, the duty in subsection (1) applies only to the person in that capacity or (as the case may be) only in relation to those functions.
- (8) Before making an order under subsection (5) in relation to any person or description of persons, the Secretary of State must consult such persons appearing to the Secretary of State to be representative of the views of the person or persons in relation to whom the order may be made as the Secretary of State considers appropriate.
- (9) No instrument containing the first order under subsection (5) is to be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.
- (10) Subject to this, an instrument containing an order under subsection (5) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (11) If a draft of an instrument containing the first order under subsection (5) would, apart from this subsection, be treated as a hybrid instrument for the purposes of the standing



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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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**Commencement Information**

**I22** S. 51 in force at 1.7.2012 by S.I. 2012/1205, art. 3(u)

**52 Sections 47 to 51: interpretation**

In sections 47 to 51—

“power of entry” and “associated power” have the meaning given by section 46,  
“the powers of entry code” has the meaning given by section 49(10).

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**Commencement Information**

**I23** S. 52 in force at 1.7.2012 by S.I. 2012/1205, art. 3(v)

PROSPECTIVE

**53 Corresponding code in relation to Welsh devolved powers of entry**

Schedule 3 (which confers a power on the Welsh Ministers to issue a code of practice about Welsh devolved powers of entry and associated powers) has effect.

VALID FROM 01/10/2012

**CHAPTER 2**

VEHICLES LEFT ON LAND

*Offence of immobilising etc. vehicles*

**54 Offence of immobilising etc. vehicles**

- (1) A person commits an offence who, without lawful authority—
- (a) immobilises a motor vehicle by the attachment to the vehicle, or a part of it, of an immobilising device, or
  - (b) moves, or restricts the movement of, such a vehicle by any means, intending to prevent or inhibit the removal of the vehicle by a person otherwise entitled to remove it.
- (2) The express or implied consent (whether or not legally binding) of a person otherwise entitled to remove the vehicle to the immobilisation, movement or restriction concerned is not lawful authority for the purposes of subsection (1).

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- (3) But, where the restriction of the movement of the vehicle is by means of a fixed barrier and the barrier was present (whether or not lowered into place or otherwise restricting movement) when the vehicle was parked, any express or implied consent (whether or not legally binding) of the driver of the vehicle to the restriction is, for the purposes of subsection (1), lawful authority for the restriction.
- (4) A person who is entitled to remove a vehicle cannot commit an offence under this section in relation to that vehicle.
- (5) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to a fine,
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (6) In this section “motor vehicle” means a mechanically propelled vehicle or a vehicle designed or adapted for towing by a mechanically propelled vehicle.

*Alternative remedies in relation to vehicles left on land*

**55 Extension of powers to remove vehicles from land**

- (1) Section 99 of the Road Traffic Regulation Act 1984 (removal of vehicles illegally, obstructively or dangerously parked, or abandoned or broken down) is amended as follows.
- (2) In subsection (1)—
  - (a) in paragraph (a), after “road” insert “ or other land ”,
  - (b) in paragraph (b)—
    - (i) after “road”, where it appears for the first time, insert “ or other land ”, and
    - (ii) after “road”, where it appears for the second time, insert “ or land concerned ”,
  - (c) in paragraph (c) for “, or on any land in the open air,” substitute “ or other land ”, and
  - (d) at the end insert “ or other land ”.
- (3) In subsection (2)—
  - (a) in paragraph (a), after “road”, where it appears for the third time, insert “ or on land other than a road ”, and
  - (b) after paragraph (a), insert—
    - “(aa) may provide, in the case of a vehicle which may be removed from land other than a road, for the moving of the vehicle from one position on such land to another position on such land or on any road;”.

**56 Recovery of unpaid parking charges**

Schedule 4 (which makes provision for the recovery of unpaid parking charges from the keeper or hirer of a vehicle in certain circumstances) has effect.

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## PART 4

### COUNTER-TERRORISM POWERS

#### *Pre-charge detention of terrorist suspects*

#### **57 Maximum detention period of 14 days**

- (1) In paragraph 36(3)(b)(ii) of Schedule 8 to the Terrorism Act 2000 (maximum period of pre-charge detention for terrorist suspects) for “28 days” substitute “ 14 days ”.
- (2) Omit section 25 of the Terrorism Act 2006 (which provides for the 28 day limit in paragraph 36(3)(b)(ii) of Schedule 8 to the Act of 2000 to be 14 days subject to a power to raise it to 28 days).

#### **Commencement Information**

**I24** S. 57 in force at 10.7.2012 by S.I. 2012/1205, art. 4(a)

#### **58 Emergency power for temporary extension and review of extensions**

- (1) After Part 3 of Schedule 8 to the Terrorism Act 2000 (extension of detention of terrorist suspects) insert—

## “PART 4

### EMERGENCY POWER WHEN PARLIAMENT DISSOLVED ETC. FOR TEMPORARY EXTENSION OF MAXIMUM PERIOD FOR DETENTION UNDER SECTION 41

- 38 (1) The Secretary of State may make a temporary extension order if—
- (a) either—
    - (i) Parliament is dissolved, or
    - (ii) Parliament has met after a dissolution but the first Queen's Speech of the Parliament has not yet taken place, and
  - (b) the Secretary of State considers that it is necessary by reason of urgency to make such an order.
- (2) A temporary extension order is an order which provides, in relation to the period of three months beginning with the coming into force of the order, for paragraphs 36 and 37 to be read as if—
- (a) in paragraph 36(3)(b)(ii) for “14 days” there were substituted “ 28 days ”, and
  - (b) the other modifications in sub-paragraphs (3) and (4) were made.
- (3) The other modifications of paragraph 36 are—
- (a) the insertion at the beginning of sub-paragraph (1) of “Subject to sub-paragraphs (1ZA) to (1ZI),”,
  - (b) the insertion, after sub-paragraph (1), of—

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“(1ZA) Sub-paragraph (1ZB) applies in relation to any proposed application under sub-paragraph (1) for the further extension of the period specified in a warrant of further detention where the grant (otherwise than in accordance with sub-paragraph (3AA) (b)) of the application would extend the specified period to a time that is more than 14 days after the relevant time.

(1ZB) No person may make such an application—

- (a) in England and Wales, without the consent of the Director of Public Prosecutions,
- (b) in Scotland, without the consent of the Lord Advocate, and
- (c) in Northern Ireland, without the consent of the Director of Public Prosecutions for Northern Ireland,

unless the person making the application is the person whose consent is required.

(1ZC) The Director of Public Prosecutions must exercise personally any function under sub-paragraph (1ZB) of giving consent.

(1ZD) The only exception is if—

- (a) the Director is unavailable, and
- (b) there is another person who is designated in writing by the Director acting personally as the person who is authorised to exercise any such function when the Director is unavailable.

(1ZE) In that case—

- (a) the other person may exercise the function but must do so personally, and
- (b) the Director acting personally—
  - (i) must review the exercise of the function as soon as practicable, and
  - (ii) may revoke any consent given.

(1ZF) Where the consent is so revoked after an application has been made or extension granted, the application is to be dismissed or (as the case may be) the extension is to be revoked.

(1ZG) Sub-paragraphs (1ZC) to (1ZF) apply instead of any other provisions which would otherwise have enabled any function of the Director of Public Prosecutions under sub-paragraph (1ZB) of giving consent to be exercised by a person other than the Director.

(1ZH) The Director of Public Prosecutions for Northern Ireland must exercise personally any function under sub-paragraph (1ZB) of giving consent unless the function is exercised personally by the Deputy Director of Public Prosecutions for Northern Ireland by virtue of section 30(4) or (7) of the Justice (Northern Ireland) Act 2002 (powers of Deputy Director to exercise functions of Director).

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- (1ZI) Sub-paragraph (1ZH) applies instead of section 36 of the Act of 2002 (delegation of the functions of the Director of Public Prosecutions for Northern Ireland to persons other than the Deputy Director) in relation to the functions of the Director of Public Prosecutions for Northern Ireland and the Deputy Director of Public Prosecutions for Northern Ireland under, or (as the case may be) by virtue of, sub-paragraph (1ZB) above of giving consent.”
- (c) the substitution, for “a judicial authority” in sub-paragraph (1A), of “—
- (a) in the case of an application falling within sub-paragraph (1B), a judicial authority; and
- (b) in any other case, a senior judge”;
- (d) the insertion, after sub-paragraph (1A), of—
- “(1B) An application for the extension or further extension of a period falls within this sub-paragraph if—
- (a) the grant of the application otherwise than in accordance with sub-paragraph (3AA)(b) would extend that period to a time that is no more than 14 days after the relevant time; and
- (b) no application has previously been made to a senior judge in respect of that period.”;
- (e) the insertion, after “judicial authority” in both places in sub-paragraph (3AA) where it appears, of “or senior judge”;
- (f) the insertion, after “detention” in sub-paragraph (4), of
- “but, in relation to an application made by virtue of sub-paragraph (1A)(b) to a senior judge, as if—
- (a) references to a judicial authority were references to a senior judge; and
- (b) references to the judicial authority in question were references to the senior judge in question”;
- (g) the insertion, after “judicial authority” in sub-paragraph (5), of “or senior judge”, and
- (h) the insertion, after sub-paragraph (6), of—
- “(7) In this paragraph and paragraph 37 “senior judge” means a judge of the High Court or of the High Court of Justiciary.”
- (4) The modification of paragraph 37 is the insertion, in sub-paragraph (2), after “judicial authority”, of “or senior judge”.
- (5) A temporary extension order applies, except so far as it provides otherwise, to any person who is being detained under section 41 when the order comes into force (as well as any person who is subsequently detained under that section).
- (6) The Secretary of State may by order revoke a temporary extension order if the Secretary of State considers it appropriate to do so (whether or not the conditions mentioned in paragraphs (a) and (b) of sub-paragraph (1) are met).

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(7) Sub-paragraph (8) applies if—

- (a) any of the following events occurs—
  - (i) the revocation without replacement of a temporary extension order,
  - (ii) the expiry of the period of three months mentioned in sub-paragraph (2) in relation to such an order,
  - (iii) the ceasing to have effect of such an order by virtue of section 123(6B) and (6C), and
- (b) at that time—
  - (i) a person is being detained by virtue of a further extension under paragraph 36,
  - (ii) the person's further detention was authorised by virtue of the temporary extension order concerned (before its revocation, expiry or ceasing to have effect) for a period ending more than 14 days after the relevant time (within the meaning given by paragraph 36(3B)),
  - (iii) that 14 days has expired, and
  - (iv) the person's detention is not otherwise authorised by law.

(8) The person with custody of that individual must release the individual immediately.

(9) Subject to sub-paragraphs (7) and (8), the fact that—

- (a) a temporary extension order is revoked,
- (b) the period of three months mentioned in sub-paragraph (2) has expired in relation to such an order, or
- (c) such an order ceases to have effect by virtue of section 123(6B) and (6C),

is without prejudice to anything previously done by virtue of the order or to the making of a new order.”

(2) After section 123(6) of that Act (orders and regulations under the Act) insert—

“(6A) As soon as practicable after making an order under paragraph 38 of Schedule 8, the Secretary of State must lay a copy of the order before each House of Parliament.

(6B) An order under paragraph 38 of Schedule 8 is to cease to have effect at the end of the period of 20 days beginning with the day on which the Secretary of State makes the order, unless a resolution approving the order is passed by each House of Parliament during that period.

(6C) For the purposes of subsection (6B) the period of 20 days is to be computed in accordance with section 7(1) of the Statutory Instruments Act 1946.

(6D) Subsections (6B) and (6C) do not apply to an order under paragraph 38 of Schedule 8 which revokes an order under that paragraph.”

(3) After section 36(4) of the Terrorism Act 2006 (review of terrorism legislation) insert—

“(4A) The person appointed under subsection (1) must ensure that a review is carried out (whether by that person or another person) into any case where the period specified in a warrant of further detention issued under Part 3 of Schedule 8 to

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the Terrorism Act 2000 (extension of detention of terrorist suspects) is further extended by virtue of paragraph 36 of that Schedule to a time that is more than 14 days after the relevant time (within the meaning of that paragraph).

(4B) The person appointed under subsection (1) must ensure that a report on the outcome of the review is sent to the Secretary of State as soon as reasonably practicable after the completion of the review.”

#### Commencement Information

**I25** S. 58 in force at 10.7.2012 by S.I. 2012/1205, art. 4(b)

#### *Stop and search powers: general*

### 59 Repeal of existing stop and search powers

Omit sections 44 to 47 of the Terrorism Act 2000 (power to stop and search).

#### Commencement Information

**I26** S. 59 in force at 10.7.2012 by S.I. 2012/1205, art. 4(c)

### 60 Replacement powers to stop and search persons and vehicles

(1) Omit section 43(3) of the Terrorism Act 2000 (requirement for searches of persons to be carried out by someone of the same sex).

(2) After section 43(4) of that Act insert—

“(4A) Subsection (4B) applies if a constable, in exercising the power under subsection (1) to stop a person whom the constable reasonably suspects to be a terrorist, stops a vehicle (see section 116(2)).

(4B) The constable—

- (a) may search the vehicle and anything in or on it to discover whether there is anything which may constitute evidence that the person concerned is a terrorist, and
- (b) may seize and retain anything which the constable—
  - (i) discovers in the course of such a search, and
  - (ii) reasonably suspects may constitute evidence that the person is a terrorist.

(4C) Nothing in subsection (4B) confers a power to search any person but the power to search in that subsection is in addition to the power in subsection (1) to search a person whom the constable reasonably suspects to be a terrorist.”

(3) After section 43 of that Act insert—



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### “43A Search of vehicles

- (1) Subsection (2) applies if a constable reasonably suspects that a vehicle is being used for the purposes of terrorism.
- (2) The constable may stop and search—
  - (a) the vehicle;
  - (b) the driver of the vehicle;
  - (c) a passenger in the vehicle;
  - (d) anything in or on the vehicle or carried by the driver or a passenger;
 to discover whether there is anything which may constitute evidence that the vehicle is being used for the purposes of terrorism.
- (3) A constable may seize and retain anything which the constable—
  - (a) discovers in the course of a search under this section, and
  - (b) reasonably suspects may constitute evidence that the vehicle is being used for the purposes of terrorism.
- (4) A person who has the powers of a constable in one Part of the United Kingdom may exercise a power under this section in any Part of the United Kingdom.
- (5) In this section “driver”, in relation to an aircraft, hovercraft or vessel, means the captain, pilot or other person with control of the aircraft, hovercraft or vessel or any member of its crew and, in relation to a train, includes any member of its crew.”

#### Commencement Information

I27 S. 60 in force at 10.7.2012 by S.I. 2012/1205, art. 4(d)

## 61 Replacement powers to stop and search in specified locations

- (1) Before section 48 of the Terrorism Act 2000 (and the italic cross-heading before it) insert—

*“Powers to stop and search in specified locations*

### 47A Searches in specified areas or places

- (1) A senior police officer may give an authorisation under subsection (2) or (3) in relation to a specified area or place if the officer—
  - (a) reasonably suspects that an act of terrorism will take place; and
  - (b) reasonably considers that—
    - (i) the authorisation is necessary to prevent such an act;
    - (ii) the specified area or place is no greater than is necessary to prevent such an act; and
    - (iii) the duration of the authorisation is no longer than is necessary to prevent such an act.

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- (2) An authorisation under this subsection authorises any constable in uniform to stop a vehicle in the specified area or place and to search—
  - (a) the vehicle;
  - (b) the driver of the vehicle;
  - (c) a passenger in the vehicle;
  - (d) anything in or on the vehicle or carried by the driver or a passenger.
- (3) An authorisation under this subsection authorises any constable in uniform to stop a pedestrian in the specified area or place and to search—
  - (a) the pedestrian;
  - (b) anything carried by the pedestrian.
- (4) A constable in uniform may exercise the power conferred by an authorisation under subsection (2) or (3) only for the purpose of discovering whether there is anything which may constitute evidence that the vehicle concerned is being used for the purposes of terrorism or (as the case may be) that the person concerned is a person falling within section 40(1)(b).
- (5) But the power conferred by such an authorisation may be exercised whether or not the constable reasonably suspects that there is such evidence.
- (6) A constable may seize and retain anything which the constable—
  - (a) discovers in the course of a search under such an authorisation; and
  - (b) reasonably suspects may constitute evidence that the vehicle concerned is being used for the purposes of terrorism or (as the case may be) that the person concerned is a person falling within section 40(1)(b).
- (7) Schedule 6B (which makes supplementary provision about authorisations under this section) has effect.
- (8) In this section—
 

“driver” has the meaning given by section 43A(5);

“senior police officer” has the same meaning as in Schedule 6B (see paragraph 14(1) and (2) of that Schedule);

“specified” means specified in an authorisation.”
- (2) Schedule 5 (which inserts a new Schedule making supplementary provision about powers to stop and search in specified locations into the Terrorism Act 2000) has effect.

#### Commencement Information

**I28** S. 61 in force at 10.7.2012 by S.I. 2012/1205, art. 4(e)

## 62 Code of practice

After section 47A of the Terrorism Act 2000 (for which see section 61) insert—

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*“Code of practice relating to sections 43, 43A and 47A*

**47AA Code of practice relating to sections 43, 43A and 47A**

- (1) The Secretary of State must prepare a code of practice containing guidance about—
  - (a) the exercise of the powers conferred by sections 43 and 43A,
  - (b) the exercise of the powers to give an authorisation under section 47A(2) or (3),
  - (c) the exercise of the powers conferred by such an authorisation and section 47A(6), and
  - (d) such other matters in connection with the exercise of any of the powers mentioned in paragraphs (a) to (c) as the Secretary of State considers appropriate.
- (2) Such a code may make different provision for different purposes.
- (3) In the course of preparing such a code, the Secretary of State must consult the Lord Advocate and such other persons as the Secretary of State considers appropriate.

**47AB Issuing of code**

- (1) The Secretary of State must lay before Parliament—
  - (a) a code of practice prepared under section 47AA, and
  - (b) a draft of an order providing for the code to come into force.
- (2) The Secretary of State must make the order and issue the code if the draft of the order is approved by a resolution of each House of Parliament.
- (3) The Secretary of State must not make the order or issue the code unless the draft of the order is so approved.
- (4) The Secretary of State must prepare another code of practice under section 47AA if—
  - (a) the draft of the order is not so approved, and
  - (b) the Secretary of State considers that there is no realistic prospect that it will be so approved.
- (5) A code comes into force in accordance with an order under this section.

**47AC Alteration or replacement of code**

- (1) The Secretary of State—
  - (a) must keep the search powers code under review, and
  - (b) may prepare an alteration to the code or a replacement code.
- (2) Before preparing an alteration or a replacement code, the Secretary of State must consult the Lord Advocate and such other persons as the Secretary of State considers appropriate.

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- (3) Section 47AB (other than subsection (4)) applies to an alteration or a replacement code prepared under this section as it applies to a code prepared under section 47AA.
- (4) In this section “the search powers code” means the code of practice issued under section 47AB (2) (as altered or replaced from time to time).

#### **47AD Publication of code**

- (1) The Secretary of State must publish the code (and any replacement code) issued under section 47AB (2).
- (2) The Secretary of State must publish—
  - (a) any alteration issued under section 47AB (2), or
  - (b) the code or replacement code as altered by it.

#### **47AE Effect of code**

- (1) A constable must have regard to the search powers code when exercising any powers to which the code relates.
- (2) A failure on the part of a constable to act in accordance with any provision of the search powers code does not of itself make that person liable to criminal or civil proceedings.
- (3) The search powers code is admissible in evidence in any such proceedings.
- (4) A court or tribunal may, in particular, take into account a failure by a constable to have regard to the search powers code in determining a question in any such proceedings.
- (5) The references in this section to a constable include, in relation to any functions exercisable by a person by virtue of paragraph 15 of Schedule 4 to the Police Reform Act 2002 or paragraph 16 of Schedule 2A to the Police (Northern Ireland) Act 2003 (search powers in specified areas or places for community support officers), references to that person.
- (6) In this section “the search powers code” means the code of practice issued under section 47AB (2) (as altered or replaced from time to time).”

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#### **Commencement Information**

**I29** S. 62 in force at 9.5.2012 by S.I. 2012/1205, art. 2

### *Stop and search powers: Northern Ireland*

## **63 Stop and search powers in relation to Northern Ireland**

Schedule 6 (which makes amendments relating to stop and search powers in Northern Ireland) has effect.

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### Commencement Information

**I30** S. 63 in force at 10.7.2012 by S.I. 2012/1205, art. 4(f)

## PART 5

### SAFEGUARDING VULNERABLE GROUPS, CRIMINAL RECORDS ETC.

VALID FROM 10/08/2012

## CHAPTER 1

### SAFEGUARDING OF VULNERABLE GROUPS

VALID FROM 10/09/2012

#### *Restrictions on scope of regulation: England and Wales*

#### **64 Restriction of scope of regulated activities: children**

- (1) Parts 1 and 3 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (regulated activity relating to children and the period condition) are amended as follows.
- (2) In paragraph 1(1)(b) (frequency and period condition for regulated activity), at the beginning, insert “except in the case of activities falling within sub-paragraph (1A),”.
- (3) After paragraph 1(1) insert—
  - “(1A) The following activities fall within this sub-paragraph—
    - (a) relevant personal care, and
    - (b) health care provided by, or under the direction or supervision of, a health care professional.
  - (1B) In this Part of this Schedule “relevant personal care” means—
    - (a) physical assistance which is given to a child who is in need of it by reason of illness or disability and is given in connection with eating or drinking (including the administration of parenteral nutrition),
    - (b) physical assistance which is given to a child who is in need of it by reason of age, illness or disability and is given in connection with—
      - (i) toileting (including in relation to the process of menstruation),
      - (ii) washing or bathing, or
      - (iii) dressing,

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- (c) the prompting (together with supervision) of a child, who is in need of it by reason of illness or disability, in relation to the performance of the activity of eating or drinking where the child is unable to make a decision in relation to performing such an activity without such prompting and supervision,
- (d) the prompting (together with supervision) of a child, who is in need of it by reason of age, illness or disability, in relation to the performance of any of the activities listed in paragraph (b) (i) to (iii) where the child is unable to make a decision in relation to performing such an activity without such prompting and supervision,
- (e) any form of training, instruction, advice or guidance which—
  - (i) relates to the performance of the activity of eating or drinking,
  - (ii) is given to a child who is in need of it by reason of illness or disability, and
  - (iii) does not fall within paragraph (c), or
- (f) any form of training, instruction, advice or guidance which—
  - (i) relates to the performance of any of the activities listed in paragraph (b)(i) to (iii),
  - (ii) is given to a child who is in need of it by reason of age, illness or disability, and
  - (iii) does not fall within paragraph (d).

(1C) In this Part of this Schedule —

“health care” includes all forms of health care provided for children, whether relating to physical or mental health and also includes palliative care for children and procedures that are similar to forms of medical or surgical care but are not provided for children in connection with a medical condition,

“health care professional” means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002.

(1D) Any reference in this Part of this Schedule to health care provided by, or under the direction or supervision of, a health care professional includes a reference to first aid provided to a child by any person acting on behalf of an organisation established for the purpose of providing first aid.”

(4) In paragraph 1(2)(c) (work activities at certain establishments to be regulated activity) for “any form of work (whether or not for gain)” substitute “ any work falling within sub-paragraph (2A) or (2B) ”.

(5) After paragraph 1(2) insert—

“(2A) Work falls within this sub-paragraph if it is any form of work for gain, other than any such work which—

- (a) is undertaken in pursuance of a contract for the provision of occasional or temporary services, and
- (b) is not an activity mentioned in paragraph 2(1) (disregarding paragraph 2(3A) and (3B)(b)).

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- (2B) Work falls within this sub-paragraph if it is any form of work which is not for gain, other than—
- (a) any such work which—
    - (i) is carried out on a temporary or occasional basis, and
    - (ii) is not an activity mentioned in paragraph 2(1) (disregarding paragraph 2(3A) and (3B)(b)), or
  - (b) any such work which is, on a regular basis, subject to the day to day supervision of another person who is engaging in regulated activity relating to children.
- (2C) The reference in subsection (2B)(b) to day to day supervision is a reference to such day to day supervision as is reasonable in all the circumstances for the purpose of protecting any children concerned.”
- (6) Also in paragraph 1—
- (a) in sub-paragraph (7) (meaning of “acting as a child minder”) for “section 79A of that Act” substitute “ section 19 of the Children and Families (Wales) Measure 2010 ”,
  - (b) omit sub-paragraph (8) (exercise of functions of certain persons to be regulated activity),
  - (c) in sub-paragraph (9) (exercise of functions of persons mentioned in paragraph 4(1) to be regulated activity) for “a person mentioned in paragraph 4(1)” substitute “ the Children's Commissioner for Wales or the deputy Children's Commissioner for Wales ”,
  - (d) in sub-paragraph (9B) (exercise of certain inspection etc. functions to be regulated activity)—
    - (i) omit paragraph (a),
    - (ii) in paragraph (b) for “section 79U(3) of the Children Act 1989” substitute “ section 41 or 42 of the Children and Families (Wales) Measure 2010 ”,
    - (iii) in paragraph (c) after “taken” insert “ in relation to Wales ” and for “that Act” substitute “ the Children Act 1989 ”,
    - (iv) in paragraph (d) after “inspection”, where it first appears, insert “ in Wales ”,
    - (v) in paragraph (e) after “taken” insert “ in relation to Wales ”,
    - (vi) in paragraph (f) omit “18B or”,
    - (vii) in paragraph (h), after “inspection”, where it first appears, insert “ in Wales ”,
    - (viii) in paragraph (m) omit “48 or”,
    - (ix) in paragraph (n) after “inspection” insert “ in Wales ”, and
    - (x) omit paragraphs (p) to (t),
  - (e) in sub-paragraph (10) (inspectors) omit paragraphs (a), (ba), (d) and (e),
  - (f) omit sub-paragraph (12A) (accessing certain databases to be regulated activity),
  - (g) omit sub-paragraph (13A) (exercise of certain functions of Care Quality Commission to be regulated activity),
  - (h) in sub-paragraph (14) (day to day management or supervision of a person carrying out regulated activity to be regulated activity) for “(8), (9C), (11) or (13A)” substitute “ (9A), (9C) or (11) ”, and



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(i) after sub-paragraph (14) insert—

“(15) Any activity which consists in or involves on a regular basis the day to day management or supervision of a person who would be carrying out an activity mentioned in sub-paragraph (1) or (2) but for the exclusion for supervised activity in paragraph 2(3A) or (3B) (b) or sub-paragraph (2B)(b) above is a regulated activity relating to children.”

(7) In paragraph 2 (activities referred to in paragraph 1(1))—

- (a) in sub-paragraph (1) omit paragraph (d) (treatment and therapy provided for a child),
- (b) in sub-paragraph (2)—
  - (i) for “, (c) and (d)” substitute “ and (c) ”, and
  - (ii) omit paragraph (d), and
- (c) after sub-paragraph (3) insert—

“(3A) Sub-paragraph (1)(a) does not include any form of teaching, training or instruction of children which is, on a regular basis, subject to the day to day supervision of another person who is engaging in regulated activity relating to children.

(3B) Sub-paragraph (1)(b)—

- (a) does not include any health care provided otherwise than by (or under the direction or supervision of) a health care professional, and
- (b) does not, except in the case of relevant personal care or of health care provided by (or under the direction or supervision of) a health care professional, include any form of care for or supervision of children which is, on a regular basis, subject to the day to day supervision of another person who is engaging in regulated activity relating to children.

(3C) The references in subsections (3A) and (3B)(b) to day to day supervision are references to such day to day supervision as is reasonable in all the circumstances for the purpose of protecting any children concerned.

(3D) Sub-paragraph (1)(c) does not include any legal advice.”

(8) In paragraph 3(1) (list of establishments referred to in paragraph 1(2) and (9C)) omit paragraph (c).

(9) Omit paragraph 4 (list of persons referred to in paragraph 1(9)).

(10) In paragraph 10(2) (the period condition) for “, (c) or (d)” substitute “ or (c) ”.

## **65 Restriction of definition of vulnerable adults**

(1) Omit section 59 of the Safeguarding Vulnerable Groups Act 2006 (definition of vulnerable adults).

(2) In section 60(1) of that Act (interpretation of Act)—

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- (a) after “In this Act—” insert—
  - ““adult” means a person who has attained the age of 18;”, and”
- (b) in the definition of “vulnerable adult”, for the words “must be construed in accordance with section 59” substitute “ means any adult to whom an activity which is a regulated activity relating to vulnerable adults by virtue of any paragraph of paragraph 7(1) of Schedule 4 is provided ”.

## **66 Restriction of scope of regulated activities: vulnerable adults**

- (1) Parts 2 and 3 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (regulated activity relating to vulnerable adults and the period condition) are amended as follows.
- (2) For paragraph 7(1) to (3) (main activities which are regulated activity) substitute—
  - “(1) Each of the following is a regulated activity relating to vulnerable adults—
    - (a) the provision to an adult of health care by, or under the direction or supervision of, a health care professional,
    - (b) the provision to an adult of relevant personal care,
    - (c) the provision by a social care worker of relevant social work to an adult who is a client or potential client,
    - (d) the provision of assistance in relation to general household matters to an adult who is in need of it by reason of age, illness or disability,
    - (e) any relevant assistance in the conduct of an adult's own affairs,
    - (f) the conveying by persons of a prescribed description in such circumstances as may be prescribed of adults who need to be conveyed by reason of age, illness or disability,
    - (g) such activities—
      - (i) involving, or connected with, the provision of health care or relevant personal care to adults, and
      - (ii) not falling within any of the above paragraphs,
 as are of a prescribed description.
  - (2) Health care includes all forms of health care provided for individuals, whether relating to physical or mental health and also includes palliative care and procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition.
  - (3) A health care professional is a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002.
  - (3A) Any reference in this Part of this Schedule to health care provided by, or under the direction or supervision of, a health care professional includes a reference to first aid provided to an adult by any person acting on behalf of an organisation established for the purpose of providing first aid.
  - (3B) Relevant personal care means—
    - (a) physical assistance, given to a person who is in need of it by reason of age, illness or disability, in connection with—
      - (i) eating or drinking (including the administration of parenteral nutrition),

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- (ii) toileting (including in relation to the process of menstruation),
  - (iii) washing or bathing,
  - (iv) dressing,
  - (v) oral care, or
  - (vi) the care of skin, hair or nails,
  - (b) the prompting, together with supervision, of a person who is in need of it by reason of age, illness or disability in relation to the performance of any of the activities listed in paragraph (a) where the person is unable to make a decision in relation to performing such an activity without such prompting and supervision, or
  - (c) any form of training, instruction, advice or guidance which—
    - (i) relates to the performance of any of the activities listed in paragraph (a),
    - (ii) is given to a person who is in need of it by reason of age, illness or disability, and
    - (iii) does not fall within paragraph (b).
- (3C) Relevant social work has the meaning given by section 55(4) of the Care Standards Act 2000 and social care worker means a person who is a social care worker by virtue of section 55(2)(a) of that Act.
- (3D) Assistance in relation to general household matters is day to day assistance in relation to the running of the household of the person concerned where the assistance is the carrying out of one or more of the following activities on behalf of that person—
- (a) managing the person's cash,
  - (b) paying the person's bills,
  - (c) shopping.
- (3E) Relevant assistance in the conduct of a person's own affairs is anything done on behalf of the person by virtue of—
- (a) a lasting power of attorney created in respect of the person in accordance with section 9 of the Mental Capacity Act 2005,
  - (b) an enduring power of attorney (within the meaning of Schedule 4 to that Act) in respect of the person which is—
    - (i) registered in accordance with that Schedule, or
    - (ii) the subject of an application to be so registered,
  - (c) an order made under section 16 of that Act by the Court of Protection in relation to the making of decisions on the person's behalf,
  - (d) the appointment of an independent mental health advocate or (as the case may be) an independent mental capacity advocate in respect of the person in pursuance of arrangements under section 130A of the Mental Health Act 1983 or section 35 of the Mental Capacity Act 2005,
  - (e) the provision of independent advocacy services (within the meaning of section 248 of the National Health Service Act 2006 or section 187 of the National Health Service (Wales) Act 2006) in respect of the person, or

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- (f) the appointment of a representative to receive payments on behalf of the person in pursuance of regulations made under the Social Security Administration Act 1992.”
- (3) Omit paragraph 7(4) (certain activities in care homes to be regulated activity).
- (4) In paragraph 7(5) (day to day management or supervision of certain activities to be regulated activity) omit “or (4)”.
- (5) In paragraph 7(7)(f) (inspection functions) omit “English local authority social services or”.
- (6) Omit paragraph 7(8A) (certain functions of Care Quality Commission to be regulated activity).
- (7) In paragraph 7(9) (functions of certain persons to be regulated activity) for “a person mentioned in paragraph 8(1)” substitute “ the Commissioner for older people in Wales or the deputy Commissioner for older people in Wales ”.
- (8) Omit paragraph 8 (the persons referred to in paragraph 7(9) whose functions are to be regulated activity).
- (9) In paragraph 10(2) (the period condition)—
  - (a) omit “or 7(1)(a), (b), (c), (d) or (g)”, and
  - (b) in paragraph (b), omit “or vulnerable adults (as the case may be)”.

## **67 Alteration of test for barring decisions**

- (1) For sub-paragraphs (2) and (3) of paragraph 1 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (automatic inclusion of person to whom paragraph applies in children's barred list) substitute—
  - “(2) If the Secretary of State has reason to believe that this paragraph might apply to a person, the Secretary of State must refer the matter to ISA.
  - (3) If (whether or not on a reference under sub-paragraph (2)) ISA is satisfied that this paragraph applies to a person, it must include the person in the children's barred list.”
- (2) For sub-paragraphs (2) to (4) of paragraph 2 of that Schedule to that Act (inclusion of person to whom paragraph applies in children's barred list with right to make representation afterwards) substitute—
  - “(2) If the Secretary of State has reason to believe that—
    - (a) this paragraph might apply to a person, and
    - (b) the person is or has been, or might in future be, engaged in regulated activity relating to children,
 the Secretary of State must refer the matter to ISA.
  - (3) Sub-paragraph (4) applies if (whether or not on a reference under sub-paragraph (2)) it appears to ISA 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.

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- (4) ISA must give the person the opportunity to make representations as to why the person should not be included in the children's barred list.
- (5) Sub-paragraph (6) applies if—
- (a) the person does not make representations before the end of any time prescribed for the purpose, or
  - (b) the duty in sub-paragraph (4) does not apply by virtue of paragraph 16(2).
- (6) If ISA—
- (a) is satisfied that this paragraph applies to the person, and
  - (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children,
- it must include the person in the list.
- (7) Sub-paragraph (8) applies if the person makes representations before the end of any time prescribed for the purpose.
- (8) If ISA—
- (a) is satisfied that this paragraph applies to the person,
  - (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children, and
  - (c) is satisfied that it is appropriate to include the person in the children's barred list,
- it must include the person in the list.”
- (3) In paragraph 3 of that Schedule to that Act (inclusion in children's barred list on behaviour grounds)—
- (a) in sub-paragraph (1)(a) for the words from “has” to “conduct,” substitute “—
    - (i) has (at any time) engaged in relevant conduct, and
    - (ii) is or has been, or might in future be, engaged in regulated activity relating to children,”
  - (b) in sub-paragraph (3), after paragraph (a) (and before the word “and” at the end of the paragraph), insert—
 

“(aa) it has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children,” and
  - (c) in sub-paragraph (3)(b) for “appears to ISA” substitute “is satisfied”.
- (4) In paragraph 5 of that Schedule to that Act (inclusion in children's barred list because of risk of harm)—
- (a) in sub-paragraph (1)(a) for “falls within sub-paragraph (4)” substitute “—
    - (i) falls within sub-paragraph (4), and
    - (ii) is or has been, or might in future be, engaged in regulated activity relating to children”,
  - (b) in sub-paragraph (3), after paragraph (a) (and before the word “and” at the end of the paragraph), insert—
 

“(aa) it has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children,” and

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(c) in sub-paragraph (3)(b) for “appears to ISA” substitute “ is satisfied ”.

(5) For sub-paragraphs (2) and (3) of paragraph 7 of that Schedule to that Act (automatic inclusion of person to whom paragraph applies in adults' barred list) substitute—

“(2) If the Secretary of State has reason to believe that this paragraph might apply to a person, the Secretary of State must refer the matter to ISA.

(3) If (whether or not on a reference under sub-paragraph (2)) ISA is satisfied that this paragraph applies to a person, it must include the person in the adults' barred list.”

(6) For sub-paragraphs (2) to (4) of paragraph 8 of that Schedule to that Act (inclusion of person to whom paragraph applies in adults' barred list with right to make representation afterwards) substitute—

“(2) If the Secretary of State has reason to believe that—

(a) this paragraph might apply to a person, and

(b) the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults,

the Secretary of State must refer the matter to ISA.

(3) Sub-paragraph (4) applies if (whether or not on a reference under sub-paragraph (2)) it appears to ISA 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.

(4) ISA must give the person the opportunity to make representations as to why the person should not be included in the adults' barred list.

(5) Sub-paragraph (6) applies if—

(a) the person does not make representations before the end of any time prescribed for the purpose, or

(b) the duty in sub-paragraph (4) does not apply by virtue of paragraph 16(2).

(6) If ISA—

(a) is satisfied that this paragraph applies to the person, and

(b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults,

it must include the person in the list.

(7) Sub-paragraph (8) applies if the person makes representations before the end of any time prescribed for the purpose.

(8) If ISA—

(a) is satisfied that this paragraph applies to the person,

(b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults, and



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(c) is satisfied that it is appropriate to include the person in the adults' barred list,

it must include the person in the list.”

(7) In paragraph 9 of that Schedule to that Act (inclusion in adults' barred list on behaviour grounds)—

(a) in sub-paragraph (1)(a) for the words from “has” to “conduct,” substitute “—

(i) has (at any time) engaged in relevant conduct, and

(ii) is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults,”

(b) in sub-paragraph (3), after paragraph (a) (and before the word “and” at the end of the paragraph), insert—

“(aa) it has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults,”, and

(c) in sub-paragraph (3)(b) for “appears to ISA” substitute “ is satisfied ”.

(8) In paragraph 11 of that Schedule to that Act (inclusion in adults' barred list because of risk of harm)—

(a) in sub-paragraph (1)(a) for “falls within sub-paragraph (4)” substitute “—

(i) falls within sub-paragraph (4), and

(ii) is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults”,

(b) in sub-paragraph (3), after paragraph (a) (and before the word “and” at the end of the paragraph), insert—

“(aa) it has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults,”, and

(c) in sub-paragraph (3)(b) for “appears to ISA” substitute “ is satisfied ”.

VALID FROM 10/09/2012

*Abolition of other areas of regulation: England and Wales*

**68 Abolition of controlled activity**

Omit sections 21 to 23 of the Safeguarding Vulnerable Groups Act 2006 (controlled activity).

**69 Abolition of monitoring**

Omit sections 24 to 27 of the Safeguarding Vulnerable Groups Act 2006 (monitoring).



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VALID FROM 10/09/2012

*Main amendments relating to new arrangements: England and Wales*

**70 Information for purposes of making barring decisions**

- (1) In paragraph 19 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (information required by ISA about persons to whom grounds for barring apply)—
- (a) in sub-paragraph (1)—
    - (i) in paragraph (a) after “applies” insert “ or appears to apply ”,
    - (ii) in paragraph (b) for “apply” substitute “ applies or appears to apply ”, and
    - (iii) omit paragraph (d),
  - (b) in sub-paragraphs (2) and (3) for “thinks might” substitute “ reasonably believes to ”, and
  - (c) in sub-paragraph (6)—
    - (i) omit the words from “which” to “it is”, and
    - (ii) omit “or paragraph 20(2)”.
- (2) In paragraph 20 of that Schedule to that Act (provision of information by Secretary of State to ISA) for sub-paragraph (2) substitute—

“(2) Where the Secretary of State is under a duty under paragraph 1, 2, 7 or 8 to refer a matter to ISA, the Secretary of State must provide to ISA any prescribed details of relevant matter (within the meaning of section 113A of the Police Act 1997) of a prescribed description which has been made available to the Secretary of State for the purposes of Part 5 of that Act.”

**71 Review of barring decisions**

After paragraph 18 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (power to apply for review of a person's inclusion in a barred list) insert—

- “18A (1) Sub-paragraph (2) applies if a person's inclusion in a barred list is not subject to—
- (a) a review under paragraph 18, or
  - (b) an application under that paragraph,
- which has not yet been determined.
- (2) ISA may, at any time, review the person's inclusion in the list.
- (3) On any such review, ISA may remove the person from the list if, and only if, it is satisfied that, in the light of—
- (a) information which it did not have at the time of the person's inclusion in the list,
  - (b) any change of circumstances relating to the person concerned, or
  - (c) any error by ISA,

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it is not appropriate for the person to be included in the list.”

## **72 Information about barring decisions**

- (1) For sections 30 to 32 of the Safeguarding Vulnerable Groups Act 2006 (provision of vetting information and information about cessation of monitoring) substitute—

### **“30A Provision of barring information on request**

- (1) The Secretary of State must provide a person (A) with the information mentioned in subsection (3) in relation to another (B) if—
- (a) A makes an application for the information and pays any fee payable in respect of the application,
  - (b) the application contains the appropriate declaration, and
  - (c) the Secretary of State has no reason to believe that the declaration is false.
- (2) The appropriate declaration is a declaration by A—
- (a) that A falls within column 1 of the table in Schedule 7 in relation to B,
  - (b) that column 2 of the entry by virtue of which A falls within column 1 refers to children or (as the case may be) vulnerable adults, and
  - (c) that B has consented to the provision of the information to A.
- (3) The information is—
- (a) if A's declaration states that column 2 of the relevant entry refers to children, whether B is barred from regulated activity relating to children, and
  - (b) if A's declaration states that column 2 of the relevant entry refers to vulnerable adults, whether B is barred from regulated activity relating to vulnerable adults.
- (4) If B consents to the provision of information to A in relation to an application under this section, the consent also has effect in relation to any subsequent such application by A.
- (5) The Secretary of State may prescribe any fee payable in respect of an application under this section.
- (6) Fees received by the Secretary of State by virtue of this section must be paid into the Consolidated Fund.
- (7) The Secretary of State may determine the form, manner and contents of an application for the purposes of this section (including the form and manner of a declaration contained in such an application).

### **30B Provision of barring information on registration**

- (1) The Secretary of State must establish and maintain a register for the purposes of this section.
- (2) The Secretary of State must register a person (A) in relation to another (B) if—

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- (a) A makes an application to be registered in relation to B and pays any fee payable in respect of the application,
  - (b) the application contains the appropriate declaration, and
  - (c) the Secretary of State has no reason to believe that the declaration is false.
- (3) The appropriate declaration is a declaration by A—
- (a) that A falls within column 1 of the table in Schedule 7 in relation to B,
  - (b) that column 2 of the entry by virtue of which A falls within column 1 refers to children or (as the case may be) vulnerable adults, and
  - (c) that B has consented to the application.
- (4) A's application and registration relate—
- (a) if A's declaration states that column 2 of the relevant entry refers to children, to regulated activity relating to children;
  - (b) if A's declaration states that column 2 of the relevant entry refers to vulnerable adults, to regulated activity relating to vulnerable adults.
- (5) The Secretary of State must notify A if B is barred from regulated activity to which A's registration relates.
- (6) The requirement under subsection (5) is satisfied if notification is sent to any address recorded against A's name in the register.
- (7) If B consents to the provision of information to A under section 30A, the consent also has effect as consent to any application by A to be registered in relation to B under this section.
- (8) The Secretary of State may prescribe any fee payable in respect of an application under this section.
- (9) Fees received by the Secretary of State by virtue of this section must be paid into the Consolidated Fund.
- (10) The Secretary of State may determine the form, manner and contents of an application for the purposes of this section (including the form and manner of a declaration contained in such an application).”
- (2) In section 33 of that Act (cessation of registration)—
- (a) in subsection (1) for “32” substitute “ 30B ”,
  - (b) in subsection (2) for “(6)” substitute “ (5) ”, and
  - (c) after subsection (3) insert—
    - “(3A) Circumstances prescribed by virtue of subsection (3) may, in particular, include that—
    - (a) the Secretary of State has asked the registered person (A) to make a renewed declaration within the prescribed period in relation to the person (B) in relation to whom A is registered, and
    - (b) either—
      - (i) A has failed to make the declaration within that period, or

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(ii) A has made the declaration within that period but the Secretary of State has reason to believe that it is false.

(3B) A renewed declaration is a declaration by A—

- (a) that A falls within column 1 of the table in Schedule 7 in relation to B,
- (b) that column 2 of the entry by virtue of which A falls within column 1 refers to children or (as the case may be) vulnerable adults, and
- (c) that B consents to the registration of A in relation to B.

(3C) If B consents to the provision of information to A under section 30A, the consent also has effect as consent to the registration of A in relation to B.

(3D) Section 34 applies in relation to the making of a declaration in response to a request from the Secretary of State of the kind mentioned in subsection (3A)(a) as it applies in relation to the making of a declaration in an application made for the purposes of section 30B.”

(3) In section 34 of that Act (declarations under sections 30 and 32)—

- (a) in the heading for “30 and 32” substitute “ 30A and 30B ”, and
- (b) in subsection (1) for “30 or 32” substitute “ 30A or 30B ”.

(4) Omit entry 19 in the table in paragraph 1 of Schedule 7 to that Act (power to add entries to the table).

(5) In paragraph 2 of Schedule 7 to that Act (power to amend entries in the table) for the words from “any” to the end substitute “ this Schedule ”.

(6) Omit paragraph 3(1)(b) of Schedule 7 to that Act (barring information where certain activities carried on for the purposes of the armed forces of the Crown) and the word “or” before it.

PROSPECTIVE

### 73 Duty to check whether person barred

After section 34 of the Safeguarding Vulnerable Groups Act 2006 (declarations relating to the provision of barring information) insert—

#### “34ZA Duty to check whether person barred

- (1) A regulated activity provider who is considering whether to permit an individual (B) to engage in regulated activity relating to children or vulnerable adults must ascertain that B is not barred from the activity concerned before permitting B to engage in it.
- (2) A personnel supplier who—
  - (a) is considering whether to supply an individual (B) to another (P), and

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- (b) knows, or has reason to believe, that P will make arrangements for B (if supplied) to engage in regulated activity relating to children or vulnerable adults,  
 must ascertain that B is not barred from the activity concerned before supplying B to P.
- (3) A person is, in particular, to be treated as having met the duty in subsection (1) or (2) if condition 1, 2 or 3 is met.
- (4) Condition 1 is that the person has, within the prescribed period, been informed under section 30A that B is not barred from the activity concerned.
- (5) Condition 2 is that—
- (a) the person has, within the prescribed period, checked a relevant enhanced criminal record certificate of B which has been obtained within that period, and
  - (b) the certificate does not show that B is barred from the activity concerned.
- (6) Condition 3 is that—
- (a) the person has, within the prescribed period, checked—
    - (i) a relevant enhanced criminal record certificate of B, and
    - (ii) up-date information given, within that period, under section 116A of the Police Act 1997 in relation to the certificate,
  - (b) the certificate does not show that B is barred from the activity concerned, and
  - (c) the up-date information is not advice to request B to apply for a new enhanced criminal record certificate.
- (7) The Secretary of State may by regulations provide for—
- (a) the duty under subsection (1) not to apply in relation to persons of a prescribed description,
  - (b) the duty under subsection (2) not to apply in relation to persons of a prescribed description.
- (8) In this section—
- “enhanced criminal record certificate” means an enhanced criminal record certificate issued under section 113B of the Police Act 1997,
- “relevant enhanced criminal record certificate” means—
- (a) in the case of regulated activity relating to children, an enhanced criminal record certificate which includes, by virtue of section 113BA of the Police Act 1997, suitability information relating to children, and
  - (b) in the case of regulated activity relating to vulnerable adults, an enhanced criminal record certificate which includes, by virtue of section 113BB of that Act, suitability information relating to vulnerable adults.”

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PROSPECTIVE

**74 Restrictions on duplication with Scottish and Northern Ireland barred lists**

(1) Before paragraph 6 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (restriction on inclusion in children's barred list for Scottish cases), and after the italic cross-heading before that paragraph, insert—

- “5A (1) ISA must not include a person in the children's barred list if ISA knows that the person is included in a corresponding list.
- (2) ISA must remove a person from the children's barred list if ISA knows that the person is included in a corresponding list.
- (3) A corresponding list is a list maintained under the law of Scotland or Northern Ireland which the Secretary of State specifies by order as corresponding to the children's barred list.”

(2) In paragraph 6(1)(a) of that Schedule to that Act—

- (a) after “if” insert “ ISA knows that ”,
- (b) after “authority” insert “—  
(i),  
and
- (c) for the words from “(whether” to “list)” substitute “, and  
(ii) has decided not to include the person in the list”.

(3) Before paragraph 12 of that Schedule to that Act (restriction on inclusion in adults' barred list for Scottish cases), and after the italic cross-heading before that paragraph, insert—

- “11A (1) ISA must not include a person in the adults' barred list if ISA knows that the person is included in a corresponding list.
- (2) ISA must remove a person from the adults' barred list if ISA knows that the person is included in a corresponding list.
- (3) A corresponding list is a list maintained under the law of Scotland or Northern Ireland which the Secretary of State specifies by order as corresponding to the adults' barred list.”

(4) In paragraph 12(1)(a) of that Schedule to that Act—

- (a) after “if” insert “ ISA knows that ”,
- (b) after “authority” insert “—  
(i),  
and
- (c) for the words from “(whether” to “list)” substitute “, and  
(ii) has decided not to include the person in the list”.

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VALID FROM 10/09/2012

*Other amendments relating to new arrangements: England and Wales*

**75 Professional bodies**

- (1) In section 41 of the Safeguarding Vulnerable Groups Act 2006 (registers: duty to refer)—
- (a) in subsection (1)—
    - (i) for “must” substitute “ may ”, and
    - (ii) omit “prescribed”,
  - (b) in subsection (4)—
    - (i) in paragraph (a), for “engaged or may engage” substitute “ or has been, or might in future be, engaged ”,
    - (ii) also in paragraph (a), omit “or controlled activity”, and
    - (iii) in paragraph (b) for “, 2, 7 or 8” substitute “ or 7 ”,
  - (c) in subsection (5) omit “prescribed”, and
  - (d) in the heading for “duty” substitute “ power ”.
- (2) Omit paragraph 9(2)(a) of Schedule 5 to the Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009 (S.I. 2009/1182) (which, if section 44(1) of the Act of 2006 were to come into force, would insert subsections (4A) to (4C) into section 41 of the Act of 2006).
- (3) In section 43 of the Act of 2006 (registers: notice of barring etc.) for subsections (1) to (5) substitute—
- (1) Subsection (2) applies if—
    - (a) ISA knows or thinks that a person (A) appears on a relevant register, and
    - (b) either—
      - (i) A is included in a barred list, or
      - (ii) ISA is aware that A is subject to a relevant disqualification.
  - (2) ISA must—
    - (a) notify the keeper of the register of the circumstances mentioned in subsection (1)(b)(i) or (as the case may be) (ii), and
    - (b) in the case where A is included in a barred list, provide the keeper of the register with such of the information on which ISA relied in including A in the list as ISA considers—
      - (i) to be relevant to the exercise of any function of the keeper, and
      - (ii) otherwise appropriate to provide.
  - (3) Subsection (4) applies if the keeper of a relevant register applies to ISA to ascertain in relation to a person (A) whether—
    - (a) A is included in a barred list, or
    - (b) ISA is aware that A is subject to a relevant disqualification.



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- (4) ISA must notify the keeper of the register as to whether the circumstances are as mentioned in subsection (3)(a) or (as the case may be) (b).
- (5) ISA may (whether on an application by the keeper or otherwise) provide to the keeper of a relevant register such relevant information as ISA considers appropriate.
- (5A) Subsection (5B) applies if—
- (a) a keeper of a register has applied to the Secretary of State to be notified in relation to a person (A) if—
    - (i) A is included in a barred list, or
    - (ii) the Secretary of State is aware that A is subject to a relevant disqualification, and
  - (b) the application has not been withdrawn.
- (5B) The Secretary of State must notify the keeper of the register if the circumstances are, or become, as mentioned in subsection (5A)(a)(i) or (as the case may be) (ii).
- (5C) For the purposes of subsection (5A)(b) an application is withdrawn if—
- (a) the keeper of the register notifies the Secretary of State that the keeper no longer wishes to be notified if the circumstances are, or become, as mentioned in subsection (5A)(a)(i) or (as the case may be) (ii) in relation to A, or
  - (b) the Secretary of State cancels the application on either of the following grounds—
    - (i) that the keeper has not answered, within such reasonable period as was required by the Secretary of State, a request from the Secretary of State as to whether the keeper still wishes to be notified if the circumstances are, or become, as mentioned in subsection (5A)(a)(i) or (as the case may be) (ii), or
    - (ii) that A neither appears in the register nor is being considered for inclusion in the register.
- (5D) A keeper of a relevant register may apply for information under this section, or to be notified under this section, in relation to a person (A) only if—
- (a) A appears in the register, or
  - (b) A is being considered for inclusion in the register.
- (5E) The duties in subsections (2), (4) and (5B) do not apply if ISA or (as the case may be) the Secretary of State is satisfied that the keeper of the register already has the information concerned.
- (5F) The Secretary of State may determine the form, manner and contents of an application for the purposes of this section.
- (5G) In this section relevant information is information—
- (a) which—
    - (i) relates to the protection of children or vulnerable adults in general, or of any child or vulnerable adult in particular, and

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(ii) is relevant to the exercise of any function of the keeper of the register, but

(b) which is not—

- (i) information that the circumstances are as mentioned in subsection (1)(b)(i) or (ii) in relation to a person,
- (ii) any information provided under subsection (2)(b), or
- (iii) information falling within paragraph 19(5) of Schedule 3.

(5H) The Secretary of State may by order amend subsection (5G).”

(4) In section 43(6)(a) of the Act of 2006 (meaning of “relevant register”) omit “of entry 1 or 8”.

(5) In the heading of section 43 of that Act for “notice of barring and cessation of monitoring” substitute “ provision of barring information to keepers of registers ”.

(6) Omit section 44 of that Act (registers: power to apply for vetting information).

## 76 Supervisory authorities

(1) In section 45 of the Safeguarding Vulnerable Groups Act 2006 (duty of supervisory authorities to refer)—

(a) in subsection (1)—

- (i) for “must” substitute “ may ”, and
- (ii) omit “prescribed”,

(b) in subsection (4)—

- (i) in paragraph (a), for “engaged or may engage” substitute “ or has been, or might in future be, engaged ”,
- (ii) also in paragraph (a), omit “or controlled activity”, and
- (iii) in paragraph (b) for “, 2, 7 or 8” substitute “ or 7 ”,

(c) in subsection (5) omit “prescribed”,

(d) omit subsection (6), and

(e) in the heading for “duty” substitute “ power ”.

(2) In section 47 of that Act (supervisory authorities: power to apply for vetting information)—

(a) in the heading for “vetting” substitute “ certain barring ”,

(b) in subsection (1) for “the Secretary of State”, in both places where it occurs, substitute “ ISA ”,

(c) in subsection (2) omit paragraphs (b) to (e),

(d) in subsection (3) omit paragraphs (b) to (e),

(e) omit subsection (5), and

(f) in subsection (7) for “prescribe” substitute “ determine ”.

(3) In section 48 of that Act (supervisory authorities: notification of barring etc. in respect of children)—

(a) in subsection (1)—

- (i) for “This section” substitute “ Subsection (2) ”,
- (ii) in paragraph (a) omit “newly”,
- (iii) at the end of paragraph (a) insert “ or ”,

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- (iv) in paragraph (b) for “becomes” substitute “ is ”, and
  - (v) omit paragraph (c) and the word “or” before it,
  - (b) in subsection (2) for “, (b) or (c)” substitute “ or (b) ”,
  - (c) after subsection (2) insert—
    - “(2A) The duty in subsection (2) does not apply in relation to an interested supervisory authority if the Secretary of State is satisfied that the authority already has the information concerned.”,
  - (d) in subsection (3)(a) for the words from “if” to “occurs” substitute “ of any circumstance mentioned in subsection (1) ”,
  - (e) in subsection (5)—
    - (i) after “withdrawn if” insert “—
      - (a)”,
    - (ii) for the words from “if”, where it appears for the second time, to “occurs” substitute “ of any circumstance mentioned in subsection (1) ”, and
    - (iii) at the end insert “, or
      - (b) the Secretary of State cancels the application on either of the following grounds—
        - (i) that the supervisory authority has not answered, within such reasonable period as was required by the Secretary of State, a request from the Secretary of State as to whether the supervisory authority still wishes to be notified of any circumstance mentioned in subsection (1) in relation to the person, or
        - (ii) that the notification is not required in connection with the exercise of a function of the supervisory authority mentioned in section 45(7).”, and
  - (f) in subsection (8) for “prescribe” substitute “ determine ”.
- (4) In section 49 of that Act (supervisory authorities: notification of barring etc. in respect of vulnerable adults)—
- (a) in subsection (1)—
    - (i) for “This section” substitute “ Subsection (2) ”,
    - (ii) in paragraph (a) omit “newly”,
    - (iii) at the end of paragraph (a) insert “ or ”,
    - (iv) in paragraph (b) for “becomes” substitute “ is ”, and
    - (v) omit paragraph (c) and the word “or” before it,
  - (b) in subsection (2) for “, (b) or (c)” substitute “ or (b) ”,
  - (c) after subsection (2) insert—
    - “(2A) The duty in subsection (2) does not apply in relation to an interested supervisory authority if the Secretary of State is satisfied that the authority already has the information concerned.”,
  - (d) in subsection (3)(a) for the words from “if” to “occurs” substitute “ of any circumstance mentioned in subsection (1) ”,
  - (e) in subsection (5)—

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- (i) after “withdrawn if” insert “—  
 (a)”,
  - (ii) for the words from “if”, where it appears for the second time, to “occurs” substitute “ of any circumstance mentioned in subsection (1) ”, and
  - (iii) at the end insert “, or  
 (b) the Secretary of State cancels the application on either of the following grounds—
    - (i) that the supervisory authority has not answered, within such reasonable period as was required by the Secretary of State, a request from the Secretary of State as to whether the supervisory authority still wishes to be notified of any circumstance mentioned in subsection (1) in relation to the person, or
    - (ii) that the notification is not required in connection with the exercise of a function of the supervisory authority mentioned in section 45(7).”, and
  - (f) in subsection (8) for “prescribe” substitute “ determine ”.
- (5) In section 50 of that Act (provision of information to supervisory authorities)—
- (a) in subsection (2) for “must” substitute “ may (whether on an application by the authority or otherwise) ”,
  - (b) in subsection (3)—
    - (i) in paragraph (b), after “the authority” insert “ which is mentioned in section 45(7) ”, and
    - (ii) for the words from “or information” to “occurred” substitute “ or of any circumstance mentioned in section 48(1) or 49(1) ”, and
  - (c) after subsection (3) insert—
    - “(4) A supervisory authority may apply to ISA under this section only if the information is required in connection with the exercise of a function of the supervisory authority which is mentioned in section 45(7).
    - (5) The Secretary of State may determine the form, manner and contents of an application for the purposes of this section.”

## 77 **Minor amendments**

- (1) In the Policing and Crime Act 2009 omit—
- (a) section 87(2) (which, if commenced, would insert sections 34A to 34C into the Safeguarding Vulnerable Groups Act 2006 in connection with the notification of proposals to include persons in barred lists), and
  - (b) section 89(6) (which, if commenced, would amend the power of the Secretary of State in the Act of 2006 to examine records of convictions or cautions in connection with barring decisions).

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- (2) In section 39 of the Safeguarding Vulnerable Groups Act 2006 (duty of local authorities to refer)—
- (a) in subsection (1)—
    - (i) for “must” substitute “ may ”, and
    - (ii) omit “prescribed”,
  - (b) in subsection (4)—
    - (i) in paragraph (a), for “engaged or may engage” substitute “ or has been, or might in future be, engaged ”,
    - (ii) also in paragraph (a), omit “or controlled activity”, and
    - (iii) in paragraph (b) for “, 2, 7 or 8” substitute “ or 7 ”,
  - (c) in subsection (5) omit “prescribed”, and
  - (d) in the heading for “duty” substitute “ power ”.
- (3) In section 50A(1) of that Act (power for ISA to provide information to the police for use for certain purposes), after paragraph (b), insert—
- “(c) the appointment of persons who are under the direction and control of the chief officer,
  - (d) any prescribed purpose”.
- (4) After section 50A(1) of that Act insert—
- “(1A) ISA must, for use for any of the purposes mentioned in subsection (1), provide to any chief officer of police who has requested it a barred list or information as to whether a particular person is barred.
- (1B) ISA may, for use for the purposes of the protection of children or vulnerable adults, provide to a relevant authority any information which ISA reasonably believes to be relevant to that authority.
- (1C) ISA must, for use for the purposes of the protection of children or vulnerable adults, provide to any relevant authority who has requested it information as to whether a particular person is barred.”
- (5) After section 50A(3) of that Act insert—
- “(4) In this section “relevant authority” means—
- (a) the Secretary of State exercising functions in relation to prisons, or
  - (b) a provider of probation services (within the meaning given by section 3(6) of the Offender Management Act 2007).”
- (6) After paragraph 5 of Schedule 4 to that Act (regulated activity relating to children) insert—

#### “Guidance

- 5A (1) The Secretary of State must give guidance for the purpose of assisting regulated activity providers and personnel suppliers in deciding whether supervision is of such a kind that, as a result of paragraph 1(2B)(b), 2(3A) or 2(3B)(b), the person being supervised would not be engaging in regulated activity relating to children.
- (2) Before giving guidance under this paragraph, the Secretary of State must consult the Welsh Ministers.

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(3) The Secretary of State must publish guidance given under this paragraph.

(4) A regulated activity provider or a personnel supplier must, in exercising any functions under this Act, have regard to guidance for the time being given under this paragraph.”

*Corresponding amendments relating to Northern Ireland*

**78 Corresponding amendments in relation to Northern Ireland**

Schedule 7 (which makes corresponding amendments in relation to Northern Ireland about the safeguarding of vulnerable groups) has effect.

## CHAPTER 2

### CRIMINAL RECORDS

#### *Safeguards in relation to certificates*

**79 Restriction on information provided to certain persons**

- (1) Omit section 93 of the Policing and Crime Act 2009 (which, if commenced, would insert section 112(2A) into the Police Act 1997 requiring copies of certain criminal conviction certificates to be given to employers etc.).
- (2) Omit—
  - (a) section 113A(4) of the Police Act 1997 (requirement to send copy of criminal record certificate to registered person), and
  - (b) section 113B(5) and (6) of that Act (requirement to give relevant information, and copy of enhanced criminal record certificate to registered person).
- (3) After section 120AB of the Police Act 1997 (procedure for certain cancellations or suspensions of registration) insert—

**“120AC Registered persons: information on progress of an application**

- (1) The Secretary of State must, in response to a request from a person who is acting as the registered person in relation to an application under section 113A or 113B, inform that person whether or not a certificate has been issued in response to the application.
- (2) Subsections (3) and (4) apply if, at the time a request is made under subsection (1), a certificate has been issued.
- (3) In the case of a certificate under section 113A, if it was a certificate stating that there is no relevant matter recorded in central records, the Secretary of State may inform the person who made the request that the certificate was such a certificate.

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- (4) In the case of a certificate under section 113B, if it was a certificate—
- (a) stating that there is no relevant matter recorded in central records and no information provided in accordance with subsection (4) of that section, and
  - (b) if section 113BA(1) or 113BB(1) applies to the certificate, containing no suitability information indicating that the person to whom the certificate is issued—
    - (i) is barred from regulated activity relating to children or to vulnerable adults, or
    - (ii) is subject to a direction under 128 of the Education and Skills Act 2008 or section 167A of the Education Act 2002,the Secretary of State may inform the person who made the request that the certificate was such a certificate.
- (5) If no certificate has been issued, the Secretary of State must inform the person who made the request of such other matters relating to the processing of the application as the Secretary of State considers appropriate.
- (6) Subject to subsections (2) to (4), nothing in this section permits the Secretary of State to inform a person who is acting as the registered person in relation to an application under section 113A or 113B of the content of any certificate issued in response to the application.
- (7) The Secretary of State may refuse a request under subsection (1) if it is made after the end of a prescribed period beginning with the day on which the certificate was issued.
- (8) In this section—
- “central records” and “relevant matter” have the same meaning as in section 113A,
  - “suitability information” means information required to be included in a certificate under section 113B by virtue of section 113BA or 113BB.
- (9) Expressions in subsection (4)(b) and in the Safeguarding Vulnerable Groups Act 2006 have the same meaning in that paragraph as in that Act.

#### **120AD Registered persons: copies of certificates in certain circumstances**

- (1) Subsection (2) applies if—
- (a) the Secretary of State gives up-date information in relation to a criminal record certificate or enhanced criminal record certificate,
  - (b) the up-date information is advice to apply for a new certificate or (as the case may be) request another person to apply for such a certificate, and
  - (c) the person whose certificate it is in respect of which the up-date information is given applies for a new criminal record certificate or (as the case may be) enhanced criminal record certificate.
- (2) The Secretary of State must, in response to a request made within the prescribed period by the person who is acting as the registered person in



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relation to the application, send to that person a copy of any certificate issued in response to the application if the registered person—

- (a) has counter-signed the application or transmitted it to the Secretary of State under section 113A(2A) or 113B(2A),
  - (b) has informed the Secretary of State that the applicant for the new certificate has not, within such period as may be prescribed, sent a copy of it to a person of such description as may be prescribed, and
  - (c) no prescribed circumstances apply.
- (3) The power under subsection (2)(b) to prescribe a description of person may be exercised to describe the registered person or any other person.
- (4) In this section “up-date information” has the same meaning as in section 116A.”

**Modifications etc. (not altering text)**

- C1** S. 79 extended (Guernsey) (with modifications) (coming into force in accordance with art. 1(2)(3) of the amending S.I.) by [The Police Act 1997 \(Criminal Records\) \(Guernsey\) \(Amendment\) Order 2012 \(S.I. 2012/1762\)](#), art. 4(1)(2), **Sch. 1**

**80 Minimum age for applicants for certificates or to be registered**

- (1) In sections 112(1), 113A(1), 113B(1), 114(1) and 116(1) of the Police Act 1997 (applications for certificates), before the word “and” at the end of paragraph (a), insert—
- “(aa) is aged 16 or over at the time of making the application,”.
- (2) In section 120(4) of that Act (registered persons)—
- (a) in paragraph (b)—
    - (i) after “person” insert “ who is ”, and
    - (ii) after “enactment” insert “ and who, in the case of an individual, is aged 18 or over ”, and
  - (b) in paragraph (c) after “individual” insert “ aged 18 or over ”.

**Modifications etc. (not altering text)**

- C2** S. 80 extended (Guernsey) (with modifications) (coming into force in accordance with art. 1(2)(3) of the amending S.I.) by [The Police Act 1997 \(Criminal Records\) \(Guernsey\) \(Amendment\) Order 2012 \(S.I. 2012/1762\)](#), art. 4(1)(2), **Sch. 1**

VALID FROM 10/09/2012

**81 Additional grounds for refusing an application to be registered**

After subsection (3) of section 120AA of the Police Act 1997 (refusal, etc. of registration on grounds not related to disclosure) insert—

- “(4) Subsection (6) applies if an application is made under section 120 by an individual who—

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- (a) has previously been a registered person; and
  - (b) has been removed from the register (otherwise than at that individual's own request).
- (5) Subsection (6) also applies if an application is made under section 120 by a body corporate or unincorporate which—
- (a) has previously been a registered person; and
  - (b) has been removed from the register (otherwise than at its own request).
- (6) The Secretary of State may refuse the application.”

## 82 Enhanced criminal record certificates: additional safeguards

- (1) In subsection (4) of section 113B of the Police Act 1997 (enhanced criminal record certificates: requests by the Secretary of State to chief officers for information)—
- (a) for “the chief officer of every relevant police force” substitute “ any relevant chief officer ”,
  - (b) omit “, in the chief officer's opinion”,
  - (c) in paragraph (a), for “might” substitute “ the chief officer reasonably believes to ”, and
  - (d) in paragraph (b), at the beginning insert “ in the chief officer's opinion, ”.
- (2) After subsection (4) of that section of that Act insert—
- “(4A) In exercising functions under subsection (4) a relevant chief officer must have regard to any guidance for the time being published by the Secretary of State.”
- (3) In subsection (9) of that section of that Act—
- (a) before the definition of “relevant police force” insert—  
““relevant chief officer” means any chief officer of a police force who is identified by the Secretary of State for the purposes of making a request under subsection (4).”, and”
  - (b) omit the definition of “relevant police force”.
- (4) After section 117(1) of that Act (disputes about accuracy of certificates) insert—
- “(1A) Where any person other than the applicant believes that the information contained in a certificate under any of sections 112 to 116 is inaccurate, that person may make an application in writing to the Secretary of State for a decision as to whether or not the information is inaccurate.”
- (5) After section 117 of that Act insert—

### “117A Other disputes about section 113B(4) information

- (1) Subsection (2) applies if a person believes that information provided in accordance with section 113B(4) and included in a certificate under section 113B or 116 —
- (a) is not relevant for the purpose described in the statement under section 113B(2) or (as the case may be) 116(2), or
  - (b) ought not to be included in the certificate.

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- (2) The person may apply in writing to the independent monitor appointed under section 119B for a decision as to whether the information is information which falls within subsection (1)(a) or (b) above.
- (3) The independent monitor, on receiving such an application, must ask such chief officer of a police force as the independent monitor considers appropriate to review whether the information concerned is information which—
  - (a) the chief officer reasonably believes to be relevant for the purpose described in the statement under section 113B(2) or (as the case may be) 116(2), and
  - (b) in the chief officer's opinion, ought to be included in the certificate.
- (4) In exercising functions under subsection (3), the chief officer concerned must have regard to any guidance for the time being published under section 113B(4A).
- (5) If, following a review under subsection (3), the independent monitor considers that any of the information concerned is information which falls within subsection (1)(a) or (b)—
  - (a) the independent monitor must inform the Secretary of State of that fact, and
  - (b) on being so informed, the Secretary of State must issue a new certificate.
- (6) In issuing such a certificate, the Secretary of State must proceed as if the information which falls within subsection (1)(a) or (b) had not been provided under section 113B(4).
- (7) In deciding for the purposes of this section whether information is information which falls within subsection (1)(a) or (b), the independent monitor must have regard to any guidance for the time being published under section 113B(4A).
- (8) Subsections (10) and (11) of section 113B apply for the purposes of this section as they apply for the purposes of that section.”

**Modifications etc. (not altering text)**

- C3** S. 82 extended (Guernsey) (with modifications) (coming into force in accordance with art. 1(2)(3) of the amending S.I.) by [The Police Act 1997 \(Criminal Records\) \(Guernsey\) \(Amendment\) Order 2012 \(S.I. 2012/1762\)](#), art. 4(1)(2), [Sch. 1](#)

*Up-dating and content of certificates*

**83 Up-dating certificates**

After section 116 of the Police Act 1997 (enhanced criminal record certificates: judicial appointments and Crown employment) insert—

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### “116A Up-dating certificates

- (1) The Secretary of State must, on the request of a relevant person and subject to subsection (2), give up-date information to that person about—
  - (a) a criminal conviction certificate,
  - (b) a criminal record certificate, or
  - (c) an enhanced criminal record certificate,which is subject to up-date arrangements.
- (2) The Secretary of State may impose conditions about—
  - (a) the information to be supplied in connection with such a request for the purpose of enabling the Secretary of State to decide whether the person is a relevant person,
  - (b) any other information to be supplied in connection with such a request.
- (3) For the purposes of subsection (1) a certificate is subject to up-date arrangements if condition A, B or C is met and the arrangements have not ceased to have effect in accordance with a notice given under section 118(3B).
- (4) Condition A is that—
  - (a) the individual who applied for the certificate made an application at the same time to the Secretary of State for the certificate to be subject to up-date arrangements,
  - (b) the individual has paid in the prescribed manner any prescribed fee,
  - (c) the Secretary of State has granted the application for the certificate to be subject to up-date arrangements, and
  - (d) the period of 12 months beginning with the date on which the grant comes into force has not expired.
- (5) Condition B is that—
  - (a) the individual whose certificate it is has made an application to the Secretary of State to renew or (as the case may be) further renew unexpired up-date arrangements in relation to the certificate,
  - (b) the individual has paid in the prescribed manner any prescribed fee,
  - (c) the Secretary of State has granted the application,
  - (d) the grant has come into force on the expiry of the previous up-date arrangements, and
  - (e) the period of 12 months beginning with the date on which the grant has come into force has not expired.
- (6) Condition C is that—
  - (a) the certificate was issued under section 117(2) or 117A(5)(b), and
  - (b) the certificate which it superseded—
    - (i) was subject to up-date arrangements immediately before it was superseded, and
    - (ii) would still be subject to those arrangements had it not been superseded.

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- (7) The Secretary of State must not grant an application as mentioned in subsection (4)(c) or (5)(c) unless any fee prescribed under subsection (4)(b) or (as the case may be) (5)(b) has been paid in the manner so prescribed.
- (8) In this section “up-date information” means—
- (a) in relation to a criminal conviction certificate or a criminal record certificate—
    - (i) information that there is no information recorded in central records which would be included in a new certificate but is not included in the current certificate, or
    - (ii) advice to apply for a new certificate or (as the case may be) request another person to apply for such a certificate,
  - (b) in relation to an enhanced criminal record certificate which includes suitability information relating to children or vulnerable adults—
    - (i) information that there is no information recorded in central records, no information of the kind mentioned in section 113B(4), and no information of the kind mentioned in section 113BA(2) or (as the case may be) 113BB(2), which would be included in a new certificate but is not included in the current certificate, or
    - (ii) advice to apply for a new certificate or (as the case may be) request another person to apply for such a certificate, and
  - (c) in relation to any other enhanced criminal record certificate—
    - (i) information that there is no information recorded in central records, nor any information of the kind mentioned in section 113B(4), which would be included in a new certificate but is not included in the current certificate, or
    - (ii) advice to apply for a new certificate or (as the case may be) request another person to apply for such a certificate.
- (9) If up-date information is given under subsection (8)(a)(i), (8)(b)(i) or (8)(c)(i) and the certificate to which that information relates is one to which subsection (10) applies, the up-date information must include that fact.
- (10) This subsection applies to a certificate which—
- (a) in the case of a criminal conviction certificate, states that there are no convictions or conditional cautions of the applicant recorded in central records,
  - (b) in the case of a criminal record certificate, is as described in section 120AC(3), and
  - (c) in the case of an enhanced criminal record certificate, is as described in section 120AC(4).
- (11) In this section—
- “central records” has the same meaning as in section 113A,  
 “criminal record certificate” includes a certificate under section 114,  
 “enhanced criminal record certificate” includes a certificate under section 116,  
 “exempted question” has the same meaning as in section 113A,  
 “relevant person” means—

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- (a) in relation to a criminal conviction certificate—
  - (i) the individual whose certificate it is, or
  - (ii) any person authorised by the individual,
- (b) in relation to a criminal record certificate—
  - (i) the individual whose certificate it is, or
  - (ii) any person who is authorised by the individual and is seeking the information for the purposes of an exempted question, and
- (c) in relation to an enhanced criminal record certificate—
  - (i) the individual whose certificate it is, or
  - (ii) any person who is authorised by the individual and is seeking the information for the purposes of an exempted question asked for a purpose prescribed under section 113B(2)(b).”

**Modifications etc. (not altering text)**

- C4** S. 83 extended (Jersey) (with modifications) (17.10.2012 coming into force in accordance with art. 1(2)(3) by [The Police Act 1997 \(Criminal Records\) \(Jersey\) \(Amendment\) Order 2012 \(S.I. 2012/2591\)](#), art. 1(2)(3)4(1)(2)(d), **Sch. 1** (with art. 5)
- C5** S. 83 extended (Isle of Man) (with modifications) (with effect in accordance with art. 1(3)(4) of the amending S.I.) by [The Police Act 1997 \(Criminal Records\) \(Isle of Man\) \(Amendment\) Order 2012 \(S.I. 2012/2598\)](#), arts. 1(2), 4(1)(d), **Sch. 1**
- C6** S. 83 extended (Guernsey) (with modifications) (coming into force in accordance with art. 1(2)(3) of the amending S.I.) by [The Police Act 1997 \(Criminal Records\) \(Guernsey\) \(Amendment\) Order 2012 \(S.I. 2012/1762\)](#), art. 4(1)(2), **Sch. 1**

**84 Criminal conviction certificates: conditional cautions**

In section 112(2) of the Police Act 1997 (contents of a criminal conviction certificate)

- (a) in paragraph (a) after “conviction” insert “ or conditional caution ”, and
- (b) in paragraph (b) for “is no such conviction” substitute “ are no such convictions and conditional cautions ”.

**Modifications etc. (not altering text)**

- C7** S. 84 extended (Guernsey) (with modifications) (coming into force in accordance with art. 1(2)(3) of the amending S.I.) by [The Police Act 1997 \(Criminal Records\) \(Guernsey\) \(Amendment\) Order 2012 \(S.I. 2012/1762\)](#), art. 4(1)(2), **Sch. 1**

*Other*

**85 Inclusion of cautions etc. in national police records**

After subsection (4) of section 27 of the Police and Criminal Evidence Act 1984 (recordable offences) insert—

- “(4A) In subsection (4) “conviction” includes—

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- (a) a caution within the meaning of Part 5 of the Police Act 1997; and
- (b) a reprimand or warning given under section 65 of the Crime and Disorder Act 1998.”

**Commencement Information**

**I31** S. 85 in force at 1.7.2012 by [S.I. 2012/1205, art. 3\(w\)](#)

VALID FROM 10/09/2012

**86 Out of date references to certificates of criminal records**

In section 75(4) of the Data Protection Act 1998 (commencement of section 56 of that Act not to be earlier than the first day on which certain sections of the Police Act 1997 relating to certificates of criminal records are all in force) for “sections 112, 113 and 115” substitute “ sections 112, 113A and 113B ”.

**CHAPTER 3**

THE DISCLOSURE AND BARRING SERVICE

*General*

**87 Formation and constitution of DBS**

- (1) There is to be a body corporate known as the Disclosure and Barring Service.
- (2) In this Chapter “DBS” means the Disclosure and Barring Service.
- (3) Schedule 8 (which makes further provision about DBS) has effect.

**Modifications etc. (not altering text)**

**C8** S. 87 extended (Guernsey) (with modifications) (coming into force in accordance with art. 1(2)(3) of the amending S.I.) by [The Police Act 1997 \(Criminal Records\) \(Guernsey\) \(Amendment\) Order 2012 \(S.I. 2012/1762\), art. 4\(1\)\(2\), Sch. 1](#)

**88 Transfer of functions to DBS and dissolution of ISA**

- (1) The Secretary of State may by order transfer any function of ISA to DBS.
- (2) The Secretary of State may by order transfer to DBS any function of the Secretary of State under, or in connection with—
  - (a) Part 5 of the Police Act 1997 (criminal records),
  - (b) the Safeguarding Vulnerable Groups Act 2006, or
  - (c) the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (S.I. 2007/1351 (N.I. 11)).



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- (3) The Secretary of State may by order provide for the dissolution of ISA.
- (4) In this section—
- “function” does not include any power of the Secretary of State to make an order or regulations,
  - “ISA” means the Independent Safeguarding Authority.

**Modifications etc. (not altering text)**

- C9** S. 88 extended (Guernsey) (with modifications) (coming into force in accordance with art. 1(2)(3) of the amending S.I.) by [The Police Act 1997 \(Criminal Records\) \(Guernsey\) \(Amendment\) Order 2012 \(S.I. 2012/1762\)](#), art. 4(1)(2), [Sch. 1](#)

*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.
- (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.

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**Modifications etc. (not altering text)**

**C10** S. 89 extended (Guernsey) (with modifications) (coming into force in accordance with art. 1(2)(3) of the amending S.I.) by [The Police Act 1997 \(Criminal Records\) \(Guernsey\) \(Amendment\) Order 2012 \(S.I. 2012/1762\)](#), art. 4(1)(2), [Sch. 1](#)

**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—

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- (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.

VALID FROM 01/10/2012

## CHAPTER 4

### DISREGARDING CERTAIN CONVICTIONS FOR BUGGERY ETC.

#### *General*

#### **92 Power of Secretary of State to disregard convictions or cautions**

- (1) A person who has been convicted of, or cautioned for, an offence under—
  - (a) section 12 of the Sexual Offences Act 1956 (buggery),
  - (b) section 13 of that Act (gross indecency between men), or
  - (c) section 61 of the Offences against the Person Act 1861 or section 11 of the Criminal Law Amendment Act 1885 (corresponding earlier offences),
 may apply to the Secretary of State for the conviction or caution to become a disregarded conviction or caution.
- (2) A conviction or caution becomes a disregarded conviction or caution when conditions A and B are met.
- (3) Condition A is that the Secretary of State decides that it appears that—
  - (a) the other person involved in the conduct constituting the offence consented to it and was aged 16 or over, and
  - (b) any such conduct now would not be an offence under section 71 of the Sexual Offences Act 2003 (sexual activity in a public lavatory).
- (4) Condition B is that—
  - (a) the Secretary of State has given notice of the decision to the applicant under section 94(4)(b), and

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(b) the period of 14 days beginning with the day on which the notice was given has ended.

(5) Sections 95 to 98 explain the effect of a conviction or caution becoming a disregarded conviction or caution.

### **93 Applications to the Secretary of State**

(1) An application under section 92 must be in writing.

(2) It must state—

- (a) the name, address and date of birth of the applicant,
- (b) the name and address of the applicant at the time of the conviction or caution,
- (c) so far as known to the applicant, the time when and the place where the conviction was made or the caution given and, for a conviction, the case number, and
- (d) such other information as the Secretary of State may require.

(3) It may include representations by the applicant or written evidence about the matters mentioned in condition A in section 92.

### **94 Procedure for decisions by the Secretary of State**

(1) In considering whether to make a decision of the kind mentioned in condition A in section 92, the Secretary of State must, in particular, consider—

- (a) any representations or evidence included in the application, and
- (b) any available record of the investigation of the offence and of any proceedings relating to it that the Secretary of State considers to be relevant.

(2) The Secretary of State may not hold an oral hearing for the purpose of deciding whether to make a decision of the kind mentioned in condition A in section 92.

(3) Subsection (4) applies if the Secretary of State—

- (a) decides that it appears as mentioned in condition A in section 92, or
- (b) makes a different decision in relation to the matters mentioned in that condition.

(4) The Secretary of State must—

- (a) record the decision in writing, and
- (b) give notice of it to the applicant.

#### *Effect of disregard*

### **95 Effect of disregard on police and other records**

(1) The Secretary of State must by notice direct the relevant data controller to delete details, contained in relevant official records, of a disregarded conviction or caution.

(2) A notice under subsection (1) may be given at any time after condition A in section 92 is met but no deletion may have effect before condition B in that section is met.

(3) Subject to that, the relevant data controller must delete the details as soon as reasonably practicable.

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(4) Having done so, the relevant data controller must give notice to the person who has the disregarded conviction or caution that the details of it have been deleted.

(5) In this section—

“delete”, in relation to such relevant official records as may be prescribed, means record with the details of the conviction or caution concerned—

- (a) the fact that it is a disregarded conviction or caution, and
- (b) the effect of it being such a conviction or caution,

“the names database” means the names database held by the National Policing Improvement Agency for the use of constables,

“official records” means records containing information about persons convicted of, or cautioned for, offences and kept by any court, police force, government department or local or other public authority in England and Wales for the purposes of its functions,

“prescribed” means prescribed by order of the Secretary of State,

“relevant data controller” means—

- (a) in relation to the names database, any chief officer of police of a police force in England and Wales who is a data controller in relation to the details concerned,
- (b) in relation to other relevant official records, such person as may be prescribed,

“relevant official records” means—

- (a) the names database, and
- (b) such other official records as may be prescribed.

(6) An order under this section—

- (a) may make different provision for different purposes,
- (b) is to be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament.

## **96 Effect of disregard for disclosure and other purposes**

(1) A person who has a disregarded conviction or caution is to be treated for all purposes in law as if the person has not—

- (a) committed the offence,
- (b) been charged with, or prosecuted for, the offence,
- (c) been convicted of the offence,
- (d) been sentenced for the offence, or
- (e) been cautioned for the offence.

(2) In particular—

- (a) no evidence is to be admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in England and Wales to prove that the person has done, or undergone, anything within subsection (1)(a) to (e), and
- (b) the person is not, in any such proceedings, to be asked (and, if asked, is not to be required to answer) any question relating to the person's past which cannot be answered without acknowledging or referring to the conviction or caution or any circumstances ancillary to it.

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- (3) Where a question is put to a person, other than in such proceedings, seeking information with respect to the previous convictions, cautions, offences, conduct or circumstances of any person—
- (a) the question is to be treated as not relating to any disregarded conviction or caution, or any circumstances ancillary to it (and the answer to the question may be framed accordingly), and
  - (b) the person questioned is not to be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose that conviction or caution or any circumstances ancillary to it in answering the question.
- (4) Any obligation imposed on any person by any enactment or rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person is not to extend to requiring the disclosure of a disregarded conviction or caution or any circumstances ancillary to it.
- (5) A disregarded conviction or caution, or any circumstances ancillary to it, is not a proper ground for—
- (a) dismissing or excluding a person from any office, profession, occupation or employment, or
  - (b) prejudicing the person in any way in any office, profession, occupation or employment.
- (6) This section is subject to section 97 but otherwise applies despite any enactment or rule of law to the contrary.
- (7) See also section 98 (meaning of “proceedings before a judicial authority” and “circumstances ancillary to a conviction or caution”).

#### **97 Saving for Royal pardons etc.**

Nothing in section 96 affects any right of Her Majesty, by virtue of Her Royal prerogative or otherwise, to grant a free pardon, to quash any conviction or sentence, or to commute any sentence.

#### **98 Section 96: supplementary**

- (1) In section 96 “proceedings before a judicial authority” includes (in addition to proceedings before any of the ordinary courts of law) proceedings before any tribunal, body or person having power—
- (a) by virtue of any enactment, law, custom or practice,
  - (b) under the rules governing any association, institution, profession, occupation or employment, or
  - (c) under any provision of an agreement providing for arbitration with respect to questions arising under that agreement,
- to determine any question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of any such question.
- (2) For the purposes of section 96, circumstances ancillary to a conviction are any circumstances of—
- (a) the offence which was the subject of the conviction;
  - (b) the conduct constituting the offence;



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- (c) any process or proceedings preliminary to the conviction;
  - (d) any sentence imposed in respect of the conviction;
  - (e) any proceedings (whether by way of appeal or otherwise) for reviewing the conviction or any such sentence;
  - (f) anything done in pursuance of, or undergone in compliance with, any such sentence.
- (3) For the purposes of section 96, circumstances ancillary to a caution are any circumstances of—
- (a) the offence which was the subject of the caution;
  - (b) the conduct constituting the offence;
  - (c) any process preliminary to the caution (including consideration by any person of how to deal with the offence and the procedure for giving the caution);
  - (d) any proceedings for the offence which take place before the caution is given;
  - (e) anything which happens after the caution is given for the purpose of bringing any such proceedings to an end;
  - (f) any judicial review proceedings relating to the caution;
  - (g) in the case of a warning under section 65 of the Crime and Disorder Act 1998 (reprimands and warnings for persons aged under 18), anything done in pursuance of, or undergone in compliance with, a requirement to participate in a rehabilitation programme under section 66(2) of that Act.

*Appeals and other supplementary provision*

**99 Appeal against refusal to disregard convictions or cautions**

- (1) The applicant may appeal to the High Court if—
- (a) the Secretary of State makes a decision of the kind mentioned in section 94(3)(b), and
  - (b) the High Court gives permission for an appeal against the decision.
- (2) On such an appeal, the High Court must make its decision only on the basis of the evidence that was available to the Secretary of State.
- (3) If the High Court decides that it appears as mentioned in condition A in section 92, it must make an order to that effect.
- (4) Otherwise it must dismiss the appeal.
- (5) A conviction or caution to which an order under subsection (3) relates becomes a disregarded conviction or caution when the period of 14 days beginning with the day on which the order was made has ended.
- (6) There is no appeal from a decision of the High Court under this section.

**100 Advisers**

- (1) The Secretary of State may appoint persons to advise whether, in any case referred to them by the Secretary of State, the Secretary of State should decide as mentioned in condition A in section 92.

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(2) The Secretary of State may disclose to a person so appointed such information (including anything within section 94(1)(a) or (b)) as the Secretary of State considers relevant to the provision of such advice.

(3) The Secretary of State may pay expenses and allowances to a person so appointed.

## 101 Interpretation: Chapter 4

(1) In this Chapter—

“caution” means—

(a) a caution given to a person in England and Wales in respect of an offence which, at the time the caution is given, that person has admitted, or

(b) a reprimand or warning given under section 65 of the Crime and Disorder Act 1998 (reprimands and warnings for persons aged under 18),

“conviction” includes—

(a) a finding that a person is guilty of an offence in respect of conduct which was the subject of service disciplinary proceedings,

(b) a conviction in respect of which an order has been made discharging the person concerned absolutely or conditionally, and

(c) a finding in any criminal proceedings (including a finding linked with a finding of insanity) that a person has committed an offence or done the act or made the omission charged,

“disregarded caution” is a caution which has become a disregarded caution by virtue of this Chapter,

“disregarded conviction” is a conviction which has become a disregarded conviction by virtue of this Chapter,

“document” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its provision or production include providing or producing a copy of the information in legible form,

“information” includes documents,

“notice” means notice in writing,

“official records” has the meaning given by section 95(5),

“sentence” includes—

(a) any punishment awarded, and

(b) any order made by virtue of Schedule 5A to the Army Act 1955, Schedule 5A to the Air Force Act 1955 or Schedule 4A to the Naval Discipline Act 1957,

in respect of a finding that a person is guilty of an offence in respect of conduct which was the subject of service disciplinary proceedings,

“service disciplinary proceedings” means any proceedings (whether in England and Wales or elsewhere)—

(a) under the Naval Discipline Act 1866, the Army Act 1881, the Air Force Act 1917, the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 (whether before a court-martial or before any other court or person authorised under the enactment concerned to award a punishment in respect of an offence), or

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- (b) before a Standing Civilian Court established under the Armed Forces Act 1976.
- (2) Paragraph (b) of the definition of “conviction” applies despite the following (which deem a conviction of a person discharged not to be a conviction)—
- (a) section 14 of the Powers of Criminal Courts (Sentencing) Act 2000, and
  - (b) section 187 of the Armed Forces Act 2006 or any corresponding earlier enactment.
- (3) The references in section 92(1) to offences under particular provisions are to be read as including references to offences under—
- (a) section 45 of the Naval Discipline Act 1866,
  - (b) section 41 of the Army Act 1881,
  - (c) section 41 of the Air Force Act 1917,
  - (d) section 70 of the Army Act 1955,
  - (e) section 70 of the Air Force Act 1955, or
  - (f) section 42 of the Naval Discipline Act 1957,
- which are such offences by virtue of those provisions.
- (4) The reference in section 92(3)(b) to an offence under section 71 of the Sexual Offences Act 2003 is to be read as including a reference to an offence under section 42 of the Armed Forces Act 2006 which is such an offence by virtue of section 71 of the Act of 2003.
- (5) In this Chapter a reference to an offence includes—
- (a) a reference to an attempt, conspiracy or incitement to commit that offence, and
  - (b) a reference to aiding, abetting, counselling or procuring the commission of that offence.
- (6) In the case of an attempt, conspiracy or incitement, the references in this Chapter to the conduct constituting the offence are references to the conduct to which the attempt, conspiracy or incitement related (whether or not that conduct occurred).
- (7) For the purposes of subsections (5) and (6) an attempt to commit an offence includes conduct which—
- (a) consisted of frequenting with intent to commit the offence any river, canal, street, highway, place of public resort or other location mentioned in section 4 of the Vagrancy Act 1824 (as it then had effect) in connection with frequenting by suspected persons or reputed thieves, and
  - (b) was itself an offence under that section.

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## PART 6

### FREEDOM OF INFORMATION AND DATA PROTECTION

VALID FROM 31/07/2013

#### *Publication of certain datasets*

#### **102 Release and publication of datasets held by public authorities**

- (1) The Freedom of Information Act 2000 is amended as follows.
- (2) In section 11 (means by which communication to be made)—
  - (a) after subsection (1) insert—

“(1A) Where—

    - (a) an applicant makes a request for information to a public authority in respect of information that is, or forms part of, a dataset held by the public authority, and
    - (b) on making the request for information, the applicant expresses a preference for communication by means of the provision to the applicant of a copy of the information in electronic form,

the public authority must, so far as reasonably practicable, provide the information to the applicant in an electronic form which is capable of re-use.”,
  - (b) in subsection (4), for “subsection (1)” substitute “ subsections (1) and (1A) ”, and
  - (c) after subsection (4) insert—

“(5) In this Act “dataset” means information comprising a collection of information held in electronic form where all or most of the information in the collection—

    - (a) has been obtained or recorded for the purpose of providing a public authority with information in connection with the provision of a service by the authority or the carrying out of any other function of the authority,
    - (b) is factual information which—
      - (i) is not the product of analysis or interpretation other than calculation, and
      - (ii) is not an official statistic (within the meaning given by section 6(1) of the Statistics and Registration Service Act 2007), and
    - (c) remains presented in a way that (except for the purpose of forming part of the collection) has not been organised, adapted or otherwise materially altered since it was obtained or recorded.”
- (3) After section 11 (means by which communication to be made) insert—

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### “11A Release of datasets for re-use

- (1) This section applies where—
  - (a) a person makes a request for information to a public authority in respect of information that is, or forms part of, a dataset held by the authority,
  - (b) any of the dataset or part of a dataset so requested is a relevant copyright work,
  - (c) the public authority is the only owner of the relevant copyright work, and
  - (d) the public authority is communicating the relevant copyright work to the applicant in accordance with this Act.
- (2) When communicating the relevant copyright work to the applicant, the public authority must make the relevant copyright work available for re-use by the applicant in accordance with the terms of the specified licence.
- (3) The public authority may exercise any power that it has by virtue of regulations under section 11B to charge a fee in connection with making the relevant copyright work available for re-use in accordance with subsection (2).
- (4) Nothing in this section or section 11B prevents a public authority which is subject to a duty under subsection (2) from exercising any power that it has by or under an enactment other than this Act to charge a fee in connection with making the relevant copyright work available for re-use.
- (5) Where a public authority intends to charge a fee (whether in accordance with regulations under section 11B or as mentioned in subsection (4)) in connection with making a relevant copyright work available for re-use by an applicant, the authority must give the applicant a notice in writing (in this section referred to as a “re-use fee notice”) stating that a fee of an amount specified in, or determined in accordance with, the notice is to be charged by the authority in connection with complying with subsection (2).
- (6) Where a re-use fee notice has been given to the applicant, the public authority is not obliged to comply with subsection (2) while any part of the fee which is required to be paid is unpaid.
- (7) Where a public authority intends to charge a fee as mentioned in subsection (4), the re-use fee notice may be combined with any other notice which is to be given under the power which enables the fee to be charged.
- (8) In this section—
  - “copyright owner” has the meaning given by Part 1 of the Copyright, Designs and Patents Act 1988 (see section 173 of that Act);
  - “copyright work” has the meaning given by Part 1 of the Act of 1988 (see section 1(2) of that Act);
  - “database” has the meaning given by section 3A of the Act of 1988;

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“database right” has the same meaning as in Part 3 of the Copyright and Rights in Databases Regulations 1997 (S.I. 1997/3032);

“owner”, in relation to a relevant copyright work, means—

- (a) the copyright owner, or
- (b) the owner of the database right in the database;

“relevant copyright work” means—

- (a) a copyright work, or
- (b) a database subject to a database right,

but excludes a relevant Crown work or a relevant Parliamentary work;

“relevant Crown work” means—

- (a) a copyright work in relation to which the Crown is the copyright owner, or
- (b) a database in relation to which the Crown is the owner of the database right;

“relevant Parliamentary work” means—

- (a) a copyright work in relation to which the House of Commons or the House of Lords is the copyright owner, or
- (b) a database in relation to which the House of Commons or the House of Lords is the owner of the database right;

“the specified licence” is the licence specified by the Secretary of State in a code of practice issued under section 45, and the Secretary of State may specify different licences for different purposes.

### **11B Power to charge fees in relation to release of datasets for re-use**

- (1) The Secretary of State may, with the consent of the Treasury, make provision by regulations about the charging of fees by public authorities in connection with making relevant copyright works available for re-use under section 11A(2) or by virtue of section 19(2A)(c).
- (2) Regulations under this section may, in particular—
  - (a) prescribe cases in which fees may, or may not, be charged,
  - (b) prescribe the amount of any fee payable or provide for any such amount to be determined in such manner as may be prescribed,
  - (c) prescribe, or otherwise provide for, times at which fees, or parts of fees, are payable,
  - (d) require the provision of information about the manner in which amounts of fees are determined,
  - (e) make different provision for different purposes.
- (3) Regulations under this section may, in prescribing the amount of any fee payable or providing for any such amount to be determined in such manner as may be prescribed, provide for a reasonable return on investment.
- (4) In this section “relevant copyright work” has the meaning given by section 11A(8).”

- (4) In section 19 (publication schemes)—



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(a) after subsection (2) insert—

“(2A) A publication scheme must, in particular, include a requirement for the public authority concerned—

(a) to publish—

(i) any dataset held by the authority in relation to which a person makes a request for information to the authority, and

(ii) any up-dated version held by the authority of such a dataset,

unless the authority is satisfied that it is not appropriate for the dataset to be published,

(b) where reasonably practicable, to publish any dataset the authority publishes by virtue of paragraph (a) in an electronic form which is capable of re-use,

(c) where any information in a dataset published by virtue of paragraph (a) is a relevant copyright work in relation to which the authority is the only owner, to make the information available for re-use in accordance with the terms of the specified licence.

(2B) The public authority may exercise any power that it has by virtue of regulations under section 11B to charge a fee in connection with making the relevant copyright work available for re-use in accordance with a requirement imposed by virtue of subsection (2A) (c).

(2C) Nothing in this section or section 11B prevents a public authority which is subject to such a requirement from exercising any power that it has by or under an enactment other than this Act to charge a fee in connection with making the relevant copyright work available for re-use.

(2D) Where a public authority intends to charge a fee (whether in accordance with regulations under section 11B or as mentioned in subsection (2C)) in connection with making a relevant copyright work available for re-use by an applicant, the authority must give the applicant a notice in writing (in this section referred to as a “re-use fee notice”) stating that a fee of an amount specified in, or determined in accordance with, the notice is to be charged by the authority in connection with complying with the requirement imposed by virtue of subsection (2A)(c).

(2E) Where a re-use fee notice has been given to the applicant, the public authority is not obliged to comply with the requirement imposed by virtue of subsection (2A)(c) while any part of the fee which is required to be paid is unpaid.

(2F) Where a public authority intends to charge a fee as mentioned in subsection (2C), the re-use fee notice may be combined with any other notice which is to be given under the power which enables the fee to be charged.”, and

(b) after subsection (7) insert—



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“(8) In this section—

“copyright owner” has the meaning given by Part 1 of the Copyright, Designs and Patents Act 1988 (see section 173 of that Act);

“copyright work” has the meaning given by Part 1 of the Act of 1988 (see section 1(2) of that Act);

“database” has the meaning given by section 3A of the Act of 1988;

“database right” has the same meaning as in Part 3 of the Copyright and Rights in Databases Regulations 1997 (S.I. 1997/3032);

“owner”, in relation to a relevant copyright work, means—

- (a) the copyright owner, or
- (b) the owner of the database right in the database;

“relevant copyright work” means—

- (a) a copyright work, or
- (b) a database subject to a database right,

but excludes a relevant Crown work or a relevant Parliamentary work;

“relevant Crown work” means—

- (a) a copyright work in relation to which the Crown is the copyright owner, or
- (b) a database in relation to which the Crown is the owner of the database right;

“relevant Parliamentary work” means—

- (a) a copyright work in relation to which the House of Commons or the House of Lords is the copyright owner, or
- (b) a database in relation to which the House of Commons or the House of Lords is the owner of the database right;

“the specified licence” has the meaning given by section 11A(8).”

(5) In section 45 (issue of code of practice)—

- (a) in subsection (2), after paragraph (d) (and before the word “and” at the end of the paragraph), insert—

“(da) the disclosure by public authorities of datasets held by them,”,

- (b) after subsection (2) insert—

“(2A) Provision of the kind mentioned in subsection (2)(da) may, in particular, include provision relating to—

- (a) the giving of permission for datasets to be re-used,
- (b) the disclosure of datasets in an electronic form which is capable of re-use,
- (c) the making of datasets available for re-use in accordance with the terms of a licence,

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- (d) other matters relating to the making of datasets available for re-use,
- (e) standards applicable to public authorities in connection with the disclosure of datasets.”, and
- (c) in subsection (3) for “The code” substitute “ Any code under this section ”.
- (6) In section 84 (interpretation), after the definition of “the Commissioner”, insert—  
 ““dataset” has the meaning given by section 11(5);”.

*Other amendments relating to freedom of information*

VALID FROM 01/09/2013

**103 Meaning of “publicly-owned company”**

- (1) Section 6 of the Freedom of Information Act 2000 (publicly-owned companies) is amended as follows.
- (2) In subsection (1)—
  - (a) omit “or” at the end of paragraph (a),
  - (b) in paragraph (b) for the words from “any public authority” to “particular information” substitute “ the wider public sector ”, and
  - (c) after paragraph (b) insert “, or
    - (c) it is wholly owned by the Crown and the wider public sector.”
- (3) For subsection (2) substitute—
  - “(2) For the purposes of this section—
    - (a) a company is wholly owned by the Crown if, and only if, every member is a person falling within sub-paragraph (i) or (ii)—
      - (i) a Minister of the Crown, government department or company wholly owned by the Crown, or
      - (ii) a person acting on behalf of a Minister of the Crown, government department or company wholly owned by the Crown,
    - (b) a company is wholly owned by the wider public sector if, and only if, every member is a person falling within sub-paragraph (i) or (ii)—
      - (i) a relevant public authority or a company wholly owned by the wider public sector, or
      - (ii) a person acting on behalf of a relevant public authority or of a company wholly owned by the wider public sector, and
    - (c) a company is wholly owned by the Crown and the wider public sector if, and only if, condition A, B or C is met.
  - (2A) In subsection (2)(c)—
    - (a) condition A is met if—
      - (i) at least one member is a person falling within subsection (2)(a)(i) or (ii),

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- (ii) at least one member is a person falling within subsection (2)(b)(i) or (ii), and
  - (iii) every member is a person falling within subsection (2)(a)(i) or (ii) or (b)(i) or (ii),
  - (b) condition B is met if—
    - (i) at least one member is a person falling within subsection (2)(a)(i) or (ii) or (b)(i) or (ii),
    - (ii) at least one member is a company wholly owned by the Crown and the wider public sector, and
    - (iii) every member is a person falling within subsection (2)(a)(i) or (ii) or (b)(i) or (ii) or a company wholly owned by the Crown and the wider public sector, and
  - (c) condition C is met if every member is a company wholly owned by the Crown and the wider public sector.”
- (4) In subsection (3), at the end, insert—
- ““relevant public authority” means any public authority listed in Schedule 1 other than—
- (a) a government department, or
  - (b) any authority which is listed only in relation to particular information”.

#### 104 Extension of certain provisions to Northern Ireland bodies

- (1) Omit—
- (a) section 80A of the Freedom of Information Act 2000 (which modifies, in relation to information held by Northern Ireland bodies, certain provisions of the Act relating to historical records etc.), and
  - (b) paragraph 6 of Schedule 7 to the Constitutional Reform and Governance Act 2010 (which inserts section 80A into the Act of 2000).
- (2) The power of the Secretary of State under section 46(2) to (5) of the Act of 2010 to make transitional, transitory or saving provision in connection with the coming into force of paragraph 4 of Schedule 7 to that Act includes power to make such provision in connection with the coming into force of that paragraph of that Schedule as it has effect by virtue of this section.

#### Commencement Information

**I32** S. 104 in force at 1.7.2012 by S.I. 2012/1205, art. 3(x)

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VALID FROM 01/09/2013

*The Information Commissioner*

VALID FROM 16/03/2015

**105 Appointment and tenure of Information Commissioner**

- (1) In paragraph 2(1) of Schedule 5 to the Data Protection Act 1998 (maximum term of appointment for the Information Commissioner) for “five years” substitute “ seven years ”.
- (2) After paragraph 2(3) of that Schedule to that Act (removal of the Information Commissioner from office) insert—
  - “(3A) No motion is to be made in either House of Parliament for such an Address unless a Minister of the Crown has presented a report to that House stating that the Minister is satisfied that one or more of the following grounds is made out—
    - (a) the Commissioner has failed to discharge the functions of the office for a continuous period of at least 3 months,
    - (b) the Commissioner has failed to comply with the terms of appointment,
    - (c) the Commissioner has been convicted of a criminal offence,
    - (d) the Commissioner is an undischarged bankrupt or the Commissioner's estate has been sequestrated in Scotland and the Commissioner has not been discharged,
    - (e) the Commissioner has made an arrangement or composition contract with, or has granted a trust deed for, the Commissioner's creditors,
    - (f) the Commissioner is otherwise unfit to hold the office or unable to carry out its functions.
  - (3B) No recommendation may be made to Her Majesty for the appointment of a person as the Commissioner unless the person concerned has been selected on merit on the basis of fair and open competition.
  - (3C) A person appointed as the Commissioner may not be appointed again for a further term of office.”
- (3) Omit paragraph 2(4) and (5) of that Schedule to that Act (termination of term of office on attaining 65 years of age etc. and eligibility for re-appointment).
- (4) In the italic heading to paragraph 2 of that Schedule to that Act, after “office” insert “ and appointment ”.
- (5) Omit section 18(5) to (7) of the Freedom of Information Act 2000 (spent provisions about period of office of Data Protection Commissioner as first Information Commissioner and application of paragraph 2(4)(b) and (5) of Schedule 5 to the Act of 1998 to that person).

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## **106 Alteration of role of Secretary of State in relation to guidance powers**

(1) For section 41C(7) of the Data Protection Act 1998 (code of practice about assessment notices: requirement for approval of Secretary of State) substitute—

“(7) The Commissioner must consult the Secretary of State before issuing the code (or an altered or replacement code).”

(2) In section 52B of that Act (data-sharing code: approval by the Secretary of State)—  
(a) for subsections (1) to (3) substitute—

“(1) When a code is prepared under section 52A, the Commissioner must—

- (a) consult the Secretary of State, and
- (b) submit the final version of the code to the Secretary of State.

(2) The Secretary of State must lay the code before Parliament.”, and”

(b) in subsection (6) for the words from the beginning to “the Commissioner” substitute “ Where such a resolution is passed, the Commissioner ”.

(3) For section 55C(5) of that Act (guidance about monetary penalty notices: requirement for approval of Secretary of State) substitute—

“(5) The Commissioner must consult the Secretary of State before issuing any guidance under this section.”

## **107 Removal of Secretary of State consent for fee-charging powers etc.**

(1) In section 51 of the Data Protection Act 1998 (general duties of the Information Commissioner)—

(a) in subsection (8) (power to charge fees, with the consent of the Secretary of State, in relation to any Part 6 services)—

- (i) omit “with the consent of the Secretary of State”, and
- (ii) before “services” insert “ relevant ”, and

(b) after subsection (8) insert—

“(8A) In subsection (8) “relevant services” means—

- (a) the provision to the same person of more than one copy of any published material where each of the copies of the material is either provided on paper, a portable disk which stores the material electronically or a similar medium,
- (b) the provision of training, or
- (c) the provision of conferences.

(8B) The Secretary of State may by order amend subsection (8A).”

(2) In section 67(5)(a) of that Act (orders under the Act subject to negative procedure) after “51(3)” insert “ or (8B) ”.

(3) In section 47 of the Freedom of Information Act 2000 (general functions of the Information Commissioner)—

(a) in subsection (4) (power to charge fees, with the consent of the Secretary of State, in relation to services provided under that section)—

- (i) omit “with the consent of the Secretary of State”, and

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- (ii) before “services” insert “ relevant ”, and  
 (b) after subsection (4) insert—

“(4A) In subsection (4) “relevant services” means—

- (a) the provision to the same person of more than one copy of any published material where each of the copies of the material is either provided on paper, a portable disk which stores the material electronically or a similar medium,
- (b) the provision of training, or
- (c) the provision of conferences.

(4B) The Secretary of State may by order amend subsection (4A).

(4C) An order under subsection (4B) may include such transitional or saving provision as the Secretary of State considers appropriate.

(4D) The Secretary of State must consult the Commissioner before making an order under subsection (4B).”

- (4) In section 82(3)(a) of that Act (orders under the Act subject to negative procedure) after “4(1)” insert “ or 47(4B) ”.

#### **108 Removal of Secretary of State approval for staff numbers, terms etc.**

- (1) Paragraph 4 of Schedule 5 to the Data Protection Act 1998 (appointment of officers and staff of the Information Commissioner) is amended as follows.

- (2) After sub-paragraph (4) insert—

“(4A) In making appointments under this paragraph, the Commissioner must have regard to the principle of selection on merit on the basis of fair and open competition.”

- (3) Omit sub-paragraph (5) (approval of Secretary of State required for number, and terms and conditions, of persons to be appointed).

## **PART 7**

### MISCELLANEOUS AND GENERAL

VALID FROM 06/04/2013

#### *Trafficking people for exploitation*

#### **109 Trafficking people for sexual exploitation**

- (1) The Sexual Offences Act 2003 is amended as follows.

- (2) For sections 57 to 59 (trafficking people for sexual exploitation) substitute—

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### “59A Trafficking people for sexual exploitation

- (1) A person (“A”) commits an offence if A intentionally arranges or facilitates—
  - (a) the arrival in, or entry into, the United Kingdom or another country of another person (“B”),
  - (b) the travel of B within the United Kingdom or another country, or
  - (c) the departure of B from the United Kingdom or another country, with a view to the sexual exploitation of B.
- (2) For the purposes of subsection (1)(a) and (c) A's arranging or facilitating is with a view to the sexual exploitation of B if, and only if—
  - (a) A intends to do anything to or in respect of B, after B's arrival, entry or (as the case may be) departure but in any part of the world, which if done will involve the commission of a relevant offence, or
  - (b) A believes that another person is likely to do something to or in respect of B, after B's arrival, entry or (as the case may be) departure but in any part of the world, which if done will involve the commission of a relevant offence.
- (3) For the purposes of subsection (1)(b) A's arranging or facilitating is with a view to the sexual exploitation of B if, and only if—
  - (a) A intends to do anything to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence, or
  - (b) A believes that another person is likely to do something to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence.
- (4) A person who is a UK national commits an offence under this section regardless of—
  - (a) where the arranging or facilitating takes place, or
  - (b) which country is the country of arrival, entry, travel or (as the case may be) departure.
- (5) A person who is not a UK national commits an offence under this section if—
  - (a) any part of the arranging or facilitating takes place in the United Kingdom, or
  - (b) the United Kingdom is the country of arrival, entry, travel or (as the case may be) departure.
- (6) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.
- (7) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in subsection (6)(a) to 12 months is to be read as a reference to 6 months.”

(3) For subsection (1) of section 60 (sections 57 to 59: interpretation) substitute—



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“(1) In section 59A—

“country” includes any territory or other part of the world;

“relevant offence” means—

(a) any offence under the law of England and Wales which is an offence under this Part or under section 1(1)(a) of the Protection of Children Act 1978, or

(b) anything done outside England and Wales which is not an offence within paragraph (a) but would be if done in England and Wales;

“UK national” means—

(a) a British citizen,

(b) a person who is a British subject by virtue of Part 4 of the British Nationality Act 1981 and who has the right of abode in the United Kingdom, or

(c) a person who is a British overseas territories citizen by virtue of a connection with Gibraltar.”

(4) Omit section 60(2) (sections 57 to 59: jurisdiction).

(5) Accordingly, the title of section 60 becomes “ Section 59A: interpretation ”.

## 110 Trafficking people for labour and other exploitation

(1) The Asylum and Immigration (Treatment of Claimants, etc) Act 2004 is amended as follows.

(2) For subsections (1) to (3) of section 4 (trafficking people for labour and other exploitation) substitute—

“(1A) A person (“A”) commits an offence if A intentionally arranges or facilitates—

(a) the arrival in, or entry into, the United Kingdom or another country of another person (“B”),

(b) the travel of B within the United Kingdom or another country, or

(c) the departure of B from the United Kingdom or another country,

with a view to the exploitation of B.

(1B) For the purposes of subsection (1A)(a) and (c) A's arranging or facilitating is with a view to the exploitation of B if (and only if)—

(a) A intends to exploit B, after B's arrival, entry or (as the case may be) departure but in any part of the world, or

(b) A believes that another person is likely to exploit B, after B's arrival, entry or (as the case may be) departure but in any part of the world.

(1C) For the purposes of subsection (1A)(b) A's arranging or facilitating is with a view to the exploitation of B if (and only if)—

(a) A intends to exploit B, during or after the journey and in any part of the world, or

(b) A believes that another person is likely to exploit B, during or after the journey and in any part of the world.”

(3) In section 4(4)—

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- (a) in paragraph (b)—
    - (i) omit “under the Human Organ Transplants Act 1989 (c. 31) or”, and
    - (ii) after “2004” insert “ as it has effect in the law of England and Wales ”,
  - (b) in that paragraph, the words from “as a result” to the end of the paragraph become sub-paragraph (i), and
  - (c) after that sub-paragraph insert “or
    - (ii) which, were it done in England and Wales, would constitute an offence within sub-paragraph (i),”.
- (4) After section 4(4) insert—
- “(4A) A person who is a UK national commits an offence under this section regardless of—
- (a) where the arranging or facilitating takes place, or
  - (b) which country is the country of arrival, entry, travel or (as the case may be) departure.
- (4B) A person who is not a UK national commits an offence under this section if—
- (a) any part of the arranging or facilitating takes place in the United Kingdom, or
  - (b) the United Kingdom is the country of arrival, entry, travel or (as the case may be) departure.”

(5) Omit section 5(1) (section 4: jurisdiction).

(6) In section 5(3) (section 4: interpretation)—

    - (a) for “In section 4(4)(a)” substitute “In section 4—

“country” includes any territory or other part of the world,”,

    - (b) the words from “ “the Human Rights Convention” to the end of the subsection become the next definition in a list, and
    - (c) after that definition insert—

““UK national” means—

    - (a) a British citizen,
    - (b) a person who is a British subject by virtue of Part 4 of the British Nationality Act 1981 and who has the right of abode in the United Kingdom, or
    - (c) a person who is a British overseas territories citizen by virtue of a connection with Gibraltar.”

VALID FROM 25/11/2012

### *Stalking*

#### **111 Offences in relation to stalking**

- (1) After section 2 of the Protection from Harassment Act 1997 (offence of harassment) insert—

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### **“2A Offence of stalking**

- (1) A person is guilty of an offence if—
    - (a) the person pursues a course of conduct in breach of section 1(1), and
    - (b) the course of conduct amounts to stalking.
  - (2) For the purposes of subsection (1)(b) (and section 4A(1)(a)) a person's course of conduct amounts to stalking of another person if—
    - (a) it amounts to harassment of that person,
    - (b) the acts or omissions involved are ones associated with stalking, and
    - (c) the person whose course of conduct it is knows or ought to know that the course of conduct amounts to harassment of the other person.
  - (3) The following are examples of acts or omissions which, in particular circumstances, are ones associated with stalking—
    - (a) following a person,
    - (b) contacting, or attempting to contact, a person by any means,
    - (c) publishing any statement or other material—
      - (i) relating or purporting to relate to a person, or
      - (ii) purporting to originate from a person,
    - (d) monitoring the use by a person of the internet, email or any other form of electronic communication,
    - (e) loitering in any place (whether public or private),
    - (f) interfering with any property in the possession of a person,
    - (g) watching or spying on a person.
  - (4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, or a fine not exceeding level 5 on the standard scale, or both.
  - (5) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, the reference in subsection (4) to 51 weeks is to be read as a reference to six months.
  - (6) This section is without prejudice to the generality of section 2.”
- (2) After section 4 of that Act (putting people in fear of violence) insert—

### **“4A Stalking involving fear of violence or serious alarm or distress**

- (1) A person (“A”) whose course of conduct—
  - (a) amounts to stalking, and
  - (b) either—
    - (i) causes another (“B”) to fear, on at least two occasions, that violence will be used against B, or
    - (ii) causes B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities,
 is guilty of an offence if A knows or ought to know that A's course of conduct will cause B so to fear on each of those occasions or (as the case may be) will cause such alarm or distress.

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- (2) For the purposes of this section A ought to know that A's course of conduct will cause B to fear that violence will be used against B on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause B so to fear on that occasion.
- (3) For the purposes of this section A ought to know that A's course of conduct will cause B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities if a reasonable person in possession of the same information would think the course of conduct would cause B such alarm or distress.
- (4) It is a defence for A to show that—
  - (a) A's course of conduct was pursued for the purpose of preventing or detecting crime,
  - (b) A's course of conduct was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or
  - (c) the pursuit of A's course of conduct was reasonable for the protection of A or another or for the protection of A's or another's property.
- (5) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding twelve months, or a fine not exceeding the statutory maximum, or both.
- (6) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in subsection (5)(b) to twelve months is to be read as a reference to six months.
- (7) If on the trial on indictment of a person charged with an offence under this section the jury find the person not guilty of the offence charged, they may find the person guilty of an offence under section 2 or 2A.
- (8) The Crown Court has the same powers and duties in relation to a person who is by virtue of subsection (7) convicted before it of an offence under section 2 or 2A as a magistrates' court would have on convicting the person of the offence.
- (9) This section is without prejudice to the generality of section 4.”

## 112 Power of entry in relation to stalking

After section 2A of the Protection from Harassment Act 1997 (for which see section 111) insert—

### “2B Power of entry in relation to offence of stalking

- (1) A justice of the peace may, on an application by a constable, issue a warrant authorising a constable to enter and search premises if the justice of the peace is satisfied that there are reasonable grounds for believing that—
  - (a) an offence under section 2A has been, or is being, committed,

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- (b) there is material on the premises which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence,
  - (c) the material—
    - (i) is likely to be admissible in evidence at a trial for the offence, and
    - (ii) does not consist of, or include, items subject to legal privilege, excluded material or special procedure material (within the meanings given by sections 10, 11 and 14 of the Police and Criminal Evidence Act 1984), and
  - (d) either—
    - (i) entry to the premises will not be granted unless a warrant is produced, or
    - (ii) the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.
- (2) A constable may seize and retain anything for which a search has been authorised under subsection (1).
- (3) A constable may use reasonable force, if necessary, in the exercise of any power conferred by virtue of this section.
- (4) In this section “premises” has the same meaning as in section 23 of the Police and Criminal Evidence Act 1984.”

*Miscellaneous repeals of enactments*

**113 Repeal of provisions for conducting certain fraud cases without jury**

Omit section 43 of the Criminal Justice Act 2003 (applications by prosecution for certain fraud cases to be conducted without a jury).

VALID FROM 01/10/2012

**114 Removal of restrictions on times for marriage or civil partnership**

- (1) In the Marriage Act 1949—
  - (a) omit section 4 (solemnization of marriages to take place at any time between 8 a.m. and 6 p.m.), and
  - (b) omit section 75(1)(a) (offence of solemnizing a marriage outside the permitted hours).
- (2) In section 16(4) of the Marriage (Registrar General's Licence) Act 1970 (disapplication of certain provisions of the Act of 1949) for “sections 75(1)(a) and” substitute “ section ”.
- (3) In section 17(2) of the Civil Partnership Act 2004 (registration as civil partners under the standard procedure to take place on any day in the applicable period between 8 a.m. and 6 p.m.)—

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- (a) for “on any day in” substitute “ at any time during ”, and
  - (b) omit “between 8 o'clock in the morning and 6 o'clock in the evening”.
- (4) Omit section 31(2)(ab) of that Act (offence of officiating at the signing of a civil partnership schedule outside the permitted hours).

### General

## 115 Consequential amendments, repeals and revocations

- (1) Schedule 9 (consequential amendments) has effect.
- (2) The provisions listed in Schedule 10 are repealed or (as the case may be) revoked to the extent specified.
- (3) The Secretary of State may by order make such provision as the Secretary of State considers appropriate in consequence of this Act.
- (4) The power to make an order under subsection (3)—
  - (a) is exercisable by statutory instrument,
  - (b) includes power to make 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 (including any Act passed in the same Session as this Act).
- (5) Subject to subsection (6), a statutory instrument containing an order under this section 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.
- (6) A statutory instrument containing an order under this section which neither amends nor repeals any provision of primary legislation is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) 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,
  - “primary legislation” means—
    - (a) a public general Act,
    - (b) an Act of the Scottish Parliament,
    - (c) a Measure or Act of the National Assembly for Wales, and
    - (d) Northern Ireland legislation.

### Commencement Information

- I33** S. 115 partly in force; s. 115(3)-(7) wholly in force at Royal Assent, s. 115(1)(2) in force at Royal Assent for certain purposes and s. 115(2) in force at 1.7.2012 for certain further purposes see s. 120(1)(4)(b)(5)(b)(c)
- I34** S. 115(1) in force at 1.7.2012 for specified purposes by [S.I. 2012/1205, art. 3\(y\)](#)
- I35** S. 115(1) in force at 10.7.2012 for specified purposes by [S.I. 2012/1205, art. 4\(i\)](#)
- I36** S. 115(2) in force at 1.7.2012 for specified purposes by [S.I. 2012/1205, art. 3\(z\)](#)
- I37** S. 115(2) in force at 10.7.2012 for specified purposes by [S.I. 2012/1205, art. 4\(j\)](#)

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## **116 Transitional, transitory or saving provision**

- (1) The Secretary of State may by order made by statutory instrument make such transitional, transitory or saving provision as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Act (other than Chapter 1 of Part 1 and any Welsh provision).
- (2) The Welsh Ministers may by order made by statutory instrument make such transitional, transitory or saving provision as the Welsh Ministers consider appropriate in connection with the coming into force of any Welsh provision.
- (3) In this section “Welsh provision” means any provision of this Act so far as it falls within section 120(3).

## **117 Financial provisions**

- (1) There is to be paid out of money provided by Parliament—
  - (a) any expenditure incurred by a Minister of the Crown by virtue of this Act, and
  - (b) any increase attributable to this Act in the sums payable by virtue of any other Act out of money so provided.
- (2) There is to be paid into the Consolidated Fund any sums received by a Minister of the Crown by virtue of this Act.

## **118 Channel Islands and Isle of Man**

Her Majesty may by Order in Council provide for any of the provisions of—

- (a) Chapters 1 to 3 of Part 5 (and Parts 6 to 8 of Schedule 9 and Parts 5 and 6 of Schedule 10), or
- (b) section 110 (and Part 10 of Schedule 9, and Part 9 of Schedule 10, so far as relating to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004),

to extend, with or without modifications, to any of the Channel Islands or to the Isle of Man.

## **119 Extent**

- (1) The following provisions extend to England and Wales only—
  - (a) sections 1 to 18, 23 and 24,
  - (b) Chapter 2 of Part 1,
  - (c) Chapter 1 of Part 2,
  - (d) section 53 and Schedule 3,
  - (e) Chapter 2 of Part 3,
  - (e) Chapter 1 of Part 5 (excluding section 78 and Schedule 7),
  - (f) Chapter 2 of Part 5 (excluding section 86),
  - (g) Chapter 4 of Part 5,
  - (h) sections 109 to 114,
  - (i) Parts 4, 6, 7 and 9 to 12 of Schedule 9 (subject to subsections (2), (3), (5) and (8) (k) and (m)),
  - (j) Parts 3, 5, 6 and 9 to 11 of Schedule 10 (subject to subsections (3), (5) and (8) (m)), and



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- (k) any provision which extends to England and Wales only by virtue of subsection (6) or (7).
- (2) The following provisions extend to England and Wales and Scotland only—
  - (a) paragraph 119(a) of Schedule 9,
  - (b) the repeal of section 22 of the Crime and Security Act 2010 in paragraph 4(2) of Schedule 9 and Part 1 of Schedule 10, and
  - (c) any provision which extends to England and Wales and Scotland only by virtue of subsection (6) or (7).
- (3) The following provisions extend to England and Wales and Northern Ireland only—
  - (a) Part 2 of Schedule 1,
  - (b) Chapter 3 of Part 5 (excluding paragraph 5(3) of Schedule 8 and section 91),
  - (c) in Part 6 of Schedule 9 and Part 5 of Schedule 10, the amendments and repeals in respect of—
    - (i) the Police Act 1997 (excluding sections 113A(10) and 113B(13) of that Act), and
    - (ii) paragraph 14(7)(c) of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006, and
  - (d) any provision which extends to England and Wales and Northern Ireland only by virtue of subsection (7).
- (4) The following provisions extend to Scotland only—
  - (a) Part 5 of Schedule 1, and
  - (b) any provision which extends to Scotland only by virtue of subsection (7).
- (5) The following provisions extend to Northern Ireland only—
  - (a) Part 6 of Schedule 1,
  - (b) section 63 and Schedule 6,
  - (c) section 78 and Schedule 7,
  - (d) in Part 6 of Schedule 9 and Part 5 of Schedule 10, the amendments, repeals and revocations in respect of—
    - (i) the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (S.I. 2007/1351 (N.I. 11)) and any order made under that Order,
    - (ii) Part 3 of Schedule 5 to the Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009 (S.I. 2009/1182), and
    - (iii) sections 90 and 92 of the Policing and Crime Act 2009, and
  - (e) any provision which extends to Northern Ireland only by virtue of subsection (7).
- (6) The following provisions have the extent provided for in those provisions—
  - (a) Schedule 2 (see each paragraph), and
  - (b) Part 2 of Schedule 10 (see the notes to that Part).
- (7) The amendments, repeals and revocations made by Parts 1 and 5 of Schedule 9 and Parts 1 and 4 of Schedule 10 have (subject to subsection (2)(b)) the same extent as the enactment amended, repealed or revoked.
- (8) The following provisions extend to England and Wales, Scotland and Northern Ireland—

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- (a) sections 19 to 22 (excluding Parts 2, 5 and 6 of Schedule 1) and 25,
- (b) Chapter 2 of Part 2,
- (c) Chapter 1 of Part 3 (excluding section 53 and Schedules 2 and 3),
- (d) Part 4 (excluding section 63 and Schedule 6),
- (e) section 86,
- (f) paragraph 5(3) of Schedule 8,
- (g) section 91,
- (h) Part 6,
- (i) sections 115 to 117 (excluding Schedules 9 and 10), this section and sections 120 and 121,
- (j) Parts 2, 3 and 8 of Schedule 9,
- (k) the amendments of Schedule 1 to the Criminal Justice and Police Act 2001, and Schedule 5 to the Sexual Offences Act 2003, in Part 11 of Schedule 9,
- (l) Parts 7 and 8 of Schedule 10,
- (m) the repeal of section 330(5)(b) of the Criminal Justice Act 2003 in Part 12 of Schedule 9 and Part 10 of Schedule 10, and
- (n) any provision which extends to England and Wales, Scotland and Northern Ireland by virtue of subsection (6) or (7).

## 120 Commencement

- (1) Subject as follows, this Act comes into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed for different purposes.
- (2) The provisions mentioned in subsection (3) come into force on such day as the Welsh Ministers may by order made by statutory instrument appoint; and different days may be appointed for different purposes.
- (3) The provisions are—
  - (a) Chapter 2 of Part 1 so far as relating to schools in Wales and further education institutions in Wales,
  - (b) sections 39(1), 40, 41 and 43 to 46 so far as they confer functions on the Welsh Ministers,
  - (c) section 53 and Schedule 3, and
  - (d) section 56 and Schedule 4 so far as relating to land in Wales.
- (4) The following provisions come into force at the end of the period of two months beginning with the day on which this Act is passed—
  - (a) section 39(2) and Schedule 2, and
  - (b) Part 2 of Schedule 10 (and section 115(2) so far as relating to that Part of that Schedule).
- (5) The following provisions come into force on the day on which this Act is passed—
  - (a) sections 88 to 91,
  - (b) section 113, Part 12 of Schedule 9 and Part 10 of Schedule 10 (and section 115(1) and (2) so far as relating to those Parts of those Schedules), and
  - (c) sections 115(3) to (7) and 116 to 119, this section and section 121.

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## 121 Short title

This Act may be cited as the Protection of Freedoms Act 2012.

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