

2012 No. 2234 (C. 89)

**CHILDREN AND YOUNG PERSONS,
ENGLAND AND WALES**

**CHILDREN AND YOUNG PERSONS,
NORTHERN IRELAND**

PREVENTION AND SUPPRESSION OF TERRORISM

**PROTECTION OF VULNERABLE ADULTS,
ENGLAND AND WALES**

**PROTECTION OF VULNERABLE ADULTS,
NORTHERN IRELAND**

RIGHTS OF THE SUBJECT, ENGLAND AND WALES

The Protection of Freedoms Act 2012 (Commencement No. 3)
Order 2012

Made - - - -

28th August 2012

The Secretary of State, in exercise of the powers conferred by sections 116(1) and 120(1) of the Protection of Freedoms Act 2012(a), makes the following Order.

Citation and interpretation

1.—(1) This Order may be cited as the Protection of Freedoms Act 2012 (Commencement No. 3) Order 2012.

(2) In this Order “the Act” means the Protection of Freedoms Act 2012.

Provisions coming into force on 10th September 2012

2. The following provisions of the Act shall come into force on 10th September 2012 immediately after the coming into force of the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012(b)—

(a) 2012 c. 9.

(b) S.I. 2012/2157.

- (a) section 64 (restriction of scope of regulated activities: children);
- (b) section 65 (restriction of definition of vulnerable adults);
- (c) section 66 (restriction of scope of regulated activities: vulnerable adults);
- (d) section 67 (alteration of test for barring decisions);
- (e) section 68 (abolition of controlled activity);
- (f) section 69 (abolition of monitoring);
- (g) section 70 (information for purposes of making barring decisions);
- (h) section 71 (review of barring decisions);
- (i) section 72(4) to (6) (information about barring decisions);
- (j) section 75(1) and (2) (professional bodies);
- (k) section 75(3) (professional bodies) insofar as it substitutes section 43(3), (4), (5), (5D), (5E), (5F), (5G) and (5H) into the Safeguarding Vulnerable Groups Act 2006**(a)**;
- (l) section 75(4) to (6) (professional bodies);
- (m) section 76(1), (2), (3)(f), (4)(f) and (5) (supervisory authorities);
- (n) section 77 (minor amendments);
- (o) section 78 (corresponding amendments in relation to Northern Ireland) insofar as it relates to the paragraphs of Schedule 7 specified in paragraph (z) below;
- (p) section 79(1) (restriction on information provided to certain persons);
- (q) section 79(2)(b) (restriction on information provided to certain persons) insofar as it omits section 113B(5) and section 113B(6)(b) of the Police Act 1997**(b)**;
- (r) section 79(3) (restriction on information provided to certain persons) insofar as it inserts section 120AC into the Police Act 1997;
- (s) section 80 (minimum age for applications for certificates or to be registered);
- (t) section 81 (additional grounds for refusing an application to be registered);
- (u) section 82 (enhanced criminal record certificates: additional safeguards);
- (v) section 84 (criminal conviction certificates: conditional cautions);
- (w) section 86 (out of date references to certificates of criminal records);
- (x) section 115(1) (consequential amendments, repeals and revocations) insofar as it relates to the paragraphs of Schedule 9 specified in paragraph (aa) below;
- (y) section 115(2) (consequential amendments, repeals and revocations) insofar as it relates to the paragraphs of Schedule 10 specified in paragraphs (bb) and (cc) below;
- (z) the following paragraphs of Schedule 7—
 - (i) paragraphs 1 to 8;
 - (ii) paragraph 9(4) to (6);
 - (iii) paragraph 12(1);
 - (iv) paragraph 12 (2) insofar as it substitutes Article 45(3), (4), (5), (5D), (5E), (5F), (5G) and (5H) into the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007**(c)**;
 - (v) paragraph 12(3) and (4);
 - (vi) paragraph 13(1), (2), (3)(g), (4)(g) and (5);
 - (vii) paragraph 14;
- (aa) the following paragraphs of Schedule 9—
 - (i) paragraphs 35 to 42

(a) 2006 c. 47.

(b) 1997 c. 50.

(c) S.I. 2007/1351 (N.I. 11).

- (ii) paragraph 43 to 67;
- (iii) paragraph 68(1), (2), (3), (4)(a) and (c) to (g);
- (iv) paragraph 69 to 74;
- (v) paragraph 75 to 103;
- (vi) paragraph 104 to 107;
- (vii) paragraph 109(1), (2)(b) and (4);
- (viii) paragraph 110(1) and (3);
- (ix) paragraph 111(1), (2), (3), (5) and (6);
- (x) paragraphs 112 and 115;
- (xi) paragraph 116(1) and (3);
- (xii) paragraph 117;
- (xiii) paragraph 118 insofar as the insertion it makes in section 126(1) of the Police Act 1997 has effect in relation to paragraph (c) of the definition of “certificate”;
- (xiv) paragraph 129;
- (bb) Part 5 of Schedule 10 except for the repeal of article 29 of the Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Miscellaneous and Transitional Provisions and Commencement No. 5) Order 2009(a);
- (cc) Part 6 of Schedule 10 except for the repeals of sections 113A(4), 113B(6)(a) and 122(3A)(a) and the words “or registered person” in 124A(1)(c) of the Police Act 1997.

Provisions coming into force on 1st October 2012

3. The day appointed for the coming into force of the following provisions of the Act is 1st October 2012:

- (a) section 20(1), (10) and (11) (appointment and functions of Commissioner);
- (b) section 22 (guidance on making national security determinations);
- (c) section 92 (power of Secretary of State to disregard convictions or cautions);
- (d) section 93 (applications to the Secretary of State);
- (e) section 94 (procedure for decisions by the Secretary of State);
- (f) section 95 (effect of disregard on police and other records);
- (g) section 96 (effect of disregard for disclosure and other purposes);
- (h) section 97 (saving for Royal pardons etc.);
- (i) section 98 (section 96: supplementary);
- (j) section 99 (appeal against refusal to disregard convictions or cautions);
- (k) section 100 (advisors);
- (l) section 101 (interpretation: Chapter 4);
- (m) section 114 (removal of restrictions on time for marriage or civil partnership);
- (n) section 115(1) (consequential amendments, repeals and revocations) insofar as it relates to the provisions of Schedule 9 specified in paragraph (o) below;
- (o) Part 9 of Schedule 9.

(a) S.I. 2009/2610.

Transitional provisions

4.—(1) The commencement of sections 64 and 66 of the Act shall have effect in relation to applications to which paragraph (2) applies only in respect of applications received by the Secretary of State on or after 10th September 2012.

(2) This paragraph applies to applications for a certificate made under section 113B of the Police Act 1997^(a) which, by virtue of section 113BA or section 113BB of that Act^(b), will include suitability information relating to children or suitability information relating to vulnerable adults.

5. The commencement of section 80 of the Act shall have effect, in relation to applications made under sections 113A, 113B, 114 and 116 of the Police Act 1997^(c), only in respect of applications received by the Secretary of State on or after 10th September 2012.

6. In articles 8, 10, 12, 14 and 15—

“the 2006 Act” means the Safeguarding Vulnerable Groups Act 2006;

“the 2007 Order” means the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007;

“ISA” means the Independent Safeguarding Authority.

7. Articles 8 to 10 apply from 10th September 2012.

8.—(1) Any person who is on the children’s barred list or the adults’ barred list (within the meaning of section 2 of the 2006 Act or Article 6 of the 2007 Order), at the time that section 67 of, and paragraph 4 of Schedule 7 to, the Act comes into force, may apply to ISA for a review of their inclusion in the children’s barred list or the adults’ barred list (as the case may) in the circumstances set out in paragraph (2).

(2) The circumstances are that the person considers that ISA would not, if it were now considering whether to bar that person under paragraphs 2, 3, 5, 8, 9 or 11 of Schedule 3 to the 2006 Act or paragraphs 2, 3, 5, 8, 9 or 11 of Schedule 1 to 2007 Order, as amended by section 67(2) to (4) and (6) to (8) of, and paragraph 4(2) to (4) and (6) to (8) of Schedule 7 to, the Act, have reason to believe that the person is or has been or might in future be engaged in regulated activity relating to children or vulnerable adults (as the case may be).

9. On receiving an application under article 8, ISA must remove the person from the children’s barred list or the adults’ barred list (as the case may be) if it does not have reason to believe that the person has been engaged, or, on the date on which they were barred, might in the future be engaged in regulated activity relating to children or vulnerable adults (as the case may be).

10. Section 4 of the 2006 Act and Article 8 of the 2007 Order apply to any decision of ISA not to remove a person from the children’s barred list or the adults’ barred list (as the case may be) under article 10 of this Order.

11. Article 12 applies from 10th September 2012 until 1st December 2012.

12. The Secretary of State may provide to ISA any information she holds in order to enable ISA to determine whether, in relation to any person, paragraphs 1, 2, 3, 5, 7, 8, 9 or 11 of Schedule 3 to the 2006 Act applies or appears to apply.

13. Article 14 applies from 10th September 2012 until 31st March 2014.

(a) 1997 c. 50. Section 113B was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 and amended by section 63(1) of, and paragraph 14 of Schedule 9 to, the Safeguarding Vulnerable Groups Act 2006, section 50 of the Criminal Justice and Immigration Act 2008, S.I. 2009/203, and sections 79(2), 80(1), 82 and 115(1) and (2) of, and paragraphs 35 and 37 of Schedule 9 and Parts 5 and 6 of Schedule 10 to, the Protection of Freedoms Act 2012.

(b) Sections 113BA and 113BB were inserted by section 63(1) of, and paragraph 14 of Schedule 9 to, the Safeguarding Vulnerable Groups Act 2006. There are amendments but none relevant to this Order.

(c) Section 113A was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c. 15). There are amendments but none relevant to this Order.

14. The Department of Justice in Northern Ireland may provide to ISA any information it holds in order to enable ISA to determine whether, in relation to any person, paragraphs 1, 2, 3, 5, 7, 8, 9 or 11 of Schedule 1 to the 2007 Order applies or appears to apply.

15. Article 16 applies from 10th September 2012 until such time as section 72(1) of the Act is brought into force for the purposes of inserting section 30A into the 2006 Act.

16. ISA may use any information it holds to check whether any of its members or employees, or prospective members or employees, are on the children's barred list or the adults' barred list or both.

Home Office
28th August 2012

Lynne Featherstone
Parliamentary Under-Secretary of State

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force various provisions of the Protection of Freedoms Act 2012 ("the Act").

Article 2 of this Order brings most of Chapters 1 and 2 of Part 5 of the Act into force on 10th September 2012.

Chapter 1 of Part 5 of the Act amends the Safeguarding Vulnerable Groups Act 2006 ("the 2006 Act"). The following changes are brought into force by article 2: the reduction of the scope of regulated activity relating to both children and vulnerable adults, the revised barring test, the abolition of monitoring and controlled activity, a new review power for the Independent Safeguarding Authority ("ISA") and various provisions on information sharing with the police and keepers of registers. Similar changes made to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 in Schedule 7 to the Act are also brought into force on 10th September 2012 by article 2.

Chapter 2 of Part 5 of the Act amends Part 5 of the Police Act 1997 ("the 1997 Act"), the provisions under which the Criminal Records Bureau ("CRB"), on behalf of the Secretary of State, issues CRB certificates. The following changes are brought into force by article 2: the repeal of section 113B(5) of the 1997 Act under which the police could disclose information directly to the employer without that information appearing on the certificate, a new provision enabling the registered person (the person who countersigns the certificate application) to check on the progress of an application, the new minimum age for applicants and counter-signatories, new grounds for refusing to register a person and enhanced safeguards for disclosure of information on enhanced criminal record certificates.

Article 3 brings into force Chapter 4 of Part 5 of the Act, which enables a person to apply to the Secretary of State to have particular convictions or cautions disregarded, on 1st October 2012. Article 3 also brings into force the power of the Secretary of State to appoint a Commissioner for the Retention and Use of Biometric Material on 1st October 2012.

Articles 4 and 5 ensure that the changes made in relation to the reduction of scope of regulated activity relating to both children and vulnerable adults and the new minimum age for applicants for a CRB certificate apply only in relation to those applications for CRB certificates received on or after 10th September 2012.

Articles 6 to 10 provide a mechanism whereby a person who is currently on either the children's barred list, or the adults' barred list, or both, can apply to the ISA to be removed from either or both lists if they would not now satisfy the barring test as it applies from 10th September 2012, namely that the ISA does not have reason to believe that they have engaged, or (at the time at which they were barred) might in future engage, in regulated activity relating to children or vulnerable adults. The existing appeals provisions apply in relation to an ISA decision under this mechanism. If the person is removed from a list because they have no connection to regulated activity, the ISA may still, in the future, bar that person on the same information if that person applies to work in regulated activity.

Articles 11 and 12 make provision for the Secretary of State (the CRB) to provide information to the ISA in order for the ISA to consider whether the amended barring test is met, particularly in relation to whether a person has engaged, is engaging or might in future engage in regulated activity. This provision is needed until the Disclosure and Barring Service takes over the CRB and ISA functions on 1st December 2012 at which stage paragraph 16 of Schedule 8 to the Act enables the DBS to use any information obtained in relation to one of its functions (e.g. CRB functions) to be used in relation to any of its other functions (e.g. ISA functions).

Articles 13 and 14 make similar provision to enable the Northern Ireland Department of Justice to pass information to the ISA, in order for the ISA to consider whether the barring test is met, until such time as there is permanent statutory provision for it to do so. It is expected that such a provision will be in the Fairer Faster Justice Bill to be introduced in the Northern Ireland Assembly in early 2013.

Articles 15 and 16 ensure that the ISA can use the barred list information it holds in order to check whether any of its members or employees are barred. This is a transitional provision until such time as the new barred list check under section 32A of the 2006 Act is commenced.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
section 29	1st July 2012	2012/1205
section 30	1st July 2012	2012/1205
section 31	1st July 2012	2012/1205
section 32	1st July 2012	2012/1205
section 33	1st July 2012	2012/1205
section 34	1st July 2012	2012/1205
section 35	1st July 2012	2012/1205
section 36	1st July 2012	2012/1205
section 37	1st November 2012	2012/2075
section 38	1st November 2012	2012/2075
section 39(1)	1st July 2012	2012/1205
section 40 in relation to England	1st July 2012	2012/1205
section 41 in relation to England	1st July 2012	2012/1205
section 42	1st July 2012	2012/1205
section 43 in relation to England	1st July 2012	2012/1205
section 44 in relation to England	1st July 2012	2012/1205
section 45 in relation to England	1st July 2012	2012/1205
section 46 in relation to England	1st July 2012	2012/1205
section 47	1st July 2012	2012/1205
section 48	1st July 2012	2012/1205
section 49	1st July 2012	2012/1205
section 50	1st July 2012	2012/1205
section 51	1st July 2012	2012/1205

section 52	1st July 2012	2012/1205
section 54	1st October 2012	2012/2075
section 55	1st October 2012	2012/2075
section 56	1st October 2012	2012/2075
section 57	10th July 2012	2012/1205
section 58	10th July 2012	2012/1205
section 59	10th July 2012	2012/1205
section 60	10th July 2012	2012/1205
section 61	10th July 2012	2012/1205
section 62	9th May 2012	2012/1205
section 63	10th July 2012	2012/1205
section 78 partially	10th August 2012	2012/2075
section 85	1st July 2012	2012/1205
section 104	1st July 2012	2012/1205
section 111	25th November 2012	2012/2075
section 112	25th November 2012	2012/2075
section 115(1) partially	1st July 2012	2012/1205
section 115(1) partially	10th July 2012	2012/1205
section 115(1) partially	1st October 2012	2012/2075
section 115(1) partially	1st November 2012	2012/2075
section 115(1) partially	25th November 2012	2012/2075
section 115(2) partially	1st July 2012	2012/1205
section 115(2) partially	10th July 2012	2012/1205
section 115(2) partially	1st October 2012	2012/2075
Schedule 4	1st October 2012	2012/2075
Schedule 5	10th July 2012	2012/1205
Schedule 6	10th July 2012	2012/1205
Schedule 7 partially	10th August 2012	2012/2075
Schedule 9 partially	1st July 2012	2012/1205
Schedule 9 partially	10th July 2012	2012/1205
Schedule 9 partially	1st October 2012	2012/2075
Schedule 9 partially	1st November 2012	2012/2075
Schedule 9 partially	25th November 2012	2012/2075
Schedule 10 partially	1st July 2012	2012/1205
Schedule 10 partially	10th July 2012	2012/1205
Schedule 10 partially	1st October 2012	2012/2075

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