

PROTECTION OF FREEDOMS ACT 2012

EXPLANATORY NOTES

TERRITORIAL EXTENT

74. The majority of the Act's provisions extend to England and Wales only, but certain provisions also extend to Scotland or Northern Ireland or both. In relation to Scotland, the Act addresses non-devolved matters only; in relation to Wales and Northern Ireland the Act addresses both devolved and non-devolved matters.
75. The following provisions in the Act which extend to Scotland relate to reserved matters:
- The retention of fingerprints and DNA profiles subject to the Terrorism Act 2000 ("the 2000 Act") or retained for national security purposes (sections 19 to 22 and Parts 1 and 3 to 5 of Schedule 1);
 - The requirement for local authorities to obtain judicial approval for the application and use of communications data under Regulation of Investigatory Powers ("RIPA") (Chapter 2 of Part 2);
 - The provisions in respect of certain powers of entry insofar as such powers relate to reserved matters (Chapter 1 of Part 3);
 - The provisions in respect of the maximum periods of pre-charge detention for terrorist suspects (sections 57 and 58);
 - The changes to terrorism stop and search powers in sections 59 to 62 and Schedule 5;
 - The amendments to the Freedom of Information Act 2000 ("FOIA") and the Data Protection Act 1998 ("DPA") (section 86 and Part 6); and
 - The power of the Treasury to make provision in respect of taxation in connection with the transfer of property, rights or liabilities of the ISA and the CRB to the Disclosure and Barring Service (section 91).
76. This Act does not contain any provisions falling within the terms of the Sewel Convention.
77. In relation to Wales, the provisions of the Act do not relate to devolved matters or confer functions on the Welsh Ministers except for the following:
- The requirement to obtain parental consent before processing a child's biometric information in schools and colleges (Chapter 2 of Part 1);
 - Powers of entry - Chapter 1 of Part 3 confers powers on the Welsh Ministers to make orders repealing, adding safeguards to or rewriting powers of entry and to make a code of practice in relation to powers of entry (and associated powers) in so far as such powers of entry relate to transferred matters;
 - The provision to make the vehicle keeper responsible in certain circumstances for unpaid parking related charges (section 56 and Schedule 4); and

*These notes refer to the Protection of Freedoms Act
2012 (c.9) which received Royal Assent on 1 May 2012*

- The amendments to the Safeguarding Vulnerable Groups Act 2006 and the establishment of the Disclosure and Barring Service (Chapters 1 and 3 of Part 5).
78. The National Assembly for Wales agreed a legislative consent motion in respect of these provisions on 15 March 2011 (see Official Report at [The Record](#)).
79. On 5 May 2011, the Assembly Act provisions of the Government of Wales Act 2006 came into force. Amongst other things, these provisions extended the legislative competence of the National Assembly of Wales to include matters in respect of access to information held by the National Assembly for Wales, the Assembly Commission, the Welsh Assembly Government or Welsh public authorities. Accordingly, to the extent that the provisions in Part 6 of the Act amending the FOIA relate to such matters, those provisions now also relate to devolved matters. The National Assembly for Wales agreed a legislative consent motion in respect of these provisions on 31 January 2012.
80. The provisions of the Act relating to the following excepted or reserved matters also extend to Northern Ireland:
- The retention of fingerprints and DNA profiles subject to the 2000 Act or the Counter-Terrorism Act 2008 (“the 2008 Act”), or retained for national security purposes and for the purposes connected with the International Criminal Court (sections 19 to 22 and Parts 1 to 4, 6 and 7 of Schedule 1);
 - The requirement for local authorities to obtain judicial approval for the application and use of covert surveillance powers under RIPA (Chapter 2 of Part 2);
 - The provisions relating to powers of entry insofar as they relate to excepted or reserved matters (Chapter 1 of Part 3);
 - The provisions in respect of the maximum periods of pre-charge detention for terrorist suspects (sections 57 and 58);
 - Changes to the terrorism stop and search powers, including amendments to the stop and search powers in Schedule 3 to the Justice and Security (Northern Ireland) Act 2007 (Part 4);
 - The amendments to the DPA (section 86 and Part 6); and
 - The power of the Treasury to make provision in respect of taxation in connection with the transfer of property, rights or liabilities of the ISA and the CRB to the Disclosure and Barring Service (section 91).
81. In addition, the following provisions of the Act relating to transferred matters will also extend to Northern Ireland:
- The amendments to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (“SVGO”) (section 78 and Schedule 7) and the Disclosure and Barring Service (Chapter 3 of Part 5 and Schedule 8); and
 - The amendments to the FOIA (sections 102, 103, 104, 105(5) and 107(3) and (4)).
82. As these provisions relate to transferred matters they require the consent of the Northern Ireland Assembly. The Northern Ireland Assembly agreed a legislative consent motion in respect of the amendments to the SVGO on 21 March 2011 (see Official Report at: [The Assembly - Official Report Monday 21 March 2011](#)). A further legislative consent motion was agreed by the Assembly on 27 June 2011¹ in relation to the Disclosure and Barring Service provisions in Chapter 3 of Part 5 and Schedule 8. On 26 September 2011², the Assembly also agreed a legislative consent motion in relation to the amendments to the FOIA made by Part 6.

¹ Northern Ireland Assembly minutes of proceedings 27.06.11

² [The Assembly - Official Report Monday 26 September 2011](#)