

PROTECTION OF FREEDOMS ACT 2012

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 7: Miscellaneous and general

Schedule 9: Consequential amendments

Part 1: Destruction, retention and use of fingerprints and samples etc.

459. *Paragraph 3* makes amendments to the Police and Criminal Evidence Act 1984 (“PACE”) to the powers to take DNA and fingerprints, consequential on the new retention regime set out in Chapter 1 of Part 1 of the Act. *Paragraph 4* repeals the uncommenced biometric retention provisions in sections 14, 16 to 19 and 21 to 23 of the Crime and Security Act 2010.

Part 3: Safeguards for certain surveillance under RIPA

460. *Paragraphs 10* and *11* amend sections 57 and 62 of Regulation of Investigatory Powers Act 2000 (“RIPA”) so as to provide that it is not part of the functions of the Interception of Communications Commissioner or the Chief Surveillance Commissioner to review the decisions of the relevant judicial authority to approve or reject authorisations or notices made by local authorities.

461. *Paragraph 12* allows the Investigatory Powers Tribunal to continue to consider complaints about the conduct by public authorities notwithstanding that the conduct has been approved by a relevant judicial authority.

462. *Paragraph 13* extends the powers of the Investigatory Powers Tribunal so that it may quash an order made by a relevant judicial authority under new section 23A or 32A of RIPA.

463. *Paragraph 14* amends section 71 of PACE so that the requirement on the Secretary of State to produce one or more codes of practice in respect of the exercise of the powers under the Act does not extend to the exercise of powers by the relevant judicial authority under new sections 23A or 32A of RIPA.

464. *Paragraph 15* amends RIPA to make provision in respect of the procedure which is to apply to applications to the sheriff for an order under new section 23A or 32A by specifying matters which must be secured by rules of court. These requirements are to ensure that the rules governing applications for judicial approval in Scotland will preserve the covert nature of the authorisation, notice or renewal while maintaining the power of the Court of Session to regulate and prescribe the procedure and practice to be followed in any civil proceedings in the sheriff court.

465. *Paragraphs 15* and *16* also amend RIPA to enable the Lord Chancellor, by order, to make procedural rules for district judges (magistrates’ courts) in Northern Ireland

in relation to local authority authorisations and notices for the acquisition of communications data and authorisations for covert human intelligence sources and directed surveillance. Currently, the Lord Chancellor has powers in relation to the making of Magistrate's Courts Rules in Northern Ireland which deal with excepted matters only. The court rules in relation to the new sections 23A and 32A of RIPA will need to deal with both reserved and excepted matters. As such, the order making power at new section 77B of RIPA allows the Lord Chancellor to make rules. New section 77B also provides that where the Magistrate's Courts Rules Committee (the body which makes rules for magistrate's courts in Northern Ireland) regulates and prescribes the procedure and practice to be followed in relation to an application to the district judge under new section 23A or 32A of RIPA, it is subject to, but not otherwise constrained by, the provisions relating to the judicial approval procedure in new sections 23B and 32B and any order made under new section 77B. Accordingly, if the Magistrates' Courts Rules Committee makes new court rules for the judicial approval process, it may not make provision which is contrary to that which is made by the Lord Chancellor in an order under new section 77B.

466. *Paragraph 17* inserts a new subsection (9) into section 81 (general interpretation) of RIPA to provide that the Secretary of State may make certain orders in respect of a transferred matter in respect of Northern Ireland where that matter is ancillary to a reserved or an excepted matter.

Part 4: Vehicles left on land

467. *Paragraph 20* makes amendments to the Private Security Industry Act 2001 ("the 2001 Act") consequential upon section 54 which makes it an offence to immobilise, remove or restrict the movement of a vehicle without lawful authority. The 2001 Act provides for the licensing, by the Security Industry Authority ("SIA"), of individuals engaged in the immobilisation (wheel clamping) of vehicles. Sections 42 and 44 of the Crime and Security Act ("the 2010 Act") amended the 2001 Act so as to provide for the licensing of wheel clamping businesses and for an independent avenue of appeal for motorists in respect of release fees imposed by businesses carrying out wheel clamping and related activities; the provisions in the 2010 Act have not been brought into force. With the introduction of the new offence, the existing licensing regime becomes redundant, accordingly this paragraph repeals the relevant provisions of the 2001 Act, as amended, which provide for the licensing of wheel clamping operatives and companies.

Part 7: Criminal records

468. *Paragraph 109* extends the power of the Criminal Records Bureau ("CRB") to require an applicant for a criminal record certificate or an enhanced criminal record certificate to provide their fingerprints where there is a dispute about that person's identity in relation to the new up-date arrangements (provided for under section 83 of this Act).
469. *Paragraph 110* amends the Police Act 1997 ("the 1997 Act") to ensure that the CRB can access barred list information for the purposes of providing up-date information on criminal record and enhanced criminal record certificates under section 83 (of this Act).
470. *Paragraph 111* extends the functions of the independent monitor (appointed under section 119B of the 1997 Act) to review the disclosure of non-conviction information in an enhanced criminal record certificate, so that the independent monitor can also sample cases in which chief police officers provide or do not provide non-conviction information for the purposes of the up-dating arrangements.
471. *Paragraph 114* omits section 122(3A)(a) of the 1997 Act which enables the Secretary of State to refuse to issue a criminal record certificate or an enhanced criminal record certificate where the registered body that countersigned the application for the certificate has failed to comply with the code of practice issued under section 122(1) (such a code provides guidance to registered bodies on the discharge of their functions and on the use of the information contained in a certificate). This provision is redundant

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as a result of section 79 which removes the requirement on the Secretary of State to send a copy of a criminal record certificate or an enhanced criminal record certificate to the registered body which countersigned the application for a certificate.