EXPLANATORY MEMORANDUM TO

THE DISCLOSURE AND BARRING SERVICE (CORE FUNCTIONS) ORDER 2012

2012 No. 2522

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Protection of Freedoms Act 2012 ("the Act") provides for the formation and constitution of a body corporate known as the Disclosure and Barring Service ("DBS"). This Order, made under paragraph 8 (1)(d) of Schedule 8 to the Act, specifies the core functions of the DBS under Part 5 of the Police Act 1997 ("the 1997 Act"). In accordance with paragraph 7 of Schedule 8 to the Act, core functions are those which may not be delegated outside the DBS.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Act establishes the DBS. An order made under section 88 of the Act will transfer functions of the Independent Safeguarding Authority ("ISA") and functions of the Secretary of State under Part 5 of the 1997 Act, the Safeguarding Vulnerable Groups Act 2006 and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, to the newly created DBS.

4.2 Schedule 8 to the Act allows for the delegation of functions of the DBS, but provides that certain "core functions" cannot be delegated to anyone other than a member of DBS staff or any of its appointed members. In relation to ISA functions, core functions are those that relate to the determination whether to bar an individual, the removal of an individual from a barred list, and the consideration of representations. These are specified in paragraph 8(1)(a) to (c) of Schedule 8 to the Act.

4.3 Part 5 of the 1997 Act enables individuals to apply to the Secretary of State (which will become the DBS by virtue of an order made under section 88 of the Act) for criminal record certificates. For any function undertaken in connection with Part 5 of the 1997 Act to be a core function, the Act provides that this must be specified in an order made by the Secretary of State. This Order therefore specifies core functions under Part 5 of the 1997 Act.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 As part of the coalition agreement, the government committed to reviewing and reforming the Vetting and Barring Scheme and criminal records regime, scaling them back to common sense levels. This was to ensure that there is a continued service to help safeguard vulnerable groups including children from those people who work or volunteer with them who pose a risk of harm, while operating in a way that reduces the burden on employers and better respects the civil liberties of the individual.

7.2 The Government review of the Vetting and Barring Scheme reported in February 2011, and recommended the creation of a new streamlined organisation to oversee a scaled-back criminal records checking and barring system which would transfer the functions of both the Secretary of State (which are carried out by the Criminal Records Bureau ("CRB")) and ISA. The new organisation is the DBS and will be a Non-Departmental Public Body (NDPB) of the Home Office.

7.3 The DBS will implement a range of reforms to the criminal record checking system, which will see the number of posts requiring checks reduced from 9.3 million to 5 million.

7.4 In creating the DBS, the government wanted to ensure that certain functions were to be undertaken within the DBS and as such are deemed to be "core functions" of the DBS. For the functions currently performed by the ISA this is to be all functions connected with barring an individual, consideration and removal of a bar, in order to ensure the independence of decision making by the DBS. For the functions currently undertaken by the CRB, this Order provides for core functions to be those concerned with access to and management of information held by other public agencies and associated functions, including:

- oversight of the verification of identity of applicants;
- access to other public records such as passport information;
- the receipt and management of police criminal records and other information from Police National Computer and local force records;
- the handling and resolution of disputes; and

- maintaining a list of registered bodies.

Consolidation

7.5 The Home Office does not consider it necessary to consolidate legislation at this time.

8. Consultation outcome

8.1 In the main, the changes effected by this instrument are consequential upon or form part of the changes announced in the Government's Remodelling Review of the Vetting and Barring Scheme, published in February 2011. That review involved consultation with a range of parties.

9. Guidance

9.1 Information on the changes in the Act to which this instrument relate is available on departmental websites and is being communicated proactively to interested parties, including in a series of road shows which were held around the UK in June and July 2012. There has also been a range of communications and guidance issued to staff within the ISA and CRB concerning the transition to DBS.

10. Impact

10.1 The impact on business, charities and voluntary bodies of the changes in the Act to which this instrument relate was set out in the impact assessment relating to Part 5 of the Protection of Freedoms Bill. The changes are concerned with who will provide services as opposed to any procedural change for customers.

10.2 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The impact assessment for Part 5 of the Protection of Freedoms Bill explored the impact on small firms of the changes to which this instrument relate. It found that there would be no disproportionate impact on small firms.

12. Monitoring & review

12.1 The establishment of the DBS will be subject to internal review.

13. Contact

Stewart Baxter at the Home Office Tel: 020 7035 3265 or email: Stewart.Baxter2@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.