

EXECUTIVE NOTE TO
THE DISCLOSURE SCOTLAND (STAFF TRANSFER) ORDER 2007
SSI 2007 No.417

Powers under which Instrument is made

1. Section 86(1) and (2) of the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”), enables the Scottish Ministers by order to make provision for staff employed by Strathclyde Joint Police Board (“SJPB”) who are carrying out functions under Part 5 of the Police Act 1997 (“the 1997 Act”) to transfer to the Scottish Administration. Section 86 was brought into force in the first Commencement Order (S.S.I. 2007/385) on 1 September 2007.

Parliamentary procedure

2. This Scottish Statutory Instrument is a class 5 instrument subject to the negative resolution procedure at the Scottish Parliament.

Summary of policy proposals

3. Under Part 5 of the 1997 Act, the Scottish Ministers may carry out criminal record checks. There are currently three levels of checks: the criminal conviction certificate (basic disclosure); the criminal record certificate (standard disclosure); and the enhanced criminal record certificate (enhanced disclosure). The basic disclosure is available to anyone for any purpose. Standard and enhanced checks are carried out mainly for the purpose of assessing the suitability of a person for certain types of employment or volunteering.
4. The day-to-day business under the 1997 Act is carried out by Disclosure Scotland, which is a Public Private Partnership (PPP) between Scottish Ministers and BT plc. Staff employed by SJPB by virtue of section 9 of the Police (Scotland) Act 1967 carry out Ministers’ functions at present. All staff are civilians. Disclosure Scotland is the last remaining component of the common police services since other functions transferred to the Scottish Police Services Authority (“SPSA”) on 1 April 2007.
5. The 2007 Act (when fully commenced) will provide for new vetting and barring scheme, including new types of disclosure check which will replace most of the enhanced disclosure checks currently carried out under the 1997 Act. The Scottish Ministers intend that both vetting and barring functions are carried out by the same body so that a streamlined, integrated service can be offered to users. Since barring is akin to an administrative justice decision, the 2007 Act does not allow for it to be delegated and an integrated service cannot sit within the SPSA. The Scottish Ministers intend Disclosure Scotland to operate as an executive agency once the vetting and barring scheme is introduced. In anticipation of Disclosure Scotland having agency status and to ensure appropriate governance in the interim, the SJPB staff discharging their functions under the 1997 Act will transfer to the Scottish Administration.

6. The order transfers all one hundred and one employees of SJPB employed by the Board for the purpose of discharging the Scottish Ministers' functions under Part 5 of the Police Act 1997. The proposed transition to executive agency status does not create a distinct legal identity, so transferring the staff to the Scottish Administration is sufficient for this purpose.
7. The power at section 86(2), together with that at section 100(2), is used to identify affected staff by employee reference allocated to them by SJPB. The Subordinate Legislation Committee, when considering the Protection of Vulnerable Groups (Scotland) Bill in its evidence session of 27 February 2007, expressed a particular concern that the order should not identify staff by name and this has been avoided.
8. The order will come into force on 1 October, being the transfer day for the purposes of section 86(3)(b). Subsections 86(4) to (6) make provision for staff who transfer to retain their existing terms and conditions of employment as in place between the staff and the SJPB. Offers of contracts on Scottish Executive terms and conditions will be made after transfer day.

Consultation

9. The order has not been the subject of public consultation since the principle of transfer was established during the parliamentary passage of the Bill and the implementation only affects the staff themselves. However, there has been extensive consultation with staff at Disclosure Scotland over the arrangements for transfer and much work has been done to prepare offers of contracts on Scottish Executive terms and conditions. Staff are protected through the application of Cabinet Office guidance - "Staff Transfers in the Public Sector Statement of Practice" (which mirrors the principles of TUPE) – and retain their existing terms and conditions until they choose to accept Scottish Executive terms and conditions.

Financial effects

10. The order transfers one hundred and one individuals from the employment of the SJPB to the Scottish Administration. The immediate effect of this is that monies which were paid to SJPB by the Scottish Ministers to pay for the salaries of these staff will now be paid directly from the Scottish Administration to the staff themselves as they will now feature on the Scottish Executive payroll. Therefore, there is no immediate change to the overall cost to the Scottish Administration (or SJPB).
11. The transfer of pension liabilities on 1 October 2007 and the offers of contract on Scottish Executive terms and conditions may lead to some modest immediate or ongoing changes to the total cost of these staff. It is not possible to give precise numbers until after the transfer day in respect of pension liabilities and the date on which contract negotiations are concluded in respect of immediate and ongoing salary costs. These costs are unlikely to be significantly different over time, with any additional costs being offset by the improved efficiency afforded by the provisions of the 2007 Act.

Regulatory Impact Assessment

12. Since the staff transfer order has no real financial effect and is only of significance to members of staff of Disclosure Scotland, no Regulatory Impact Assessment has been prepared for this instrument.

Scottish Executive
Children, Young People and Social Care Directorate