
STATUTORY INSTRUMENTS

1992 No. 1315

MINISTERS OF THE CROWN

The Transfer of Functions (Financial Services) Order 1992

<i>Made</i>	- - - -	<i>4th June 1992</i>
<i>Laid before Parliament</i>		<i>5th June 1992</i>
<i>Coming into force</i>	- -	<i>7th June 1992</i>

At the Court at Buckingham Palace, the 4th day of June 1992

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in pursuance of sections 1 and 2 of the Ministers of the Crown Act 1975(1) and section 2(2) of the European Communities Act 1972(2) is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation and commencement

- 1.—(1) This Order may be cited as the Transfer of Functions (Financial Services) Order 1992.
(2) This Order shall come into force on 7th June 1992.

Transfer of functions from the Secretary of State to the Treasury

2.—(1) Subject to the following provisions of this Order, the functions of the Secretary of State under—

- (a) the Company Securities (Insider Dealing) Act 1985(3),
- (b) the Financial Services Act 1986(4),
- (c) Parts VII (financial markets and insolvency) and IX (transfer of securities) of the Companies Act 1989(5), and
- (d) the Uncertificated Securities Regulations 1992(6),

(1) 1975 c. 26.
(2) 1972 c. 68.
(3) 1985 c. 8.
(4) 1986 c. 60.
(5) 1989 c. 40.
(6) S.I.1992/225.

are hereby transferred to the Treasury.

(2) The functions of the Secretary of State under the following provisions of the Companies Act 1989 are also hereby transferred to the Treasury—

- (a) section 203(3), so far as it concerns the making of an order specifying when the transitional period referred to in that section is to end;
- (b) section 206(2) (power to make a delegation order on bringing into force any provision of Part VIII of the Act which amends the Financial Services Act 1986); and
- (c) section 215(2), (3) and (4) so far as it relates to the bringing into force of—
 - (i) any provision of Part VII; or
 - (ii) any provision of Part VIII of the Act which amends the Financial Services Act 1986.

(3) Subject to the following provisions of this Order, in so far as the Secretary of State retains any functions under Part III of the Companies Act 1985(7) and the Prevention of Fraud (Investments) Act 1958(8) (which enactments have been repealed with savings) those functions are also hereby transferred to the Treasury.

(4) In relation to the enactments referred to in paragraph (3) above, references in this Order to the Secretary of State or to the Secretary of State for Trade and Industry include references to the Board of Trade.

Functions retained by the Secretary of State

3. The functions of the Secretary of State mentioned in Schedule 1 to this Order are not transferred to the Treasury.

Functions to be exercisable jointly by the Secretary of State and the Treasury

4. The functions of the Secretary of State mentioned in Schedule 2 to this Order shall be exercisable by the Secretary of State jointly with the Treasury.

Functions to be exercisable by the Secretary of State and the Treasury concurrently

5. The functions of the Secretary of State mentioned in Schedule 3 to this Order shall be exercisable by the Secretary of State and the Treasury concurrently.

Functions transferred to designated agency

6.—(1) Nothing in this Order affects the exercise (including any exercise concurrently with the Secretary of State) of any function which, before the coming into force of this Order, has been transferred from the Secretary of State to a designated agency by an order (in this Article referred to as a “delegation order”) under section 114 of the Financial Services Act 1986 or section 168(2) or section 206(2) of the Companies Act 1989.

(2) Where, before the coming into force of this Order, any function has been so transferred, the powers under section 115 of the Financial Services Act 1986 or section 168(3) of the Companies Act 1989 to make an order resuming that function shall be construed as powers of the Treasury to make an order assuming that function; and references in those sections to the resumption of functions shall be construed accordingly.

(3) The transfer to the Treasury by virtue of this Order of the power to make a delegation order does not affect the operation of any enactment under which such an order may be subject to a

(7) 1985 c. 6.
(8) 1958 c. 45.

reservation that the function which is transferred is to be exercisable concurrently by the Secretary of State.

Barlow Clowes ex gratia payments scheme

7.—(1) The functions of the Secretary of State for Trade and Industry with respect to the Barlow Clowes ex gratia payments scheme are hereby transferred to the Treasury.

(2) In this Order “the Barlow Clowes ex gratia payments scheme” means the scheme announced in a statement made in the House of Commons on 19th December 1989 by the Secretary of State for Trade and Industry.

Transfers of property, rights and liabilities

8. There are hereby transferred—

- (a) to the Solicitor for the affairs of Her Majesty’s Treasury any property, rights and liabilities to which, immediately before the coming into force of this Order, the Secretary of State for Trade and Industry is entitled or subject in connection with the Barlow Clowes ex gratia payments scheme; and
- (b) to the Treasury all other property, rights and liabilities to which, immediately before the coming into force of this Order, the Secretary of State for Trade and Industry is entitled or subject in connection with any functions transferred by this Order.

Designation for purposes of European Communities Act 1972

9. For the purposes of section 2(2) of the European Communities Act 1972(9), the Treasury is hereby designated (in place of the Secretary of State) in relation to—

- (a) matters relating to listing of securities on a stock exchange and information concerning listed securities,
- (b) measures relating to open-ended collective investment schemes which have as their purpose investment in transferable securities, with the aim of spreading investment risk of funds raised from the public, and
- (c) measures relating to prospectuses on offers of transferable securities to the public,

and in relation to anything supplemental or incidental to those matters or measures.

Supplementary

10.—(1) The enactments mentioned in Schedule 4 to this Order shall be amended in accordance with that Schedule.

(2) Subject to paragraph (1) above, in any enactment or instrument passed or made before the coming into force of this Order, any reference to the Secretary of State shall be construed, so far as necessary in consequence of any transfers effected by this Order as if it were a reference to the Treasury, to the Secretary of State and the Treasury acting jointly, to the Secretary of State or the Treasury or, as the case may be, to the Solicitor for the affairs of Her Majesty’s Treasury.

(3) In this Order “instrument” includes (without prejudice to the generality of that expression) regulations, rules, orders, contracts, memoranda and articles of association and other documents.

(4) Any legal proceedings to which the Secretary of State for Trade and Industry or his Department is a party at the coming into force of this Order may—

(9) 1972 c. 68.

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- (a) if they relate to any property, rights and liabilities transferred by Article 8(a) above, be continued by or against the Treasury and the Solicitor for the affairs of Her Majesty's Treasury;
- (b) if they relate to any other transfer effected by this Order, be continued by or against the Treasury.

(5) This Order shall not affect the validity of anything done (or having effect as if done) by or in relation to the Secretary of State for Trade and Industry before the coming into force of this Order, and (subject to paragraph (4) above) anything which at that date is in process of being done by or in relation to him may, if it relates to any function or any property, rights and liabilities transferred by this Order, be continued by or in relation to the Treasury.

(6) Anything done (or having effect as if done) by the Secretary of State for Trade and Industry for the purpose of or in connection with anything transferred by this Order which immediately before the coming into force of this Order is in force shall have effect, so far as required for continuing its effect on and after that date, as if done by the Treasury.

G. I. de Deney
Clerk of the Privy Council

SCHEDULE 1

Article 3

FUNCTIONS RETAINED BY THE SECRETARY OF STATE

The Prevention of Fraud (Investments) Act 1958

1. The function under section 14(8) (consent to prosecutions).

The Companies Act 1985

2. The functions under sections 65(3)(b) and 77(5)(a) (prescribing manner in which translation to be certified as correct translation).

The Company Securities (Insider Dealing) Act 1985

3. The function under section 8 (punishment of contraventions).

The Financial Services Act 1986

4. The functions under section 6 (injunctions and restitution orders).
5. The function of taking disciplinary action under section 47A (in respect of failure to comply with statements of principle) in so far as the action consists of a function specified in this Schedule.
6. The function of giving a direction under section 59 (employment of prohibited persons) and associated functions, where the direction would have the effect of prohibiting the employment of an individual in connection with investment business carried on in connection with or for the purpose of insurance business at Lloyd's, being employment by any person who is an exempted person as respects such business.
7. The functions under section 60 (public statements as to person's misconduct) and 61(1) (injunctions) in any case in which those functions are exercisable by virtue of a contravention of a direction of the kind described in paragraph 6 above.
8. The functions under section 61(1)—
 - (a) with respect to a person who is an exempted person by virtue of section 42 in any case in which the contravention or proposed contravention arises or is likely to arise in the course of investment business as respects which the person is exempt; or
 - (b) exercisable by virtue of section 61(1)(a)(ii) or (iii) (injunctions relating to contraventions of sections 47, 56, 57 or 59 or of requirements imposed under section 58(3)).
9. The functions under section 61(3) in relation to a contravention of a provision referred to in section 61(1)(a)(ii) or (iii) by a person who neither is, nor has ever been, an authorised person or appointed representative.
10. The functions under section 61 in relation to a contravention or proposed contravention of section 130.
11. The functions under sections 72 and 73 (winding up orders).
12. The functions under section 94 (investigations).
13. The functions under sections 97 to 101 (references to Tribunal) in so far as they arise out of a notice or a copy of a notice which, by virtue of any other paragraph of this Schedule, falls, after the coming into force of this Order, to be served by the Secretary of State.
14. The functions under section 105 (investigation powers).

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15. The functions under section 106 (exercise of investigative powers by officer etc.).
16. The functions under section 128B (relevance of information given and action taken by other regulatory authorities) and subsections (1), (4) and (5) of section 128C (enforcement in support of overseas regulatory authority) in so far as they relate to any other function specified in this Schedule.
17. The function under subsection (3)(c) of section 128C.
18. The functions under subsections (3) and (4) of section 130 (restriction on promotion of contracts of insurance).
19. The functions under section 138 (insurance brokers).
20. The functions under subsection (3) of section 148 (exemptions from disclosure) but without prejudice to the existing concurrent power of the Treasury under that subsection.
21. The functions under subsection (3) of section 165 (exemptions from disclosure) but without prejudice to the existing concurrent power of the Treasury under that subsection).
22. The functions under sections 177 and 178 (investigations into insider dealing and penalties for failure to co-operate).
23. In so far as they relate to insurance business which is not also investment business, the functions under—
 - (a) section 183 (reciprocal facilities for financial business),
 - (b) section 184 (investment and insurance business), or
 - (c) section 186 (variation and revocation of notices).
24. The functions under section 199 (powers of entry).
25. The functions under section 201 (prosecutions).
26. The following functions under Schedule 10 (regulated insurance companies)—
 - (a) the function under sub-paragraph (2) of paragraph 3 (certification as to requirement in sub-paragraph (1));
 - (b) the function under paragraph 4(6) of determining (before a delegation order is made transferring functions of making rules and regulations in relation to a regulated insurance company) whether the rules and regulations will take proper account of Part II of the Insurance Companies Act 1982 or, as the case may be, of the provisions for corresponding purposes in the law of the member State in which the company is established;
 - (c) functions under paragraph 6 (procedure on exercise of powers of intervention);
 - (d) functions under paragraph 10 (consultation with designated agency).

The Uncertificated Securities Regulations 1992

27. The functions under regulations 26(2) (inspection of registers) and 110 (investigations).

SCHEDULE 2

Article 4

FUNCTIONS EXERCISABLE JOINTLY BY THE SECRETARY OF STATE AND THE TREASURY

The Financial Services Act 1986

1. The function of revoking a recognition order in respect of a recognised self-regulating organisation whose members include or may include regulated insurance companies on the ground that—

- (a) the requirement specified in paragraph 3(1) of Schedule 10 is not satisfied; or
- (b) the organisation has contravened sub-paragraph (3) or (4) of paragraph 6 of that Schedule as applied by sub-paragraph (5) of paragraph 6.

2. The function of giving a direction under subsection (1) of section 33, where the function—

- (a) falls within paragraph (a) of that subsection, and
- (b) is made in respect of a regulated insurance company.

3. The function of taking disciplinary action under section 47A (in respect of failure to comply with statements of principle) in so far as the action consists of a function specified in this Schedule.

4. In so far as they relate to investment business which is also insurance business, the functions under—

- (a) section 183 (reciprocal facilities for financial business),
- (b) section 184 (investment and insurance business),
- (c) sections 28, 29, 33, 34, 60, 61 and 97 to 101 in relation to a contravention of a partial restriction notice under section 184(4), or
- (d) section 186 (variation and revocation of notices).

5. The functions under section 128B (relevance of information given and action taken by other regulatory authorities) and subsections (1), (4) and (5) of section 128C (enforcement in support of overseas regulatory authority) in so far as they relate to any other function specified in this Schedule.

6. In Schedule 10 (regulated insurance companies) the functions under paragraph 8(2) to (5) in so far as they relate to a direction of a description mentioned in paragraph 2 above.

The Companies Act 1989

7.—(1) Subject to sub-paragraphs (2) and (3) below, functions under the following provisions of Part VII, namely, sections 158(4) and (5), 160(5), 170 to 174, 176, 181, 185 and 186.

(2) The reference in sub-paragraph (1) above to the functions under section 170 does not include a reference to the function under subsection (1) of that section of approving an overseas investment exchange.

(3) The reference in sub-paragraph (1) above to functions under section 186 is a reference only to so much of the functions under that section as relates to any function under the other enactments specified in sub-paragraph (1) above.

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SCHEDULE 3

Article 5.

FUNCTIONS EXERCISABLE CONCURRENTLY BY THE SECRETARY OF STATE AND THE TREASURY

1. The functions under section 180 and 181 of the Financial Services Act 1986 (restrictions on disclosure).
2. In Schedule 9 to that Act (designated agency status etc.), the function under paragraph 13 (communication of information).
3. In section 82 of the Companies Act 1989 (request for assistance by overseas regulatory authority), the function under subsection (3) of being satisfied as to whether assistance requested by an overseas regulatory authority is for the purpose of its regulatory functions.

SCHEDULE 4

Article 10(1).

MODIFICATIONS OF ENACTMENTS

The Companies Act 1985

1. In section 449(1)(d) of the Companies Act 1985 for the words “Secretary of State to exercise any of his functions” there shall be substituted “Secretary of State or the Treasury to exercise any of their functions”.
2. Section 744 of that Act shall have effect, in relation to any provision of that Act conferring a function transferred to the Treasury by this Order, as if “prescribed” meant prescribed by statutory instrument made by the Treasury.

The Financial Services Act 1986

3. In sections 178(10), 199(7) and 201(4) of the Financial Services Act 1986 (which extend the functions to which a delegation order may apply) for the words “Secretary of State”, in the last place where they occur in each of those provisions, there shall be substituted “Treasury”.
4. In section 179(3) of that Act, before paragraph (a) there shall be inserted the following paragraph—

“(aa) the Treasury.”
5. In section 180(1) of that Act, after paragraph (b) there shall be inserted the following paragraph—

“(bb) for the purpose of enabling or assisting the Treasury to exercise any of their powers under this Act or under Part III or VII of the Companies Act 1989.”
6. In section 186 of that Act at the end of subsection (7) there shall be inserted “which varies or revokes a notice relating to the carrying on of a deposit-taking business as mentioned in section 185 above.”
7. In section 205 of that Act, after the words “Secretary of State” there shall be inserted “or the Treasury”.
8. In section 205A(1) of that Act, after the words “Secretary of State” there shall be inserted “or the Treasury”.

9. In section 207(1) of that Act, at the end of the definition of “prescribed”, there shall be inserted “or the Treasury”.

10. In Schedule 7 to that Act, in paragraph 1(2), for the words “Secretary of State” there shall be substituted “Treasury”.

The Banking Act 1987

11.—(1) In section 84 of the Banking Act 1987, in subsection (1), in the Table, after the entry relating to the Secretary of State there shall be inserted—

“The Treasury Functions under the Financial Services Act 1986 or under Part III or VII of the Companies Act 1989.”

(2) In subsection (6)(a)(ii) of that section after the words “Secretary of State” there shall be inserted “or the Treasury”.

The Companies Act 1989

12. In section 87(4) of the Companies Act 1989, in the Table, after the entry relating to the Secretary of State there shall be inserted—

“The Treasury Functions under the Financial Services Act 1986 or under this Part or Part VII of this Act.”

13. In each of the following provisions of Part VII of that Act (which provide for the Secretary of State to consult the Treasury and the Bank of England)—

- (a) section 171(6),
- (b) section 172(3),
- (c) section 173(6),
- (d) section 174(5), and
- (e) section 176(6),

for the words “shall consult the Treasury and” there shall be substituted “and the Treasury shall consult”.

The Friendly Societies Act 1992

14. In section 64 of the Friendly Societies Act 1992 after subsection (3) there shall be inserted the following subsection—

“(3A) Nothing in section 63 above prohibits the disclosure of information to the Treasury in circumstances where it is desirable or expedient that the information should be disclosed for the purpose of facilitating the discharge by the Treasury of any functions of theirs under the Financial Services Act 1986 or under Part III or Part VII of the Companies Act 1989 nor does that section prohibit further disclosure of the information by the Treasury with the consent of the Commission.”

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order transfers a number of functions currently exercisable by the Secretary of State to the Treasury with effect from 7th June, so as to be exercisable by the Treasury alone, by the Secretary of State and the Treasury acting jointly or by the Secretary of State and the Treasury acting concurrently. It also makes a number of ancillary and supplementary provisions.

The main functions transferred are functions under the Company Securities (Insider Dealing) Act 1985, the Financial Services Act 1986, Parts VII (financial markets and insolvency) and IX (transfer of securities) of the Companies Act 1989, the Uncertificated Securities Regulations 1992 and the Barlow Clowes *ex gratia* payments scheme. The statutory powers are transferred by virtue of Article 2, which is subject to Articles 3 to 5. Article 3 excludes functions specified in Schedule 1 from the transfer so that they remain exercisable by the Secretary of State. The functions that thus remain with the Secretary of State are in the main functions connected with the prudential supervision of insurance undertakings and enforcement (including investigations and prosecutions). Article 4 provides that functions specified in Schedule 2 are to be exercisable by the Secretary of State and the Treasury acting jointly. These joint functions consist, essentially, of certain functions, together with functions of making secondary legislation under Part VII of the Companies Act 1989 which affects the operation of insolvency law. Article 5 provides that certain minor functions set out in Schedule 3 to the Order are to be exercisable concurrently. The functions under the Barlow Clowes *ex gratia* payments scheme are transferred by Article 7.

To a considerable extent the functions of the Secretary of State under the Financial Services Act 1986 and to a lesser degree under Part VII of the Companies Act 1989 have been transferred⁽¹⁰⁾, under powers contained in those Acts, in whole or in part to a “designated agency” (at the date of this Order, The Securities and Investments Board) so as to be exercisable by that agency alone or concurrently with the Secretary of State. This Order operates on the functions of the Secretary of State so far as they remain vested in him following those transfers. Article 6 both preserves the effect of those transfers and ensures that the Treasury can assume the powers from the designated agency in circumstances where the Secretary of State would have been entitled to resume them.

Article 9 designates the Treasury as the appropriate authority to make Regulations implementing certain EC Directives in the area of financial services, in place of the Secretary of State.

Articles 8 and 10 (together with Schedule 4) make ancillary and supplemental provision, in particular provision in relation to property rights and liabilities held by the Secretary of State in connection with the functions transferred by the Order and provision enabling enactments and instruments to be interpreted correctly in consequence of the transfers effected by the Order.

(10) The following Orders have transferred functions of the Secretary of State to the designated agency: (in the case of The Financial Services Act 1986) The Financial Services Act 1986 (Delegation) Order 1987 S.I. 1987/942, The Financial Services Act 1986 (Delegation) (Transitional Provisions) Order 1987/2035, The Financial Services Act 1986 (Delegation) (No. 2) Order 1988 S.I. 1988/738, the Companies Act 1989 (Commencement No. 3 Transitional Provisions and Transfer of Functions under the Financial Services Act 1986) Order 1990 S.I. 1990/354, The Financial Services Act 1986 (Delegation) Order 1991 S.I. 1991/200 and The Financial Services Act 1986 (Delegation) (No. 2) Order 1991 S.I. 1991/1256; and (in the case of Part VII of the Companies Act 1989) The Companies Act 1989 (Commencement No. 10 and Saving Provisions) Order 1991 S.I. 1991/871.