
STATUTORY INSTRUMENTS

2005 No. 3429

MINISTERS OF THE CROWN

**The Transfer of Functions (Lord Chancellor
and Secretary of State) Order 2005**

Made - - - - *14th December 2005*
22nd December
Laid before Parliament *2005*
Coming into force - - *12th January 2006*

At the Court at Buckingham Palace, the 14th day of December 2005

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in pursuance of section 1 of the Ministers of the Crown Act 1975(1), 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 (Lord Chancellor and Secretary of State) Order 2005.

(2) This Order comes into force on 12th January 2006.

Interpretation

2.—(1) In this Order “instrument”, without prejudice to the generality of that expression, includes in particular Royal Charters, Royal Warrants, Orders in Council, Letters Patent, judgments, decrees, orders, rules, regulations, schemes, bye-laws, awards, contracts and other agreements, memoranda and articles of association, certificates, deeds and other documents.

(2) References in this Order to functions transferred by a provision of this Order include references to any function of a Minister that that provision directs to be exercisable concurrently with another Minister.

(3) References in this Order to the functions of a Minister under an enactment include references to the functions of that Minister under an instrument having effect under that enactment.

Transfer of functions to the Lord Chancellor

3.—(1) The functions of the Secretary of State under the following enactments are transferred to the Lord Chancellor—

- (a) the Legal Aid Act 1988(2);
- (b) in the Courts and Legal Services Act 1990(3), sections 58, 58A and 58B;
- (c) in the Access to Justice Act 1999(4), Parts 1 and 2, and Part 7 so far as relating to any provision of those Parts.

(2) The functions of the Secretary of State under section 2(3)(a) of the Human Rights Act 1998(5), his functions under subsection (9)(a) of section 7 of that Act, and his functions under subsection (11) of that section by virtue of subsection (9)(a), are to be exercisable concurrently with the Lord Chancellor.

Transfer of property, rights and liabilities to the Lord Chancellor

4. All property, rights and liabilities to which the Secretary of State for Constitutional Affairs is entitled or subject at the coming into force of this Order in connection with the functions transferred by article 3 are transferred to the Lord Chancellor.

Transfers to the Lord Chancellor: supplementary

5.—(1) This Order does not affect the validity of anything done (or having effect as if done) by or in relation to the Secretary of State before the coming into force of this Order.

(2) Anything (including legal proceedings) which, at the coming into force of this Order, is in the process of being done by or in relation to the Secretary of State may, so far as it relates to anything transferred by article 3 or 4, be continued by or in relation to the Lord Chancellor.

(3) Anything done (or having effect as if done) by or in relation to the Secretary of State in connection with anything transferred by article 3 or 4 has effect, so far as necessary for continuing its effect after the coming into force of this Order, as if done by or in relation to the Lord Chancellor.

(4) Documents or forms printed for use in connection with the functions transferred by article 3 may be used in connection with those functions even though they contain, or are to be read as containing, references to the Secretary of State, his department or an officer of his; and for the purposes of the use of any such documents or forms after the coming into force of this Order, those references are to be read as references to the Lord Chancellor, his department or an officer of his (as appropriate).

(5) Any enactment or instrument passed or made before the coming into force of this Order has effect—

- (a) so far as is necessary for the purposes of or in consequence of article 3, as if references to (and references which are to be read as references to) the Secretary of State, his department or an officer of his were or included references to the Lord Chancellor, his department or an officer of his (as appropriate), and
- (b) so far as is necessary for the purposes of or in consequence of article 4, as if references to (and references which are to be read as references to) the Secretary of State for Constitutional Affairs, his department or an officer of his were references to the Lord Chancellor, his department or an officer of his (as appropriate).

(2) 1988 c. 34.
(3) 1990 c. 41.
(4) 1999 c. 22.
(5) 1998 c. 42.

Transfer of function to the Secretary of State for the Home Department

6. The function of the Lord Chancellor of appointing a Conservator under section 12 of the Wimbledon and Putney Commons Act 1871(6) is transferred to the Secretary of State for the Home Department.

Transfer to the Secretary of State for the Home Department: supplementary

7.—(1) This Order does not affect the validity of anything done (or having effect as if done) by or in relation to the Lord Chancellor before the coming into force of this Order.

(2) Anything (including legal proceedings) which, at the coming into force of this Order, is in the process of being done by or in relation to the Lord Chancellor may, so far as it relates to the function transferred by article 6, be continued by or in relation to the Secretary of State for the Home Department.

(3) Anything done (or having effect as if done) by or in relation to the Lord Chancellor in connection with the function transferred by article 6 has effect, so far as necessary for continuing its effect after the coming into force of this Order, as if done by or in relation to the Secretary of State for the Home Department.

(4) Any enactment or instrument passed or made before the coming into force of this Order has effect so far as is necessary for the purposes of or in consequence of article 6, as if references to (and references which are to be read as references to) the Lord Chancellor, his department or an officer of his were references to the Secretary of State for the Home Department, his department or an officer of his (as appropriate).

Consequential amendments

8. The Schedule (consequential amendments) has effect.

A. K. Galloway
Clerk of the Privy Council

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SCHEDULE

Article 8

Consequential amendments

Wimbledon and Putney Commons Act 1871 (c. cciv)

1. In section 12 of the Wimbledon and Putney Commons Act 1871 (appointment of Conservators), for “the Lord Chancellor” substitute “Secretary of State for the Home Department”.

Courts and Legal Services Act 1990 (c. 41)

2. In sections 58 and 58A of the Courts and Legal Services Act 1990 (conditional fee agreements), for “Secretary of State” in each place substitute “Lord Chancellor”.

Human Rights Act 1998 (c. 42)

3. In sections 2(3)(a), 7(9)(a), and 20(2) and (4) of the Human Rights Act 1998 (rules), before “the Secretary of State” insert “the Lord Chancellor or”.

Access to Justice Act 1999 (c. 22)

4. In Parts 1 and 2 of the Access to Justice Act 1999 (funding of legal services), for “Secretary of State” substitute “Lord Chancellor” (and for “Secretary of State's” substitute “Lord Chancellor's”) in each place—

- (a) in sections 1 to 6, 8, 9, 12 to 14, 16, 18 to 20, 23, 25 and 26,
- (b) in section 28, in the inserted section 58B of the Courts and Legal Services Act 1990,
- (c) in section 30, and
- (d) in Schedules 1 and 3.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order in Council, made under the Ministers of the Crown Act 1975, transfers back to the Lord Chancellor functions under the Legal Aid Act 1988, functions relating to the funding of legal services under the Courts and Legal Services Act 1990 and Parts 1 and 2 of the Access to Justice Act 1999, and functions relating to rules under the Human Rights Act 1998. These were transferred from the Lord Chancellor to the Secretary of State by the Secretary of State for Constitutional Affairs Order 2003 (S.I.2003/1887).

The Order also transfers back to the Secretary of State for the Home Department the function of appointing a Conservator under the Wimbledon and Putney Commons Act 1871 which was transferred from that Secretary of State to the Lord Chancellor by the Transfer of Functions (Miscellaneous) Order 2001 (S.I. 2001/3500).

Nothing in this Order alters the functions of the National Assembly for Wales, the Scottish Ministers or the devolved authorities in Northern Ireland.

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