

1988 No. 1843

MINISTERS OF THE CROWN

**The Transfer of Functions
(Health and Social Security) Order 1988**

Made - - - - - *26th October 1988*
Laid before Parliament *3rd November 1988*
Coming into force - *28th November 1988*

At the Court at Buckingham Palace, the 26th day of October 1988

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in pursuance of section 2 of the Ministers of the Crown Act 1975(a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:-

Citation, interpretation and commencement

1.—(1) This Order may be cited as the Transfer of Functions (Health and Social Security) Order 1988.

(2) In this Order—

“the new Departments” means the Department of Health and the Department of Social Security, and any reference to “the new Secretaries of State” is a reference to the Secretaries of State for those Departments;

“health and personal social services functions” means such of the functions of the Secretary of State as, immediately before 26th July 1988 (the date on which the new Secretaries of State were appointed) were entrusted to the Secretary of State for Social Services, other than his social security functions;

“social security functions” means such of the following functions of the Secretary of State, that is to say—

- (a) his functions under the enactments and instrument specified in Schedule 1 to this Order, and
- (b) the functions transferred to him from the Minister of Social Security by the Secretary of State for Social Services Order 1968(b) or subsequently conferred upon him in the exercise of any function so transferred, as, immediately before 26th July 1988, were entrusted to the Secretary of State for Social Services.

(3) This Order shall come into force on 28th November 1988.

(a) 1975 c.26.
(b) S.I. 1968/1699.

Transfer of functions and property relating to health etc.

2.—(1) The functions of the Secretary of State for Social Services under the enactments specified in Part I of Schedule 2 to this Order are hereby transferred to the Secretary of State for Health.

(2) All functions of the Secretary of State for Social Services which—

(a) are exercisable under local Acts or instruments passed or made before the making of this Order, and

(b) are similar to any health and personal social services functions or any functions transferred by paragraph (1) above,

are hereby transferred to the Secretary of State for Health.

(3) There are hereby transferred to the Secretary of State for Health all property, rights and liabilities to which the Secretary of State for Social Services is entitled or subject, at the coming into force of this Order, in connection with any health and personal social services functions or any functions transferred by this Article.

(4) Subject to Articles 5(3) and 6(4) below, any instrument, contract or other document made before the coming into force of this Order shall have effect, so far as may be necessary in connection with the entrusting of the health and personal social services functions to the Secretary of State for Health, or for the purposes of or in consequence of the transfer of functions, property, rights or liabilities effected by this Article, as if any reference to the Secretary of State for Social Services or the Department of Health and Social Security or an officer of his were a reference to the Secretary of State for Health or his Department or an officer of his.

Transfer of functions and property relating to social security

3.—(1) The functions of the Secretary of State for Social Services under the enactments specified in Part II of Schedule 2 to this Order are hereby transferred to the Secretary of State for Social Security.

(2) All functions of the Secretary of State for Social Services which—

(a) are exercisable under local Acts or instruments passed or made before the making of this Order, and

(b) are similar to any social security functions or any functions transferred by paragraph (1) above,

are hereby transferred to the Secretary of State for Social Security.

(3) There are hereby transferred to the Secretary of State for Social Security all property, rights and liabilities to which the Secretary of State for Social Services is entitled or subject, at the coming into force of this Order, in connection with any social security functions or any functions transferred by this Article.

(4) Subject to Articles 5(3) and 6(4) below, any instrument, contract or other document made before the coming into force of this Order shall have effect, so far as may be necessary in connection with the entrusting of the social security functions to the Secretary of State for Social Security or for the purposes of or in consequence of the transfer of functions, property, rights or liabilities effected by this Article, as if any reference to the Secretary of State for Social Services or the Department of Health and Social Security or an officer of his were a reference to the Secretary of State for Social Security or his Department or an officer of his.

Style, seal and acts of Secretary of State

4.—(1) The person who, at the coming into force of this Order, is the Secretary of State for either of the new Departments and his successors shall be a corporation sole (with a corporate seal) by the name of the Secretary of State for Health or, as the case may be, the Secretary of State for Social Security.

(2) The corporate seal of the Secretary of State for either of the new Departments shall be authenticated by the signature of a Secretary of State, or of a Secretary to that Department, or of a person authorised by a Secretary of State to act in that behalf.

(3) The corporate seal of the Secretary of State for either of the new Departments shall

be officially and judicially noticed, and every document purporting to be an instrument made or issued by the Secretary of State for that Department, and to be sealed with that seal authenticated in the manner provided by paragraph (2) above, or to be signed or executed by a Secretary to that Department, or a person authorised as above, shall be received in evidence and be deemed to be so made or issued without further proof, unless the contrary is shown.

(4) A certificate signed by the Secretary of State for either of the new Departments that any instrument purporting to be made or issued by him was so made or issued shall be conclusive evidence of that fact.

Amendment, adaptation and repeal of enactments and instruments

5.—(1) The Documentary Evidence Act 1868(a) shall apply in relation to each of the new Secretaries of State—

(a) as if references to orders and regulations included references to any document, and

(b) as if the officers mentioned in column 2 of the Schedule included any officer authorised to act on behalf of the Secretary of State.

(2) In Schedule 2 to the Parliamentary Commissioner Act 1967(b)—

(a) the words “Department of Health and Social Security” shall be omitted; and

(b) the entries “Department of Health” and “Department of Social Security” shall be inserted at the appropriate places.

(3) Except in regulation 2 of the Health Services (Notification) Regulations 1980(c), where the reference to an office of the Department of Health and Social Security shall be construed as a reference to an office of the Department of Health, any reference in any statutory instrument to such an office shall be construed as a reference to an office of the Department of Social Security.

(4) Schedule 3 to this Order, which contains consequential amendments, shall have effect.

Supplemental

6.—(1) This Order shall not affect the validity of anything done by or in relation to the Secretary of State for Social Services before the coming into force of this Order, and anything (including legal proceedings) which is then in the process of being done by or in relation to him may—

(a) if it relates to health and personal social services functions or to functions, property, rights or liabilities transferred by Article 2 above, be continued by or in relation to the Secretary of State for Health, or

(b) if it relates to social security functions or to functions, property, rights or liabilities transferred by Article 3 above, be continued by or in relation to the Secretary of State for Social Security.

(2) Any authority, appointment, determination, approval, consent or direction given or made or other thing whatsoever done, or having effect as if given, made or done, by the Secretary of State for Social Services shall, if in force at the coming into force of this Order, continue in force and have effect—

(a) if it relates to health and personal social services functions or to functions, property, rights or liabilities transferred by Article 2 above, as if given, made or done by the Secretary of State for Health, or

(b) if it relates to social security functions or to functions, property, rights or liabilities transferred by Article 3 above, as if given, made or done by the Secretary of State for Social Security.

(3) Documents or forms printed or duplicated for use in connection with any health

(a) 1868 c.37.

(b) 1967 c.13; Schedule 2 was substituted by the Parliamentary and Health Service Commissioners Act 1987 (c.39), Schedule 1.

(c) S.I. 1980/1201.

and personal social services functions or any social security functions or any functions transferred by this Order may be so used notwithstanding that they contain references to the Secretary of State for Social Services, and those references shall be construed—

- (a) in relation to any health and personal social services functions or any functions transferred by Article 2 above, as references to the Secretary of State for Health, or
- (b) in relation to any social security functions or any functions transferred by Article 3 above, as references to the Secretary of State for Social Security, and similarly with references to the Department of Health and Social Security or an officer of the Secretary of State for Social Services.

(4) Any power of appointing trustees conferred on the Secretary of State for Social Services by a trust instrument shall be exercisable by either of the new Secretaries of State, and the trust instrument shall be construed accordingly.

G. I. de Deney
Clerk of the Privy Council

SCHEDULE 1

Article 1(2)

ENACTMENTS CONFERRING SOCIAL SECURITY FUNCTIONS

THE PRINCIPAL ENACTMENTS

The Social Security Act 1973(a).
The Social Security Acts 1975 to 1988.
The Child Benefit Act 1975(b).

WAR PENSIONS

The Chronically Sick and Disabled Persons Act 1970(c), section 9.
The Reserve Forces Act 1980(d), sections 140 and 151.
The Naval, Military and Air Forces Etc. (Disablement and Death) Services Pensions Order 1983(e).
The Disabled Persons (Services, Consultation and Representation) Act 1986(f), section 10.

MISCELLANEOUS

The Family Income Supplements Act 1970(g).
The Legal Aid Act 1974(h).
The National Insurance Act 1974(i).
The Industrial Injuries and Diseases (Old Cases) Act 1975(j).
The Social Security (Consequential Provisions) Act 1975(k).
The Supplementary Benefits Act 1976(l).
The Employment Protection (Consolidation) Act 1978(m), section 132.

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- (a) 1973 c.38.
 - (b) 1975 c.61.
 - (c) 1970 c.44.
 - (d) 1980 c.9.
 - (e) S.I. 1983/883.
 - (f) 1986 c.33.
 - (g) 1970 c.55.
 - (h) 1974 c.4.
 - (i) 1974 c.14.
 - (j) 1975 c.16.
 - (k) 1975 c.18.
 - (l) 1976 c.71.
 - (m) 1978 c.44; section 132 was amended by paragraph 30 of Schedule 3 to the Social Security Act 1979 (c.18), paragraph 13 of Schedule 4 to the Social Security Act 1980 (c.30) and paragraph 29 of Schedule 4 to the Social Security and Housing Benefits Act 1982 (c.24).

The Vaccine Damage Payments Act 1979(a).
The Pneumoconiosis etc. (Workers' Compensation) Act 1979(b).
The Social Security and Housing Benefits Act 1982(c), Part II.
The Forfeiture Act 1982(d)
The Abolition of Domestic Rates etc. (Scotland) Act 1987(e), section 24.

SCHEDULE 2

Articles 2 and 3

ENACTMENTS WHICH CONFERRED FUNCTIONS ON THE SECRETARY OF STATE FOR SOCIAL SERVICES

PART I

FUNCTIONS TRANSFERRED TO SECRETARY OF STATE FOR HEALTH

The Births and Deaths Registration Act 1926(f), section 9.
The Therapeutic Substances Act 1956(g), sections 4(1) and (2) and 5.
The Professions Supplementary to Medicine Act 1960(h), Schedule 1, paragraph 1(1)(b).
The National Health Service Act 1966(i).
The Radiological Protection Act 1970(j).
The Child Care Act 1980(k), section 30.
The Food Act 1984(l).

PART II

FUNCTIONS TRANSFERRED TO SECRETARY OF STATE FOR SOCIAL SECURITY

The Pensions Appeal Tribunals Act 1943(m).
The Income and Corporation Taxes Act 1970(n), section 365(2).
The Income and Corporation Taxes Act 1988(o), section 315(3).

SCHEDULE 3

Article 5(4)

CONSEQUENTIAL AMENDMENTS

1. The words "Secretary of State for Health" shall be substituted for the words "Secretary of State for Social Services" in each place where they occur in the following enactments—

- (a) the Births and Deaths Registration Act 1926, section 9;
- (b) the Therapeutic Substances Act 1956, section 4(1) and (2);
- (c) the Professions Supplementary to Medicine Act 1960, Schedule 1, paragraph 1(1)(b);
- (d) the National Health Service Act 1966, section 11;
- (e) the Radiological Protection Act 1970, section 1(4)(a);
- (f) the Child Care Act 1980, section 30; and
- (g) the Food Act 1984, sections 132(1) and 135(2).

2. The words "Secretary of State for Social Security" shall be substituted for the words "Secretary of State for Social Services" in each place where they occur in the following enactments—

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- (a) 1979 c.17.
 - (b) 1979 c.41.
 - (c) 1982 c.24.
 - (d) 1982 c.34.
 - (e) 1987 c.47.
 - (f) 1926 c.48; section 9 was amended by S.I. 1968/1699.
 - (g) 1956 c.25; section 4 was amended by S.I. 1968/1699 and 1969/388.
 - (h) 1960 c.66; paragraph 1 of Schedule 1 was amended by S.I. 1968/1699 and 1969/388.
 - (i) 1966 c.8.
 - (j) 1970 c.46.
 - (k) 1980 c.5.
 - (l) 1984 c.30.
 - (m) 1943 c.39.
 - (n) 1970 c.10.
 - (o) 1988 c.1.

- (a) the Pensions Appeal Tribunals Act 1943, section 12(1);
- (b) the Income and Corporation Taxes Act 1970, section 365(2);
- (c) the Supplementary Benefits Act 1976, sections 22 and 23(1); and
- (d) the Income and Corporation Taxes Act 1988, section 315(3).

3. The words "Department of Health" shall be substituted for the words "Department of Health and Social Security" in each place where they occur in the following enactments—

- (a) the Abortion Act 1967(a), section 2(2);
- (b) the Finance Act 1981(b), section 28(7)(a); and
- (c) the Dentists Act 1984(c), Schedule 1, paragraph 1(2)(b).

4. The words "Department of Social Security" shall be substituted for the words "Department of Health and Social Security" in each place where they occur in the following enactments—

- (a) the Finance (No. 2) Act 1979(d), section 9(2)(a);
- (b) the Value Added Tax Act 1983(e), Schedule 5, Group 14, Note 6(b);
- (c) the Social Security Act 1986(f), section 20(2); and
- (d) the Income and Corporation Taxes Act 1988, sections 152(7) and 318(2)(a).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision consequent on the establishment of the Department of Health and the Department of Social Security and the entrusting to the Secretaries of State for those Departments of functions formerly carried out by the Secretary of State for Social Services.

It provides for the transfer from the Secretary of State for Social Services to each of those Secretaries of State of—

- (a) functions under certain enactments,
- (b) functions under various local Acts and instruments, and
- (c) property, rights and liabilities,

all of which relate to the functions entrusted to them on the establishment of their Departments (Articles 1 to 3 and Schedules 1 and 2).

Supplemental, consequential and ancillary provisions are contained in Articles 4 to 6 and Schedule 3.

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- (a) 1967 c.87; section 2 was amended by S.I. 1969/388.
 - (b) 1981 c.35.
 - (c) 1984 c.24.
 - (d) 1979 c.47.
 - (e) 1983 c.55; the Note was added by S.I. 1984/959.
 - (f) 1986 c.50.

£1.30 net

ISBN 0 11 087843 4

Printed in the United Kingdom for Her Majesty's Stationery Office

880 WO 1738 C16 10/88 452/3 4235 PS 8901376 883021K