
STATUTORY INSTRUMENTS

1999 No. 678

MINISTERS OF THE CROWN

**The Transfer of Functions (Lord Advocate
and Secretary of State) Order 1999**

<i>Made</i>	- - - -	<i>10th March 1999</i>
<i>Laid before Parliament</i>		<i>22nd March 1999</i>
<i>Coming into force</i>	- -	<i>19th May 1999</i>

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. This Order may be cited as the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999 and shall come into force on 19th May 1999.

Transfer of functions

2.—(1) The functions of the Lord Advocate under the enactments specified in the Schedule to this Order are hereby transferred to the Secretary of State.

(2) The functions of the Lord Advocate which are mentioned in Article 2(b) of the Transfer of Functions (Treasury and Lord Advocate) Order 1981⁽²⁾ are hereby transferred to the Secretary of State.

Supplementary and consequential

3. All property, rights and liabilities to which the Lord Advocate is entitled or subject at the coming into force of this Order in connection with any function transferred by this Order are hereby transferred to the Secretary of State for Scotland.

4. In section 34 of the Conveyancing (Scotland) Act 1924⁽³⁾, for “the Lord Advocate at the Crown Office” there is substituted “the Secretary of State at St Andrew’s House”.

5. Paragraph 1(2)(b) of Schedule 5 to the Reserve Forces Act 1996⁽⁴⁾ shall be repealed.

(1) 1975 c. 26.

(2) S.I. 1981/239.

(3) 1924 c. 27. Section 34 was amended by the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35), section 34.

(4) 1996 c. 14.

6. In section 91(3)(b) of the Arbitration Act 1996⁽⁵⁾ the words “with the concurrence of the Lord Advocate” shall be repealed.

7.—(1) This Order shall not affect the validity of anything done (or having effect as if done) by or in relation to the Lord Advocate 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 Advocate may, so far as it relates to anything transferred by this Order, be continued by or in relation to the Secretary of State or, as the case may be, the Secretary of State for Scotland.

(3) Anything done (or having effect as if done) by or in relation to the Lord Advocate for the purposes of or in connection with anything transferred by this Order shall, if in force at the coming into force of this Order, have effect as if done by or in relation to the Secretary of State or, as the case may be, the Secretary of State for Scotland in so far as that is required for continuing its effect after the coming into force of this Order.

(4) Subject to any express repeal or amendment made by this Order, any enactment, instrument or other document passed or made before the coming into force of this Order shall have effect, so far as may be necessary for the purposes of or in consequence of any transfer effected by this Order, as if for any references to the Lord Advocate there were substituted references to the Secretary of State or, as the case may be, the Secretary of State for Scotland.

A K Galloway
Clerk of the Privy Council

(5) 1996 c. 23.

SCHEDULE

Article 2

FUNCTIONS TRANSFERRED FROM THE LORD ADVOCATE TO THE SECRETARY OF STATE

Primary legislation

Public Revenue (Scotland) Act 1833 (c. 13), section 1(6);
Judicial Statistics (Scotland) Act 1869 (c. 33), section 3;
Judicial Factors (Scotland) Act 1889 (c. 39), section 12;
Conveyancing (Scotland) Act 1924 (c. 27), sections 33 and 34;
Lands Tribunal Act 1949 (c. 42), section 3(7);
Pharmacy Act 1954 (c. 61), Schedule 1C, paragraph 3(8);
Sheriffs Courts (Civil Jurisdiction and Procedure) (Scotland) Act 1963 (c. 22), section 3(9);
Law Commissions Act 1965 (c. 22);
Taxes Management Act 1970 (c. 9), sections 4, 4A, 46A and 56B(10);
Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35), section 19;
Sheriff Courts (Scotland) Act 1971 (c. 58), sections 35 and 36B(11);
Farriers (Registration) Act 1975 (c. 35), Schedule 3, paragraph 7;
Litigants in Person (Costs and Expenses) Act 1975 (c. 47), section 1;
Industry Act 1975 (c. 68), Schedule 3, paragraph 24;
Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c. 14), section 7;
Aircraft and Shipbuilding Industries Act 1977 (c. 3), Schedule 7, paragraph 10;
Insurance Brokers (Registration) Act 1977 (c. 46), section 20(12);
Solicitors (Scotland) Act 1980 (c. 46), Schedule 3, paragraph 2;
Medical Act 1983 (c. 54), Schedule 4, paragraph 7(13);
Data Protection Act 1984 (c. 35), section 3(14);
Transport Act 1985 (c. 67), Schedule 4, paragraph 15(15);

- (6) Section 1 was amended by the Customs and Excise Act 1952 (c. 44), Schedule 12, Part I and by the Finance Act 1963 (c. 25), Schedule 14, Part VI. Certain functions of the Treasury were transferred to the Lord Advocate by virtue of S.I. 1981/239, articles 2 to 4.
- (7) Section 3 was amended by the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35), section 50(2), by the Tribunals and Inquiries Act 1971 (c. 62), Schedule 3, by the Land Tenure Reform (Scotland) Act 1974 (c. 38), section 19, by the Criminal Procedure (Scotland) Act 1975 (c. 21), section 289F and 289G, by the Local Government, Planning and Land Act 1980 (c. 65), section 193 and Schedule 33, paragraphs 3(2) and 3(3), by the Tribunals and Inquiries Act 1992 (c. 53), section 18 and by the Arbitration Act 1996 (c. 23), Schedule 3, paragraph 6. Certain functions of the Secretary of State were transferred to the Lord Advocate by virtue of S.I. 1972/2002.
- (8) Schedule 1C was inserted by Pharmacists (Fitness to Practice) Act 1997 (c. 19), Schedule, paragraph 4.
- (9) Section 3 was substituted by the Family Law (Scotland) Act 1985 (c. 37), section 23.
- (10) Sections 4 and 4A were substituted by the Finance Act 1984 (c. 43), Schedule 22, and amended by the Judicial Pensions and Retirement Act 1993 (c. 8), Schedule 6, paragraph 36. Section 4 was further amended by Schedule 8 to that Act and by the Courts and Legal Services Act 1990 (c. 41), Schedule 10, paragraph 30. Sections 46A and 56B were inserted by paragraphs 3 and 4 of Schedule 16 to the Finance (No.2) Act 1992 (c. 48). They are applied, with modifications, by the Schedule to the Stamp Duty Reserve Tax Regulations 1986 (S.I. 1986/1711).
- (11) Section 35 was amended by S.I. 1976/900, by S.I. 1981/842, by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 18(1) and Schedule 2, paragraph 14 and by S.I. 1988/1993. Section 36B was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, section 18(2).
- (12) Section 20 was amended by the Courts and Legal Services Act 1990 (c. 41), section 71(2), Schedule 10, paragraph 41.
- (13) Amended by the Courts and Legal Services Act 1990 (c. 41), section 71(2), Schedule 10 paragraph 53 and the Medical (Professional Performance) Act 1995 (c. 51), section 4 and Schedule, paragraph 21.
- (14) Amended by the Courts and Legal Services Act 1990 (c. 41), section 71(2), Schedule 10, paragraph 58.
- (15) Paragraph 15 of Schedule 4 was amended by S.I. 1989/495.

Building Societies Act 1986 (c. 53), section 47(16);
 Financial Services Act 1986 (c. 60), section 96;
 Debtors (Scotland) Act 1987 (c. 18);
 Banking Act 1987 (c. 22), sections 28(17) and 30;
 Income and Corporation Taxes Act 1988 (c. 1), section 319(2)(18);
 Multilateral Investment Guarantee Agency Act 1988 (c. 8), section 6(19);
 Civil Evidence (Scotland) Act 1988 (c. 32), section 8;
 Copyright, Designs and Patents Act 1988 (c. 48), sections 145 and 150(20);
 Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), Part I;
 Child Support Act 1991 (c. 48), sections 22, 24, 25 and 45 and Schedule 4, paragraph 7(21);
 Social Security Administration Act 1992 (c. 5), sections 51, 52, 189(22) and Schedule 2 paragraph 1;
 Friendly Societies Act 1992 (c. 40), sections 59(23) and 60;
 Finance (No.2) Act 1992 (c. 48), section 75(1);
 Tribunals and Inquiries Act 1992 (c. 53);
 Charities Act 1993 (c. 10), section 80;
 Value Added Tax Act 1994 (c. 23), Schedule 12, paragraphs 2, 3 and 9;
 Trade Marks Act 1994 (c. 26), section 77;
 Reserve Forces Act 1996 (c. 14), sections 90 and 91, and Schedule 5, paragraphs 1, 10 and 12;
 Employment Tribunals Act 1996 (c. 17), section 3(24);
 Arbitration Act 1996 (c. 23), section 91(3);
 Housing Grants, Construction and Regeneration Act 1996 (c. 53), section 114;
 Nurses, Midwives and Health Visitors Act 1997 (c. 24), section 19(5) and Schedule 2, paragraph 4;
 Social Security Act 1998 (c. 14), sections 5(1) and 79(2), Schedule 1, paragraph 1(4), and Schedule 4, paragraph 8;
 Data Protection Act 1998 (c. 29), section 6(4)(a);
 Competition Act 1998 (c. 41), Schedule 7, paragraphs 2 and 4;
 Social Security Contributions (Transfer of Functions etc.) Act 1999 (c. 2), section 13(1).

Subordinate legislation

Section 4(2) of the National Trust for Scotland Order 1947 as confirmed by the [National Trust for Scotland Order Confirmation Act 1947 \(1947 c.xxxviii\)](#);

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- (16) Section 47 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 10, paragraph 68, by the Judicial Pensions and Retirement Act 1993 (c. 8), Schedule 6, paragraph 64 and by the Building Societies Act 1997 (c. 32), section 24.
- (17) Section 28 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 10, paragraph 69.
- (18) Section 319(2) was inserted by Article 2(2)(b) of the Transfer of Functions (Foreign Service Allowance) Order 1996 (S.I. 1996/313).
- (19) Section 6 was substituted by the Arbitration Act 1996 (c. 23), Schedule 3, paragraph 49.
- (20) Section 145 was amended by the Courts and Legal Services Act 1990 (c. 41), section 71(2) and Schedule 10, paragraph 73. Section 150 was amended by the Arbitration Act 1996 (c. 23), Schedule 3, paragraph 50.
- (21) Sections 24 and 25 were amended by the Child Support Act 1995 (c. 34), Schedule 3.
- (22) Section 189 was amended by the Local Government Finance Act 1992 (c. 14), Schedule 2, paragraph 24, by the Social Security (Recovery of Benefits) Act 1997 (c. 27), Schedule 3 paragraph 10 and by the Social Security Act 1998 (c. 14) Schedule 7, paragraph 109. Paragraph 1 of Schedule 2 was amended by the Judicial Pensions and Retirement Act 1993 (c. 8), Schedule 6, paragraph 21.
- (23) Section 59 was amended by the Judicial Pensions and Retirement Act 1993 (c. 8), Schedule 6, paragraph 68.
- (24) The short title of this Act was changed by the Employment Rights (Dispute Resolution) Act 1998 (c. 8), section 1(2).

The Merchant Shipping (Section 52 Inquiries) Rules 1982 (S.I. [1982/1752](#)), rule 5(25);
The Merchant Shipping (Formal Investigations) Rules 1985 (S.I. [1985/1001](#)), rule 4(1);
The Building Societies Appeal Tribunal Regulations 1987 (S.I. [1987/891](#)), regulation 6;
The Banking Appeal Tribunal (Scottish Appeals) Regulations 1987 (S.I. [1987/1336](#)), regulation 6;
Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) 1991 (S.I. [1991/1397](#)), rules 21 to 24;
The Charities (Scheme for the Transfer of Assets) (Scotland) Regulations 1992 (S.I. [1992/2082](#));
The Charities Accounts (Scotland) Regulations 1992 (S.I. [1992/2165](#)), regulation 9(2);
The Public Trusts (Reorganisation) (Scotland) (No.2) Regulations 1993 (S.I. [1993/2254](#));
Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. [1994/1443](#)), rule 63.10;
The Deregulation (Model Appeal Provisions) Order 1996 (S.I. [1996/1678](#))(26);
The Merchant Shipping (Section 63 Inquiries) Rules 1997 (S.I. [1997/347](#)), rule 5(1).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for transfer to the Secretary of State of the functions of the Lord Advocate under the enactments listed in the Schedule to the Order and as mentioned in Article 2(2) of the Order.

Articles 3 to 7 of the Order contain provisions which are supplementary to, or consequential on, that transfer. Article 3 provides for the transfer to the Secretary of State for Scotland of any property, rights and liabilities to which the Lord Advocate is entitled or subject in connection with any function transferred. Articles 4 to 6 make certain consequential amendments and repeals. Article 7 contains other consequential or supplementary provisions.

(25) Rule 5 was amended by S.I. [1989/184](#).

(26) The Deregulation (Model Appeal Provisions) Order 1996 was applied by the Chemical Weapons (Licence Appeal Provisions) Order 1996 (S.I. [1996/3030](#)).