

1972 No. 2002

MINISTERS OF THE CROWN**The Transfer of Functions
(Secretary of State and Lord Advocate) Order 1972***Made - - - - 20th December 1972**Laid before Parliament 21st December 1972**Coming into Operation 1st February 1973*

At the Court at Buckingham Palace, the 20th day of December 1972

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in pursuance of section 1 of the Ministers of the Crown (Transfer of Functions) Act 1946(a) and section 4 of the Ministers of the Crown Act 1964(b), 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 (Secretary of State and Lord Advocate) Order 1972.

(2) The Interpretation Act 1889(c) applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

(3) Any provision of this Order for the transfer of functions to the Lord Advocate from the Secretary of State shall be construed, in relation to any of those functions which are already exercisable by the Lord Advocate concurrently with the Secretary of State, as directing that the functions shall cease to be exercisable by the Secretary of State; and references in this Order to functions transferred or to a transfer by the Order shall be construed accordingly.

(4) Any reference in this Order to an enactment is a reference thereto as amended, and includes a reference thereto as applied, by or under any other enactment.

(5) This Order shall come into operation on 1st February 1973.

Transfer of functions from Secretary of State to Lord Advocate

2.—(1) There are hereby transferred to the Lord Advocate the functions conferred on the Secretary of State by the following enactments, namely:—

(a) sections 27 and 29 of the Crofters Holdings (Scotland) Act 1886(d)
(making of regulations and approval of forms of procedure in connection with applications to the Scottish Land Court);

(a) 1946 c. 31.

(b) 1964 c. 98.

(c) 1889 c. 63.

(d) 1886 c. 29.

- (b) section 1(1), as read with section 3(2), of the Consolidation of Enactments (Procedure) Act 1949(a) (laying before Parliament of memoranda in connection with the consolidation of enactments) ;
- (c) section 3 of the Lands Tribunal Act 1949(b) as amended by section 50(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970(c) (making of rules for regulating proceedings before the Lands Tribunal for Scotland) ;
- (d) section 44 of the Iron and Steel Act 1949(d) as revived and amended by sections 32(2) and 49(1) of, and Schedule 3 to, the Iron and Steel Act 1967(e) (making of rules for regulating the procedure in Scottish proceedings before the Iron and Steel Arbitration Tribunal) ;
- (e) sections 2 to 5 of the Law Commissions Act 1965(f) (appointment of members of the Scottish Law Commission, approval of Commission's programmes, etc.) ;
- (f) sections 2, 4, 5, 11, 12, 15, 16 and 19 of the Tribunals and Inquiries Act 1971(g) (appointment of members of the Council on Tribunals and of the Scottish Committee of the Council and making of references to the Council, making of rules regulating the procedure in connection with statutory inquiries in Scotland, etc.).

(2) There are hereby transferred to the Lord Advocate the functions of the Secretary of State for Scotland under paragraph 11 of Schedule 10 to the Transport Act 1962(h) as read with Article 5(2) of the Secretary of State for the Environment Order 1970(i) (approval of procedural rules made by the Transport Tribunal).

Supplemental and consequential

3.—(1) This Order shall not affect the validity of anything done by or in relation to any Secretary of State before the coming into operation of this Order ; and anything which, at the coming into operation of this Order, is in process of being done by or in relation to any Secretary of State may, if it relates to any functions transferred by this Order to the Lord Advocate, be continued by or in relation to the Lord Advocate.

(2) Any approval, order, regulations, rules, appointment, determination or reference given or made, or other thing whatsoever done, by any Secretary of State in connection with any functions transferred by this Order to the Lord Advocate shall, if in force at the coming into operation of this Order, continue in force and have effect as if given, made or done by the Lord Advocate in so far as that is required for continuing its or their effort after the coming into operation of this Order.

(3) In consequence of the transfer of functions effected by Article 2 above (but subject to the foregoing provisions of this Article)—

- (a) in paragraph 11 of Schedule 10 to the Transport Act 1962 for the words "the Secretary of State" there shall be substituted the words "the Lord Advocate" ;
- (b) in sections 2 and 6 of the Law Commissions Act 1965 the words "the Secretary of State and", wherever they occur, shall be omitted ;

(a) 1949 c. 33.

(b) 1949 c. 42.

(c) 1970 c. 35.

(d) 1949 c. 72.

(e) 1967 c. 17.

(f) 1965 c. 22.

(g) 1971 c. 62.

(h) 1962 c. 46.

(i) S.I. 1970/1681 (1970 III, p. 5551).

(c) in the remaining enactments specified in paragraph (1) of the said Article 2, for the words “the Secretary of State”, wherever they occur, there shall be substituted the words “the Lord Advocate”;

and any other enactment, instrument or document passed or made before the coming into operation of this Order shall have effect so far as may be necessary for the purpose or in consequence of the said transfer as if for references to the Secretary of State there were substituted references to the Lord Advocate.

W. G. Agnew.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order transfers to the Lord Advocate the following functions of the Secretary of State:—

- (a) functions in relation to the making and approval of procedural rules, etc., in connection with proceedings before the Scottish Land Court and the Lands Tribunal for Scotland, Scottish proceedings before the Iron and Steel Arbitration Tribunal, and proceedings before the Transport Tribunal (except the power to approve rules of the Transport Tribunal, so far as exercisable by the Secretary of State for the Environment) (Article 2(1)(a), (c) and (d) and (2));
- (b) the function of laying before Parliament memoranda proposing corrections and minor improvements in any enactments in order to facilitate the consolidation of those enactments (Article 2(1)(b));
- (c) functions in relation to the Scottish Law Commission (appointment of members, approval of Commission’s programmes, etc.) (Article 2(1)(e));
- (d) functions in relation to the Council on Tribunals and the Scottish Committee of the Council (appointment of members, making of references to the Council, etc.) and making of rules regulating procedure in connection with statutory inquiries held in Scotland (Article 2(1)(f)).

The remaining provisions of the Order are supplementary or consequential.

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