

1982 No. 159**MINISTERS OF THE CROWN****The Transfer of Functions (Legal Aid and Maintenance Orders) (Northern Ireland) Order 1982**

Made - - - - - 10th February 1982
Laid before Parliament 18th February 1982
Coming into Operation 1st April 1982

At the Court at Buckingham Palace, the 10th day of February 1982

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in pursuance of section 1 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 and commencement

1.—(1) This Order may be cited as the Transfer of Functions (Legal Aid and Maintenance Orders) (Northern Ireland) Order 1982.

(2) This Order shall come into operation on 1st April 1982.

Transfer of legal aid functions

2.—(1) There are hereby transferred to the Lord Chancellor the functions of the Secretary of State under—

- (a) the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(b);
- (b) the Legal Aid (General) Regulations (Northern Ireland) 1965(c), the Legal Aid Certificates Rules (Northern Ireland) 1966(d), the Legal Aid (Defence Certificates) Rules (Northern Ireland) 1966(e) and the Legal Aid (Appeal Aid Certificates) Rules (Northern Ireland) 1966(f);
- (c) subsection (2) of section 28 of the Criminal Appeal (Northern Ireland) Act 1980(g) so far as relates to the expenses mentioned in paragraph (a) of that subsection; and
- (d) section 37(3) of that Act.

(2) Any such regulations as are mentioned in Article 17(3) of the Order mentioned in paragraph (1)(a) above shall be made after consultation with the Lord Chief Justice of Northern Ireland instead of with his concurrence; and

(a) 1975 c. 26. (b) S.I. 1981/228 (N.I. 8).
 (c) S.R. & O. (N.I.) 1965 No. 217. (d) S.R. & O. (N.I.) 1966 No. 52.
 (e) S.R. & O. (N.I.) 1966 No. 53. (f) S.R. & O. (N.I.) 1966 No. 54.
 (g) 1980 c. 47.

any such regulations as are mentioned in Article 22(5)(a) of that Order shall be made after consultation with the Northern Ireland Supreme Court Rules Committee instead of with their consent.

(3) The enactments mentioned in the Schedule to this Order shall have effect with the amendments there specified.

(4) In the instruments mentioned in paragraph (1)(b) above any reference which by virtue of the Northern Ireland (Modification of Enactments—No. 1) Order 1973(a) falls to be construed as a reference to the Secretary of State shall be construed as a reference to the Lord Chancellor.

Transfer of functions relating to maintenance orders

3.—(1) There are hereby transferred to the Lord Chancellor the functions of the Secretary of State under the Maintenance Orders (Reciprocal Enforcement) Act 1972(b) in so far as they relate to any matter concerning a court in Northern Ireland or a person residing or believed to reside there.

(2) Any reference in the said Act of 1972 to the Secretary of State shall, so far as necessary for giving effect to paragraph (1) above, be construed as a reference to the Lord Chancellor.

(3) In paragraphs (1) and (2) above references to the said Act of 1972 include references to that Act as applied by any Order in Council under section 40 of that Act.

Supplementary

4.—(1) This Order shall not affect the validity of anything done by or in relation to the 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 the Secretary of State may, if it relates to any functions transferred by this Order, be continued by or in relation to the Lord Chancellor.

(2) Anything done by the Secretary of State in connection with any functions transferred by this Order shall, if in force at the coming into operation of this Order, have effect as if done by the Lord Chancellor so far as that is required for continuing its effect after the coming into operation of this Order.

N. E. Leigh,
Clerk of the Privy Council.

SCHEDULE

Article 2(3).

LEGAL AID: AMENDMENTS

*The Legal Aid, Advice and Assistance (Northern Ireland) Order 1981*S.I. 1981/
228 (N.I. 8).

1. In each of the following provisions for the words “ Secretary of State ”, wherever they occur, there shall be substituted the words “ Lord Chancellor ”—

- (a) Article 1(3);
- (b) Article 18(1) to (4), (8) and (9);
- (c) Article 19(5) to (8);
- (d) Article 20(1), (2) and (4);
- (e) Article 21(1) and (3);
- (f) Article 22(1), (3) and (5);
- (g) Article 23;
- (h) the definition of “ regulations ” in Article 27;
- (i) Article 36(3);
- (j) Article 37;
- (k) Article 38(3) and (5);
- (l) paragraphs 1(2)(b) and (3), 2(2)(b) and (3) and 6 of Schedule 2.

2. In Article 17(3) for the words “ without the concurrence of ” there shall be substituted the words “ except after consultation with ”.

3. In Article 22(5)(a) for the words “ obtain the consent of ” there shall be substituted the word “ consult ”.

The Criminal Appeal (Northern Ireland) Act 1980

1980 c. 47.

4. In section 28(2)—

- (a) for the words preceding paragraph (a) there shall be substituted the words “ The following expenses, that is to say— ”;
- (b) after paragraph (e) there shall be inserted the words “ shall, up to an amount allowed by the Master (Taxing Office) be defrayed, in the case of expenses within paragraph (a), by the Lord Chancellor and, in any other case, by the Secretary of State. ”

5. In section 37(3) for the words “ the Secretary of State ” there shall be substituted the words “ the Lord Chancellor ”.

6. In paragraph 7 of Schedule 4 the words from “ in subsection (1) ” to “ respectively and ” shall be omitted.

*The Costs in Criminal Cases Act (Northern Ireland) 1968*1968 c. 10
(N.I.).

7. For section 4(1) there shall be substituted—

“ (1) When the Court of Appeal dismisses an appeal or an application for leave to appeal, it may, subject to rules made pursuant to section 7, order the appellant—

- (a) to pay to the Secretary of State the whole or any part of the costs of the appeal or application, including any expenses payable by the Secretary of State by virtue of section 28(2) of the Criminal Appeal (Northern Ireland) Act 1980;
- (b) to pay to the Lord Chancellor the whole or any part of any expenses payable by the Lord Chancellor in respect of the appeal or application by virtue of the said section 28(2); and
- (c) to pay the cost of any transcript of a record of proceedings made in accordance with rules of court under section 21 of that Act. ”.

8. In section 6(b) for the words from “ to pay ” onwards there shall be substituted the words “ to pay to the Lord Chancellor the whole or any part of any costs of the defence or appeal defrayable by him under the said Order of 1981 ”.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order transfers to the Lord Chancellor certain functions of the Secretary of State in Northern Ireland. Article 2 transfers his functions in respect of legal aid under sections 28(2)(a) and 37(3) of the Criminal Appeal (Northern Ireland) Act 1980, the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 and subordinate legislation having effect as if made under that Order. The Schedule to this Order makes amendments consequential on this transfer. Article 3 transfers his functions under the Maintenance Orders (Reciprocal Enforcement) Act 1972, including his functions under that Act as applied by Orders in Council made under section 40 of that Act, so far as those functions relate to any matters concerning a court in Northern Ireland or a person residing or believed to reside there.

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