

2003 No. 1887

MINISTERS OF THE CROWN

The Secretary of State for Constitutional Affairs Order 2003

Made - - - - - *17th July 2003*

Laid before Parliament *29th July 2003*

Coming into force *19th August 2003*

At the Court at Buckingham Palace, the 17th day of July 2003

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in pursuance of sections 1 and 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 and commencement

1.—(1) This Order may be cited as the Secretary of State for Constitutional Affairs Order 2003.

(2) This Order comes into force on 19th August 2003.

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) In this Order a reference to a function of a Minister is to be read, in the case of a function which is exercisable by him jointly with another person or is otherwise shared by him with another person, as a reference to his share in that function.

(3) Any provision of this Order for the transfer of functions of the Lord Chancellor to the Secretary of State is to be read, in relation to functions exercisable by the Lord Chancellor concurrently with the Secretary of State, as providing that the functions are to cease to be exercisable by the Lord Chancellor; and references in this Order to the transfer of functions are to be read accordingly.

^(a) 1975 c. 26.

(4) Any reference in this Order to the functions of a Minister under an enactment includes a reference to the functions of that Minister under an instrument having effect under that enactment.

Incorporation of the Secretary of State for Constitutional Affairs

3.—(1) The person who at the coming into force of this Order is the Secretary of State for Constitutional Affairs and any successor to that person shall be, by that name, a corporation sole.

(2) The corporate seal of the Secretary of State for Constitutional Affairs shall—

(a) be authenticated by the signature of a Secretary of State or a person authorised by a Secretary of State to act in that behalf, and

(b) be officially and judicially noticed.

(3) Every document purporting to be an instrument made or issued by the Secretary of State for Constitutional Affairs and to be—

(a) sealed with his corporate seal authenticated in the manner provided by paragraph (2), or

(b) signed or executed by a person authorised by a Secretary of State to act in that behalf,

shall be received in evidence and 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 Constitutional Affairs that any instrument purporting to be made or issued by him was so made or issued shall be conclusive evidence of that fact.

(5) The Documentary Evidence Act 1868^(a) shall apply in relation to the Secretary of State for Constitutional Affairs—

(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.

Transfer of functions from the Lord Chancellor

4.—(1) The functions of the Lord Chancellor under the enactments listed in Schedule 1 are transferred to the Secretary of State.

(2) The functions transferred by this article include functions under any provision not yet in force at the time this Order is made (and a reference in Schedule 1 to an enactment includes a reference to the enactment as amended by an Act or subordinate legislation passed or made before that time, but not yet in force).

Transfer of property, rights and liabilities from the Lord Chancellor

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

Transfers from the Lord Chancellor: supplementary

6.—(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 anything transferred by article 4 or 5, be continued by or in relation to the Secretary of State for Constitutional Affairs.

(3) Anything done (or having effect as if done) by or in relation to the Lord Chancellor in connection with anything transferred by article 4 or 5 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 Constitutional Affairs.

(a) 1868 c. 37.

(4) Documents or forms printed for use in connection with the functions transferred by article 4 may be used in connection with those functions even though they contain, or are to be read as containing, references to the Lord Chancellor, the Lord Chancellor's Department or an officer of the Lord Chancellor; 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 Secretary of State for Constitutional Affairs, the Department for Constitutional Affairs or an officer of the Secretary of State for Constitutional Affairs (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 4, as if references to (and references which are to be read as references to) the Lord Chancellor, the Lord Chancellor's Department or an officer of the Lord Chancellor were references to the Secretary of State, 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 5, as if references to (and references which are to be read as references to) the Lord Chancellor, the Lord Chancellor's Department or an officer of the Lord Chancellor were references to the Secretary of State for Constitutional Affairs, the Department for Constitutional Affairs or an officer of the Secretary of State for Constitutional Affairs (as appropriate).

Transfer of functions from the First Secretary of State

7. The functions of the First Secretary of State under section 28 of the Courts Act 1971(a) are transferred to the Secretary of State.

Transfer from the First Secretary of State: supplementary

8.—(1) This Order does not affect the validity of anything done (or having effect as if done) by or in relation to the First 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 First Secretary of State may, so far as it relates to anything transferred by article 7, be continued by or in relation to the Secretary of State for Constitutional Affairs.

(3) Anything done (or having effect as if done) by or in relation to the First Secretary of State in connection with anything transferred by article 7 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 Constitutional Affairs.

(4) Documents or forms printed for use in connection with the functions transferred by article 7 may be used in connection with those functions even though they contain, or are to be read as containing, references to the First Secretary of State, the Office of the Deputy Prime Minister or an officer of the First Secretary of State; 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 Secretary of State for Constitutional Affairs, the Department for Constitutional Affairs or an officer of the Secretary of State for Constitutional Affairs (as appropriate).

(5) 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 7, as if references to (and references which are to be read as references to) the First Secretary of State, the Office of the Deputy Prime Minister or an officer of the First Secretary of State were references to the Secretary of State, his department or an officer of his (as appropriate).

Consequential amendments

9. Schedule 2 (consequential amendments) has effect.

A.K. Galloway
Clerk of the Privy Council

(a) 1971 c. 23.

SCHEDULE 1

Article 4

Enactments Conferring Functions Transferred by Article 4

- Commissioners for Oaths Act 1889 (c. 10), section 1(1);
Courts Act 1971 (c. 23), Part 4;
Solicitors Act 1974 (c. 47);
Representation of the People Act 1983 (c. 2), except section 161;
Representation of the People Act 1985 (c. 50);
Administration of Justice Act 1985 (c. 61);
Parliamentary Constituencies Act 1986 (c. 56), except paragraph 3 of Schedule 1;
Legal Aid Act 1988 (c. 34);
Courts and Legal Services Act 1990 (c. 41), Parts 2 and 4, sections 113 and 125, and section 124 (commencement) so far as relating to any of those provisions;
Data Protection Act 1998 (c. 29), except—
 (a) sections 6(4)(a) and (b) and 28,
 (b) in Schedule 5, paragraph 12(2) so far as it relates to the resignation of the chairman or a deputy chairman, and
 (c) in Schedule 6, paragraphs 2 and 3;
Human Rights Act 1998 (c. 42), except—
 (a) sections 5, 10, 18 and 19, and
 (b) Schedule 4;
Access to Justice Act 1999 (c. 22), Parts 1 to 3, and Part 7 (supplementary) so far as relating to any provision of those Parts;
Representation of the People Act 2000 (c. 2), Schedule 4;
Freedom of Information Act 2000 (c. 36), except—
 (a) sections 15, 23, 24, 36, 46, 65 and 66, and
 (b) section 53 so far as it confers functions on “the accountable person”;
Election Publications Act 2001 (c. 5);
European Parliamentary Elections Act 2002 (c. 24);
European Parliament (Representation) Act 2003 (c. 7).

SCHEDULE 2

Article 9

Consequential Amendments

Public Records Act 1958 (c. 51)

1. In the Public Records Act 1958, in Part 1 of the Table at the end of paragraph 3 of Schedule 1, for “Lord Chancellor’s Department” substitute “Department for Constitutional Affairs”.

Courts Act 1971 (c. 23)

2.—(1) In the Courts Act 1971, in sections 27, 29 and 30 for “Lord Chancellor” in each place substitute “Secretary of State”.

(2) In section 28 of that Act, for “First Secretary of State” in each place, and for “said Secretary of State”, substitute “Secretary of State”.

(3) In Schedule 3 to that Act—

- (a) in paragraph 2(1), for “the Lord Chancellor” substitute “he”, and
- (b) in paragraph 5, for “appropriate Minister” in each place substitute “Secretary of State”.

Solicitors Act 1974 (c. 47)

3. In the Solicitors Act 1974, in sections 2, 11, 12A, 14, 28, 31, 46, 47, 56 and 81A and in Schedule 1A, for “Lord Chancellor” in each place substitute “Secretary of State”.

Representation of the People Act 1983 (c. 2)

4. In the Representation of the People Act 1983, section 199A is repealed.

Representation of the People Act 1985 (c. 50)

5. In the Representation of the People Act 1985, section 27(2A) is repealed.

Administration of Justice Act 1985 (c. 61)

6. In the Administration of Justice Act 1985, for “Lord Chancellor” substitute “Secretary of State” in each place—

- (a) in sections 9, 26, 38, 53 and 69,
- (b) in Schedule 3, except paragraph 3 and the second place in paragraph 4(3), and
- (c) in Schedule 4.

Parliamentary Constituencies Act 1986 (c. 56)

7. In the Parliamentary Constituencies Act 1986, section 6A is repealed.

Courts and Legal Services Act 1990 (c. 41)

8.—(1) In the Courts and Legal Services Act 1990, for “Lord Chancellor” substitute “Secretary of State” in each place—

- (a) in sections 18, 18A, 21, 22, 26, 27, 34, 35, 37, 39 to 41, 43 to 45, 48, 50(3) and (6) and 53,
- (b) in section 54, in the substituted section 23(2A) of the Solicitors Act 1974,
- (c) in sections 55, 58, 58A, 60, 69, 89, 113(1) and (8) and 125, and
- (d) in Schedules 3 to 6, 8 and 9.

(2) In section 50(2) of that Act, paragraph (a) is repealed.

(3) In Schedule 9 to that Act, in paragraph 5 for “Lord Chancellor’s” in each place substitute “Secretary of State’s”.

(4) In Schedule 19 to that Act, in paragraph 17—

- (a) for “Lord Chancellor” substitute “Secretary of State”, and
- (b) for “him” substitute “the Lord Chancellor”.

Data Protection Act 1998 (c. 29)

9.—(1) In the Data Protection Act 1998, for “Lord Chancellor” substitute “Secretary of State” in each place—

- (a) in sections 6(4)(c), 7 to 10, 12, 16, 17, 22, 23, 25, 26, 30, 32, 38, 51, 52, 54, 56, 64, 67 and 75,
- (b) in Schedules 1 to 4,
- (c) in Schedule 5, in Part 1 and, in Part 2, in paragraphs 13 to 15,
- (d) in Schedule 6, in paragraph 7, and
- (e) in Schedule 7.

(2) In Schedule 5 to that Act, in paragraph 12(2), at the end insert “(in the case of the chairman or a deputy chairman) or to the Secretary of State (in the case of any other member)”.

Human Rights Act 1998 (c.42)

10.—(1) In sections 1 and 14 to 16 of the Human Rights Act 1998, for “Lord Chancellor” in each place substitute “Secretary of State”.

(2) In sections 2(3)(a), 7(9)(a) and 20(2) and (4) of that Act, the words “the Lord Chancellor or” are repealed.

Access to Justice Act 1999 (c.22)

11.—(1) In the Access to Justice Act 1999, for “Lord Chancellor” substitute “Secretary of State” 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 sections 30 and 45 to 47,

(d) in section 50, including the amendment to paragraph 7 of Schedule 3 to the Courts and Legal Services Act 1990,

(e) in sections 51 and 52, and

(f) in Schedules 1, 3 and 8.

(2) In section 108 of that Act, in subsection (1), after “Lord Chancellor” insert “or Secretary of State”.

(3) In Schedule 1 to that Act, in paragraph 15(5), for “Lord Chancellor’s” substitute “Secretary of State’s”.

(4) In Schedule 14 to that Act, in paragraph 1(1), after “Lord Chancellor” insert “or Secretary of State”.

Freedom of Information Act 2000 (c. 36)

12.—(1) In the Freedom of Information Act 2000, for “Lord Chancellor” substitute “Secretary of State” in each place—

(a) in sections 4, 5, 7, 9, 10, 12, 13, 45, 47 and 53,

(b) in section 69(2), in the inserted section 9A of the Data Protection Act 1998, and

(c) in sections 75, 83 to 85 and 87.

(2) In section 46(5) of that Act, after “consult—” insert—

“(a) the Secretary of State.”.

(3) In section 82(1) of that Act, the words “Lord Chancellor or the” are repealed.

Election Publications Act 2001 (c. 5)

13. In the Election Publications Act 2001, in subsections (1) and (3) of section 2, the words “or the Lord Chancellor” are repealed.

European Parliamentary Elections Act 2002 (c. 24)

14. In the European Parliamentary Elections Act 2002, section 16A is repealed.

European Parliament (Representation) Act 2003 (c. 7)

15.—(1) In the European Parliament (Representation) Act 2003, for “Lord Chancellor” substitute “Secretary of State” in each place—

(a) in sections 3, 5, 6, 10 to 13, 17 and 18,

(b) in section 21(3), in the inserted section 13(3B) of the European Parliamentary Elections Act 2002, and

(c) in section 28.

(2) Section 26 of that Act is repealed.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order in Council, made under the Ministers of the Crown Act 1975, incorporates the Secretary of State for Constitutional Affairs as a corporation sole (article 3). That article also provides for the authentication of the corporate seal of that Secretary of State, the making of instruments by him, and related matters.

Article 4 transfers to the Secretary of State the functions of the Lord Chancellor under the enactments listed in Schedule 1.

Article 5 transfers to the Secretary of State for Constitutional Affairs property, rights and liabilities to which the Lord Chancellor is entitled or subject in connection with the functions transferred by article 4.

Article 6 contains supplementary provision in connection with the transfers made by articles 4 and 5.

Article 7 transfers to the Secretary of State the functions of the First Secretary of State under section 28 of the Courts Act 1971.

Article 8 contains supplementary provision in connection with the transfer made by article 7.

Article 9 and Schedule 2 make consequential amendments to legislation.

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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MINISTERS OF THE CROWN

The Secretary of State for Constitutional Affairs Order 2003

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