

1973. No. 256

[NC]

LOCAL GOVERNMENT

Transfer of Functions and Adaptation of Enactments

TRANSFER OF FUNCTIONS (LOCAL GOVERNMENT, ETC.) (NORTHERN IRELAND) ORDER 1973, DATED 17TH JULY 1973, MADE BY THE SECRETARY OF STATE UNDER SECTION 2 OF THE NORTHERN IRELAND (MISCELLANEOUS PROVISIONS) ACT 1945.

WHEREAS section 2 of the Northern Ireland (Miscellaneous Provisions) Act 1945(a), as amended by section 13 of the Northern Ireland Act 1947(b), provides that if it appears to the Governor of Northern Ireland that, in consequence of functions having been transferred by or under an Act of the Parliament of Northern Ireland from one authority or person to another, it is expedient that functions conferred on the one by or under an Act of the Parliament of the United Kingdom (being functions that cannot be transferred by or under an Act of the Parliament of Northern Ireland) should be transferred to the other, he may, by Order in Council made with the consent of the Secretary of State, provide for the transfer of the functions so conferred accordingly:

AND WHEREAS the said section further provides that any such Order in Council may contain such consequential, incidental and supplemental provisions as appear to the Governor of Northern Ireland to be necessary or expedient for the purposes of the Order (including provisions amending any Act of the Parliament of the United Kingdom, or instrument issued under any such Act), and may be varied or revoked by a subsequent Order of the Governor of Northern Ireland in Council made with the consent of the Secretary of State:

AND WHEREAS in consequence of certain functions of local authorities and certain other bodies having been transferred by or under the Housing Executive Act (Northern Ireland) 1971(c), the Local Government Act (Northern Ireland) 1972(d) and the Health and Personal Social Services (Northern Ireland) Order 1972(e) it is expedient to make such provision as hereafter appearing in this Order:

AND WHEREAS by subsection (1)(a) of section 1 of the Northern Ireland (Temporary Provisions) Act 1972(f) it is provided that so long as that section has effect all functions which apart from that Act belong to the Governor in Council shall be discharged by the Secretary of State:

NOW, THEREFORE, the Secretary of State in exercise of the powers conferred upon him by section 2 of the Northern Ireland (Miscellaneous Provisions) Act 1945 (as amended by section 13 of the Northern Ireland Act 1947) and by section 1(1) of the Northern Ireland (Temporary Provisions) Act 1972 hereby makes the following Order:—

(a) 8 & 9 Geo. 6 c. 12.

(b) 10 & 11 Geo. 6 c. 37.

(c) 1971. c. 5 (N.I.).

(d) 1972 c. 9 (N.I.).

(e) S.I. 1972, No. 1265 (N.I. 14).

(f) 1972. c. 22.

Citation, etc.

1.—(1) This Order may be cited as the Transfer of Functions (Local Government, etc.) (Northern Ireland) Order 1973.

(2) In this Order—

“the appointed day” means 1st October 1973;

“district council” means a council established under the Local Government Act (Northern Ireland) 1972;

“Health and Social Services Board” means such a board established under the Health and Personal Social Services (Northern Ireland) Order 1972;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954(g);

“the transferor” and “the transferee” respectively mean, in relation to any functions transferred, the authority or person from and to whom the functions are transferred.

(3) The Interpretation Act (Northern Ireland) 1954 shall apply to this Order as it applies to an Act of the Parliament of Northern Ireland.

Transfer of functions

2. The functions exercisable immediately before the appointed day under each of the enactments specified in column 1 of Schedule 1 shall be and are hereby transferred as from that day from the authority or person specified in relation to that enactment in column 2 to the authority or person so specified in column 3.

Consequential, etc., amendments

3. In consequence of Article 2, as from the appointed day the enactments specified in column 1 of Schedule 2 shall, in their application to Northern Ireland, have effect subject to the amendments thereof specified in column 2.

Transfer of assets and liabilities

4. All assets held immediately before the appointed day by the transferor, and all liabilities to which immediately before that day the transferor was subject (including liabilities which fall to accrue due on or after that day), in connection with any functions transferred to the transferee by this Order (being assets and liabilities that are not transferred by or under any other statutory provision) shall as from the appointed day be transferred to the transferee to whom the functions are transferred; and accordingly, as from that day, by virtue of this Order and without any further conveyance, transfer or assignment—

(a) those assets shall vest in, and be enjoyed by, the transferee; and

(b) those liabilities shall become liabilities of the transferee.

References in enactments, etc., to transferor, and continuance of proceedings

5.—(1) The following provisions of this Article shall apply in relation to the functions, assets and liabilities transferred by this Order.

(2) In the construction and for the purposes of any enactment (including the enactments mentioned in column 1 of Schedule 1), judgment, decree, order, award, deed, contract, regulation, bye-law, certificate or other document passed or made before the appointed day, any reference to, or which is to be construed as a reference to, the transferor, shall, so far only as may be necessary for the purpose or in consequence of the transfer, be construed as a reference to the transferee.

(3) The transfer shall not affect any order, regulation, rule, appointment, direction, instruction, approval, requirement or authorisation made or given or other thing done by the transferor before the appointed day, but any such matter shall, if in force immediately before that day, continue in force to the like extent and subject to the like provisions as if it had been duly made, given or done by the transferee.

(4) Anything commenced before the appointed day by or under the authority of the transferor may, so far as it relates to any functions transferred, be carried on or completed by or under the authority of the transferee.

(5) Where at the appointed day any legal proceeding is pending to which the transferor is a party, and the proceeding has reference to any of the functions, or any asset or liability, transferred, the transferee shall be substituted in the proceeding for the transferor, and the proceeding shall not abate by reason of the substitution.

(6) Without prejudice to paragraph (5), any investigation, legal proceeding or remedy under any enactment or otherwise in respect of any function, asset or liability transferred to the transferee may be instituted, continued or enforced by or against the transferee under the powers and the provisions (if any) applicable thereto immediately before the appointed day.

(7) In this Article "enactment" includes an enactment of the Parliament of Northern Ireland.

Modification and adaptation of local enactments

6. There shall be made in every local and personal Act and public general Act of a local character such modifications and adaptations as may be required to bring it into conformity with the provisions of this Order.

Dated this 17th day of July 1973.

W. S. I. Whitelaw,

One of Her Majesty's Principal
Secretaries of State.

Article 2.

SCHEDULE 1

Functions transferred

<i>Enactment by or under which function is conferred</i>	<i>Transferor</i>	<i>Transferee</i>
The Patriotic Fund Reorganisation Act 1903 (3 Edw. 7 c. 20)	The chairman of a county council; a Lord Mayor; the Mayor of a county borough	The chairman of a district council
The Sailors and Soldiers (Gifts for Land Settlement) Act 1916 (6 & 7 Geo. 5 c. 60)	The council of a county or county borough	A district council
The Public Health Act 1936, section 143 (26 Geo. 5 & 1 Edw. 8 c. 49)	A health authority or a port sanitary authority	A Health and Social Services Board
The Wireless Telegraphy Act 1949, section 2 (12, 13 & 14 Geo. 6 c. 54)	A welfare authority	A Health and Social Services Board
The Post Office Act 1953, section 51 (1 & 2 Eliz. 2 c. 36)	The council of a borough or urban district	A district council
The Army Act 1955 (3 & 4 Eliz. 2 c. 18)	A welfare authority	A Health and Social Services Board
The Air Force Act 1955 (3 & 4 Eliz. 2 c. 19)	A welfare authority	A Health and Social Services Board
The Trustee Investments Act 1961, section 11 (9 & 10 Eliz. 2 c. 62)	The council of a county, a county or other borough, or an urban or rural district	A district council
The Post Office Act 1969, Schedule 4, paragraph 59 (1969. c. 48)	A local authority or the Northern Ireland Housing Trust	The Northern Ireland Housing Executive
The Children and Young Persons Act 1969, section 25 (1969. c. 54)	A welfare authority	The Ministry of Home Affairs for Northern Ireland

<i>Enactment by or under which function is conferred</i>	<i>Transferor</i>	<i>Transferee</i>
The Merchant Shipping Act 1970, section 17 (1970. c. 36)	A welfare authority	The Ministry of Health and Social Services for Northern Ireland, or in relation to, expenses under the Children and Young Persons Act (Northern Ireland) 1968 (if such expenses are specified in regulations under the enactment), the Ministry of Home Affairs for Northern Ireland; or a Health and Social Services Board acting on behalf of either of those Ministries
The Immigration Act 1971 (1971. c. 77)	A medical officer of health	The chief administrative medical officer of a Health and Social Services Board

Article 3

SCHEDULE 2

Amendments

<i>Enactment</i>	<i>Amendment</i>
The Patriotic Fund Reorganisation Act 1903 (3 Edw. 7 c. 20)	In Schedule 1, in paragraph 1(d), for the words "Wales and Ireland" there shall be substituted the words "and Wales and the chairman of every district council in Northern Ireland established under the Local Government Act (Northern Ireland) 1972".
The Sailors and Soldiers (Gifts for Land Settlement) Act 1916 (6 & 7 Geo. 5 c. 60)	In section 1(4) after the word "Fisheries," there shall be inserted the words "to the council of any county or county borough"; and after the words "for Ireland," there shall be inserted the words "to any district council established under the Local Government Act (Northern Ireland) 1972".
The Public Health Act 1936 (26 Geo. 5 & 1 Edw. 8 c. 49)	In section 143 (as extended to Northern Ireland under subsection (9) of that section)— (a) in subsection (3) for the words from "specify the authorities" to "executed, and" there shall be substituted the words "provide for their enforcement and execution by Health and Social Services Boards established under the Health and Personal Social Services (Northern Ireland) Order 1972". (b) in subsection (4) for the word "authority" there shall be substituted the word "Board"; (c) subsection (6) shall cease to have effect.
The Wireless Telegraphy Act 1949 (12, 13 & 14 Geo. 6 c. 54)	In section 2(2)(d) for the words "welfare authority established under the Public Health and Local Government (Administrative Provisions) Act (Northern Ireland) 1946" there shall be substituted the words "Health and Social Services Board established under the Health and Personal Social Services (Northern Ireland) Order 1972". Section 17(2) shall cease to have effect.
The Post Office Act 1953 (1 & 2 Eliz. 2 c. 36)	In section 51(6) the following paragraphs shall be inserted after paragraph (a)— "(aa) for any reference to the council of any borough or urban district there shall be substituted a reference to a district council established under the Local Government Act (Northern Ireland) 1972; (ab) subsection (3) shall be omitted;"; and paragraphs (b) to (e) shall cease to have effect.

<i>Enactment</i>	<i>Amendment</i>
The Army Act 1955 (3 & 4 Eliz. 2 c. 18)	In section 215(7) for the words "welfare authority" there shall be substituted the words "Health and Social Services Board established under the Health and Personal Social Services (Northern Ireland) Order 1972".
The Air Force Act 1955 (3 & 4 Eliz. 2 c. 19)	In section 213(7) for the words "welfare authority" there shall be substituted the words "Health and Social Services Board established under the Health and Personal Social Services (Northern Ireland) Order 1972".
The Trustee Investments Act 1961 (9 & 10 Eliz. 2 c. 62)	In section 11(4)(d) for the words "the council of a county, a county or other borough, or an urban or rural district" there shall be substituted the words "a district council established under the Local Government Act (Northern Ireland) 1972".
The Post Office Act 1969 (1969. c. 48)	In Schedule 4, paragraph 59,— (a) in sub-paragraph (1) for the words "a relevant authority" and "the relevant authority" there shall be substituted (in each case) the words "the Northern Ireland Housing Executive"; (b) in sub-paragraph (3) the words "relevant authority" means a local authority or the Northern Ireland Housing Trust and" shall cease to have effect.
The Children and Young Persons Act 1969 (1969. c. 54)	In section 25— (a) in subsection (1) for the words "welfare authority" there shall be substituted the words "Ministry of Home Affairs for Northern Ireland (in this section referred to as the Ministry of Home Affairs)"; (b) in subsection (2) for the words "welfare authority in whose area his parent or guardian resides or will reside" there shall be substituted the words "Ministry of Home Affairs", and the words from "If an order" onwards shall cease to have effect; (c) in subsection (3) for the words "welfare authority" where they first occur there shall be substituted the words "the Ministry of Home Affairs", and in paragraph (b)(i) for the words "a welfare authority" there shall be substituted the words "the Ministry of Home Affairs"; (d) in subsection (4) for the words "welfare authority" there shall be substituted the words "the Ministry of Home Affairs" and after the words "the authority" there shall be inserted the word "Ministry"; (e) in subsection (5) for the words "training school order" and "welfare authority" there shall be substituted the words "and training school order".

<i>Enactment</i>	<i>Amendment</i>
The Merchant Shipping Act 1970 (1970. c. 36)	<p>In section 17—</p> <p>(a) in subsection (10) for the word “or” where it first occurs there shall be substituted the words “the Ministry of Home Affairs for Northern Ireland, a Health and Social Services Board acting on behalf of either of those Ministries, or (except in Northern Ireland)”;</p> <p>(b) in subsection (11) for the words from the beginning to “1946 and” there shall be substituted the words “In the application of subsection (2)(a) of this section to Northern Ireland, for the reference to a local authority there shall be substituted a reference to the Ministry of Home Affairs for Northern Ireland or a Health and Social Services Board; and in this section”; and at the end of the subsection there shall be inserted the words “and ‘Health and Social Services Board’ means such a Board established under the Health and Personal Social Services (Northern Ireland) Order 1972”.</p>
The Immigration Act 1971 (1971. c. 77).	<p>In section 24(1)(d) after the words “a medical officer of health” there shall be inserted the words “or the chief administrative medical officer of a Health and Social Services Board”.</p> <p>In Schedule 2, in paragraph 7,—</p> <p>(a) after the words “such medical officer of health” there shall be inserted the words “or the chief administrative medical officer of such Health and Social Services Board established under the Health and Personal Social Services (Northern Ireland) Order 1972”; and</p> <p>(b) the words “of health” in the second place where they occur shall cease to have effect.</p>

EXPLANATORY NOTE

(This note is not part of the Order, but is intended to indicate its general purport.)

In consequence of the reorganisation of local government in Northern Ireland, this Order transfers certain functions exercisable under enactments of the Parliament of the United Kingdom which cannot be transferred by or under an Act of the Parliament of Northern Ireland.