
STATUTORY INSTRUMENTS

1992 No. 709

MINISTERS OF THE CROWN

**The Transfer of Functions (Magistrates'
Courts and Family Law) Order 1992**

<i>Made</i>	- - - -	<i>12th March 1992</i>
<i>Laid before Parliament</i>		<i>13th March 1992</i>
<i>Coming into force</i>	- -	<i>1st April 1992</i>

At the Court at Buckingham Palace, the 12th day of March 1992

Present,

The Queen's Most Excellent Majesty in Council

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.—(1) This Order may be cited as the Transfer of Functions (Magistrates' Courts and Family Law) Order 1992.

(2) This Order shall come into force on 1st April 1992.

Transfer of functions relating to magistrates' courts and related matters

2.—(1) The functions of the Secretary of State under—

- (a) the Justices of the Peace Act 1979(2),
- (b) any rules or regulations made under the Act of 1979, and
- (c) the provisions specified in Schedule 1 to this Order (which confer functions in respect of magistrates' courts committees, the committee of magistrates, juvenile courts, the powers of magistrates' courts, justices' clerks, proceedings in magistrates' courts and connected matters),

are hereby transferred to the Lord Chancellor.

(1) 1975 c. 26.
(2) 1979 c. 55.

(2) In paragraph (1) above the reference to rules and regulations made under the Act of 1979 includes a reference to any rules or regulations having effect as if made under that Act or which continue to have effect by virtue of any provision of that Act.

(3) In—

- (a) the provisions mentioned in paragraph (1) above, except the provisions mentioned in paragraph (4) below, and
- (b) section 20(5) of the Prosecution of Offences Act 1985⁽³⁾(application of section 61(4) of the Act of 1979 to the recovery, under regulations made under section 20, of sums paid by the Legal Aid Board or out of central funds),

for the words “Secretary of State”, wherever they occur, there shall be substituted “Lord Chancellor”.

(4) The provisions referred to in paragraph (3) above are—

- (a) section 38(4) of and Schedule 1 to the Act of 1979; and
- (b) in the Justices of the Peace Act 1949 (Compensation) Regulations 1978⁽⁴⁾, in regulation 2(1) (interpretation), the definition of local authority.

(5) In section 38(4) of the Act of 1979 (power of either the Lord Chancellor or the Secretary of State to require committee of magistrates to consider and report on certain matters) the words “or the Secretary of State” shall be omitted.

(6) In the Petty Sessions Areas (Divisions and Names) Regulations 1988⁽⁵⁾, in regulation 6, for the words “Home Office, Queen Anne’s Gate, London SW1H 9AT by a date” there shall be substituted “at an address and by a date”.

Transfer of certain functions relating to family law

3.—(1) The functions of the Secretary of State under the provisions specified in Schedule 2 to this Order (which confer miscellaneous functions with respect to family law) are hereby transferred to the Lord Chancellor.

(2) In the provisions specified in that Schedule for the words “Secretary of State”, wherever they occur, there shall be substituted “Lord Chancellor”.

Transfer of functions relating to reciprocal enforcement of maintenance orders

4.—(1) The functions of the Secretary of State—

- (a) under the Maintenance Orders (Facilities for Enforcement) Act 1920⁽⁶⁾,
- (b) arising by virtue of—
 - (i) paragraph 2 of Schedule 2 to the South Africa Act 1962⁽⁷⁾, or
 - (ii) paragraph 3 of Schedule 2 to the Zimbabwe Act 1979⁽⁸⁾

(which continue the operation of the Act of 1920 in relation to the Republic of South Africa and Zimbabwe respectively), or
- (c) under any rules made under the Act of 1920,

are hereby transferred to the Lord Chancellor.

(3) 1985 c. 23.
 (4) S.I. 1978/1682.
 (5) S.I. 1988/1698.
 (6) 1920 c. 33.
 (7) 1962 c. 23.
 (8) 1979 c. 60.

(2) In the provisions mentioned in paragraph (1) above (including the provisions of the Act of 1920 continued as mentioned in that paragraph) any reference to the Secretary of State shall be construed as a reference to the Lord Chancellor.

(3) The functions of the Secretary of State—

(a) under the Maintenance Orders (Reciprocal Enforcement) Act 1972⁽⁹⁾,

(b) arising by virtue of—

(i) the Reciprocal Enforcement of Maintenance Orders (Republic of Ireland) Order 1974⁽¹⁰⁾(which applies Part I of the Act of 1972, with modifications, in relation to the Republic of Ireland),

(ii) the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1979⁽¹¹⁾(which applies Part I of the Act of 1972, with modifications, in relation to the Hague Convention countries), or

(iii) the Recovery of Maintenance (United States of America) Order 1979⁽¹²⁾ (which applies Part II of the Act of 1972, with modifications, in relation to specified States of the United States of America), or

(c) under any rules or regulations made under or by virtue of the Act of 1972 or by virtue of any Order mentioned in sub-paragraph (b) above,

apart from the functions mentioned in paragraph (4) below, are hereby transferred to the Lord Chancellor.

(4) The functions referred to in paragraph (3) above are the functions of the Secretary of State in so far as they relate to any matter concerning—

(a) a court in Scotland; or

(b) a person residing in Scotland or having assets there or believed to reside or have assets there.

(5) In the provisions referred to in paragraph (3) above, (including the provisions of the Act of 1972 as applied or modified as mentioned in that paragraph) references to the Secretary of State shall be construed, so far as necessary, as references to the Lord Chancellor.

(6) The functions of the Secretary of State under—

(a) section 5(1) of the Civil Jurisdiction and Judgments Act 1982⁽¹³⁾(recognition and enforcement of maintenance orders), and

(b) any provision of rules 3 to 14 of the Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) Rules 1986⁽¹⁴⁾,

as respects England and Wales are hereby transferred to the Lord Chancellor.

(7) In section 5(1) of the Act of 1982 for paragraphs (a) and (b) there shall be substituted—

“(a) as respects England and Wales and Northern Ireland, by the Lord Chancellor; and

(b) as respects Scotland, by the Secretary of State.”

⁽⁹⁾ 1972 c. 18.

⁽¹⁰⁾ S.I. 1974/2140.

⁽¹¹⁾ S.I. 1979/1317.

⁽¹²⁾ S.I. 1979/1314.

⁽¹³⁾ 1982 c. 27.

⁽¹⁴⁾ S.I. 1986/1962.

Supplementary

5.—(1) Any instrument made before the coming into force of this Order shall have effect, so far as may be necessary for the purpose or in consequence of the transfers effected by this Order, as if references to the Secretary of State were references to the Lord Chancellor.

(2) This Order does not affect the validity of anything done by or in relation to the Secretary of State before the coming into force of this Order, and anything which at the time of the coming into force of this Order is in process of being done by or in relation to the Secretary of State may, if it relates to a function transferred by this Order, be continued by or in relation to the Lord Chancellor.

(3) Anything done by the Secretary of State for the purpose of a function transferred by this Order, if in force at the coming into force of this Order, shall have effect, so far as required for continuing its effect after the coming into force of this Order, as if done by the Lord Chancellor.

(4) Documents or forms produced for use in connection with any function transferred by this Order may be used even though they contain references to the Secretary of State and those references shall be construed so far as necessary as references to the Lord Chancellor.

G. I. de Deney
Clerk of the Privy Council

SCHEDULE 1

FUNCTIONS RELATING TO MAGISTRATES' COURTS ETC. TRANSFERRED BY ARTICLE 2

<i>Title and chapter or number</i>	<i>Provision conferring function</i>
The Children and Young Persons Act 1933 (c. 12).	Schedule 2 (powers with respect to juvenile courts).
The Clerks of the Peace and Justices' Clerks (Compensation) Regulations 1965 (S.I. 1965/517).	Any provision of the Regulations.
The Magistrates' Courts Act 1980 (c. 43).	Section 68 (powers with respect to combined family panels). Section 137(4) (power to vary provision made by Part I of Schedule 6 to the Act with respect to fees taken by clerks to justices).
The Magistrates' Courts Rules 1981 (S.I. 1981/552).	Rule 66(12) (power to authorise inspection of registers kept by clerks of magistrates' courts).
The Criminal Justice Act 1988 (c. 33).	In section 81 (application of sums received under or by virtue of Part VI of the Act), subsections (8) and (9) (certain sums held by justices' clerks treated for the purposes of section 61 of the Justices of the Peace Act 1979 as if they were a fine imposed by a magistrates' court).
The Road Traffic Offenders Act 1988 (c. 53).	In section 82 (accounting for fixed penalties), subsection (1) (sums payable by way of fixed penalty treated for the purposes of section 61 of the Justices of the Peace Act 1979 as if they were fines imposed on summary conviction) and subsection (2) (power to determine, in default of agreement between responsible authorities, sums payable in connection with discharge of functions by justices' clerks in respect of fixed penalty offences).
The Criminal Justice Act 1991 (c. 53).	In section 76, subsection (4) (determination of appeals) and subsection (5) (power to control determinations of magistrates' courts committees and committee of magistrates as to provision of court security officers).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE 2

FUNCTIONS RELATING TO FAMILY LAW TRANSFERRED BY ARTICLE 3

<i>Title and chapter or number</i>	<i>Provision conferring function</i>
The Family Law Reform Act 1969 (c. 46).	Section 22(1) (power to make regulations as to the manner of giving effect to directions as to scientific tests and the taking of samples for the purposes of establishing paternity).
Blood Tests (Evidence of Paternity) Regulations 1971 (S.I. 1971/1861).	Regulation 2(1) (so far as it confers the function of appointing testers).
The Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22).	Section 2(3) (power to determine, by order, the maximum amount of a lump sum required to be paid under an order of a magistrates' court made in matrimonial proceedings).
The Magistrates' Courts Act 1980 (c. 43).	In section 59 (orders for periodical payments: means of payment), subsection (8) (power by regulations to confer on magistrates' courts the power to order that periodical payments be made by a method of payment other than those specified in subsection (3) of the section), subsection (10) (power to apply other enactments to such methods of payment) and subsection (11) (power to be exercised by statutory instrument). In section 94A (interest on arrears), subsection (1) (power by order to provide that a magistrates' court may order that interest shall be paid on arrears under certain maintenance orders), subsection (2) (power to prescribe rate of interest) and subsection (6) (power exercisable by statutory instrument).
The Magistrates' Courts (Adoption) Rules 1984 (S.I. 1984/611).	Rule 32(5)(b) (iii) (authorisation of person to obtain information relating to adoption proceedings for the purposes of research).
The Children Act 1989 (c. 41).	Section 97(4) (power by order to dispense with ban on publication of material intended or likely to identify children involved in proceedings before magistrates' courts etc.). In Schedule 1 (financial provision for children), paragraph 5(2) (power by order to fix maximum amount of lump sum payment).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order transfers from the Secretary of State to the Lord Chancellor functions with respect to the administration of magistrates' courts and connected matters. It also transfers from the Secretary of State to the Lord Chancellor functions in respect of certain family law matters, including in particular functions with respect to the reciprocal enforcement of maintenance orders (except such functions so far as they relate to Scotland).