
STATUTORY INSTRUMENTS

1973 No. 2163

**The Northern Ireland (Modification
of Enactments—No. 1) Order 1973**

Citation, interpretation and commencement

1.—(1) This Order may be cited as the Northern Ireland (Modification of Enactments—No. 1) Order 1973 and shall come into operation on the appointed day.

(2) In this Order, unless the contrary intention appears—

“the appointed day” means the day on which Part II of the Constitution Act comes into force;

“the Assembly” means the Northern Ireland Assembly;

“the Constitution Act” means the Northern Ireland Constitution Act 1973;

“enactment” includes an enactment of the Parliament of Northern Ireland;

“General Order” means the General Adaptation of Enactments (Northern Ireland) Order 1921(1);

“Governor” means the Governor of Northern Ireland;

“statutory rule” has the same meaning as in the Statutory Rules Act (Northern Ireland) 1958;

“Taxes Order” means the Government of Ireland (Adaptation of the Taxing Acts) Order 1922(2);

“transferor” and “transferee” respectively mean the person from and to whom any functions are transferred under any provision of this Order.

(3) Any reference in this Order to any enactment is a reference to that enactment as amended by, and includes a reference to that enactment as extended or applied by, any other enactment.

(4) In this Order, any reference to an enactment is a reference to that enactment as it has effect in Northern Ireland.

(5) In this Order any reference to an instrument made under an enactment includes a reference to an instrument having effect under that enactment.

(6) Any reference in Schedule 5 to any provision is a reference to that provision as it would have had effect if Schedule 5 to the Constitution Act had not been enacted.

(7) In this Order, unless the context otherwise requires, any reference to a numbered Article, Schedule or paragraph is a reference to the Article, Schedule or paragraph bearing that number in this Order or in the Article in question, as the case may require.

(8) The Interpretation Act 1889 shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

(9) Except so far as it repeals any provision of the House of Commons Disqualification Act 1957 in its application to the House of Commons of the United Kingdom, this Order extends to Northern Ireland only.

(1) (Rev.XVI, p. 967; 1921, p. 422)

(2) (Rev. XVI, p. 978; 1922, p. 701)

Transfer of certain functions to Secretary of State

2.—(1) Subject to Article 3, the functions, immediately before the appointed day, of the Minister or Ministry of Home Affairs for Northern Ireland under the enactments specified in Schedule 1 and under any instrument made under any such enactment are hereby transferred to the Secretary of State.

(2) The Secretary of State, as well as the Department of Home Affairs, may exercise functions under sections 147, 167 and 168 of the Children and Young Persons Act (Northern Ireland) 1968.

(3) The functions, immediately before the appointed day, of the Ministry of Commerce for Northern Ireland under section 59 of the Explosives Act 1875 are hereby transferred to the Secretary of State.

(4) The Secretary of State, as well as a head of a Northern Ireland department, may exercise functions under section 11(3) of the Parliamentary Commissioner Act (Northern Ireland) 1969 and section 12(3) of the Commissioner for Complaints Act (Northern Ireland) 1969.

(5) The functions, immediately before the appointed day, of the Privy Council of Northern Ireland are hereby transferred to the Secretary of State.

Transfer of functions relating to appointment of judges and other judicial matters

3.—(1) The functions, immediately before the appointed day, of the Minister or Ministry of Home Affairs for Northern Ireland under the enactments specified in Schedule 2 and under any instrument made under any such enactment are hereby transferred to the Lord Chancellor.

(2) Any reference in the enactments specified in Schedule 2 and in any instrument made under any such enactment to the Governor of Northern Ireland, as respects functions to be discharged by him, shall be construed as a reference to the Lord Chancellor.

Transfer of functions in relation to death duties, stamp duties and certain excise duties

4.—(1) Except as otherwise expressly provided in this Order, the functions, immediately before the appointed day, of the Minister or Ministry of Finance for Northern Ireland under any enactment relating to death duty or stamp duty are hereby transferred to the Commissioners of Inland Revenue.

(2) The functions, immediately before the appointed day, of the Minister or Ministry of Finance for Northern Ireland under the Customs and Excise Act 1952 and under any enactment relating to general betting duty, pool betting duty or duty on gaming machine licences are hereby transferred to the Commissioners of Customs and Excise.

(3) The power to make regulations under Schedule 2 or Part III of Schedule 3 to the Miscellaneous Transferred Excise Duties Act (Northern Ireland) 1972 shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of the House of Commons, and the Statutory Instruments Act 1946 shall apply accordingly.

(4) In paragraph (1) “death duty” includes estate duty, legacy duty and succession duty.

Transfer of functions relating to certain financial matters

5.—(1) The following functions, immediately before the appointed day, of the Minister or Ministry of Finance for Northern Ireland under the enactments specified in Schedule 1 and 2 and under any instrument made under any such enactment are hereby transferred to the Minister for the Civil Service:—

- (a) functions with respect to the appointment or employment (including determination of numbers) of any persons or to their continuation in or removal from office or employment;
- (b) functions with respect to the determination of remuneration and the times of paying it or to the determination of conditions of service, personal expenses or allowances;

(c) functions with respect to pensions, allowances, gratuities and other like benefits payable to or in respect of any persons.

(2) The other functions, immediately before the appointed day, of the Minister or Ministry of Finance for Northern Ireland under those enactments and instruments are hereby transferred to the Treasury.

(3) The functions, immediately before the appointed day, of the Minister or Ministry of Finance for Northern Ireland under the enactments specified in Schedule 3 are hereby transferred to the Treasury.

(4) The functions, immediately before the appointed day, of the Ministry of Finance for Northern Ireland under subsection (2) of section 1 of the Superannuation (Miscellaneous Provisions) Act (Northern Ireland) 1969 are hereby transferred to the Minister for the Civil Service as respects an office such as is mentioned in subsection (4) of that section to which an enactment mentioned in paragraph (a) or (b) of that subsection applies.

Transfer of functions relating to Comptroller and Auditor General for Northern Ireland and amendment of certain enactments relating to accounts, etc

6.—(1) The functions, immediately before the appointed day, of the Comptroller and Auditor General for Northern Ireland under the enactments specified in Schedule 4 are hereby transferred to the Comptroller and Auditor General in so far as those functions relate to accounts or statements as respects any period falling after the appointed day.

(2) A clerk of the Crown and peace shall keep the accounts referred to in section 101 of the County Courts Act (Northern Ireland) 1959 separately in relation to so much of the financial year ending in 1974 as relates to the period ending with the appointed day and as relates to the period beginning with the appointed day and ending with the expiration of that financial year.

(3) In section 12 of the Legal Aid and Advice Act (Northern Ireland) 1965 any reference to a financial year shall be construed, in relation to the financial year ending in 1974, as a reference to the period between the beginning of that financial year and ending immediately before the appointed day and the period beginning with that day and ending with the expiration of that financial year.

(4) In section 7 of the Judgments (Enforcement) Act (Northern Ireland) 1969 any reference to a financial year (except the first reference in subsection (4)) shall be construed, in relation to the financial year ending in 1974, as a reference to the period between the beginning of that year and ending immediately before the appointed day and the period beginning with that day and ending with the expiration of that financial year.

(5) In section 29 of the Police Act (Northern Ireland) 1970 the reference to a financial year shall be construed, in relation to the financial year ending in 1974, as a reference to the period between the beginning of that year and ending immediately before the appointed day and the period beginning with that day and ending with the expiration of that financial year.

(6) The Comptroller and Auditor General for Northern Ireland or, as the case may be, a Northern Ireland department shall not lay before the Assembly—

- (a) a statement (or a report relating thereto) mentioned in section 12(5) of the Legal Aid and Advice Act (Northern Ireland) 1965;
- (b) a statement mentioned in section 7 of the Judgments (Enforcement) Act (Northern Ireland) 1969;
- (c) copies of the statements mentioned in section 29 of the Police Act (Northern Ireland) 1970;
- (d) copies of the accounts and reports mentioned in section 3 of the Northern Ireland (Financial Provisions) Act 1972,

which deals or deal with a financial year falling before the appointed day or such part of a financial year as falls before that day.

Transfer of functions of chief crown solicitor

7. The functions, immediately before the appointed day, of the Chief Crown Solicitor for Northern Ireland under any enactment and under any instrument made under an enactment are hereby transferred to the Crown Solicitor for Northern Ireland.

Parliamentary control of certain statutory rules

8.—(1) No instrument made, whether before or after the appointed day, under an enactment mentioned in Article 4 or specified in Schedule 1, 2 or 3 shall be laid before the Assembly, or be liable to annulment or capable of being revoked in pursuance of a resolution, motion or address of the Assembly and no draft of an instrument shall, under such an enactment, be so laid nor shall any proceedings be taken in the Assembly with respect to a draft of such an instrument.

(2) Where, under any enactment mentioned in Article 4 or specified in Schedule 1, 2 or 3—

- (a) it is a condition, before an instrument can be made, or for the coming into operation of an instrument, that a resolution or motion has been passed or address presented by the Assembly or that a draft of the instrument has been laid before it; or
- (b) an instrument ceases to have effect unless such a resolution or motion is passed or such an address is presented,

the instrument may be made or come into operation, or shall not cease to have effect, as the case may be, notwithstanding that any such resolution, motion or address has not been passed or presented.

(3) Any instrument made after the appointed day in relation to which paragraph (1) or (2) has effect shall—

- (a) if, but for paragraph (1), it would have been laid before the Assembly without being subject to any proceedings there, be laid before Parliament; and
- (b) in any other case, be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

(4) No statutory rule which is made before the appointed day which would, but for this paragraph, have been liable to be annulled or capable of being revoked in pursuance of a resolution, motion or address of the Assembly shall be so annulled or revoked.

(5) Where under any enactment mentioned in Article 4 or specified in Schedule 1, 2 or 3 or an instrument made under such an enactment—

- (a) anything done or any instrument made by the transferee requires any approval, consent, recommendation or other authorisation of the Head of the Department of Finance for Northern Ireland or that Department; or
- (b) the transferee is required to consult that Head or Department before taking any step,

the thing may be done, instrument made or step taken without any such approval, consent, recommendation, authorisation or consultation.

Making of certain subordinate legislation by statutory instrument

9.—(1) Any power to make orders or regulations conferred by an enactment specified in paragraph (2) shall be exercisable by statutory instrument and the Statutory Instruments Act 1946 shall apply accordingly.

(2) The enactments referred to in paragraph (1) are the following, namely:—

- section 9 of the Finance Act (Northern Ireland) 1936;
- section 27(3) of the Finance (No. 2) Act (Northern Ireland) 1946;

section 1 of the Finance Act (Northern Ireland) 1963;

section 1(2) of the Finance Act (Northern Ireland) 1970; and the Vehicles (Excise) Act (Northern Ireland) 1972.

Transfer of certain property etc

10.—(1) With any functions transferred by this Order to the transferee there shall, on the appointed day, be transferred to him, without further assurance, all property, rights and liabilities to which the transferor is entitled or subject in connection with those functions immediately before the appointed day.

(2) The transferee may give such directions extending or restricting the operation of paragraph (1) as he may consider expedient—

(a) for the purpose of making minor adjustments of the property, rights and liabilities transferred by virtue of that paragraph;

(b) for the purpose of removing uncertainty as to the application of that paragraph to any property, rights or liabilities;

and a direction under this paragraph may in particular provide for dividing or apportioning any property, rights or liabilities between the transferor and the transferee.

(3) Subject to paragraph (4), a certificate issued by the transferee to the effect that any property of the transferor which is specified in the certificate was, or was not, transferred to him by virtue of paragraph (1), or that any rights or liabilities of the transferor so specified were, or were not, so transferred shall be conclusive evidence of the matters stated in the certificate.

(4) The issue of a certificate under paragraph (3) shall not prevent a subsequent direction being given under paragraph (2) in relation to any property, rights or liabilities to which the certificate refers.

(5) A direction shall not be given under paragraph (2) after the end of the period of two years beginning with the appointed day.

(6) In the application of this Article to a transferee other than the Secretary of State, any reference to property shall be omitted.

Supplemental

11.—(1) Paragraphs (2) to (6) shall have effect in connection with the transfer of any functions by this Order.

(2) This Order shall not affect the validity of anything done by or in relation to the transferor before the appointed day.

(3) Anything which, immediately before the appointed day, is in process of being done by or in relation to the transferor (including, in particular, any legal proceedings to which the transferor is a party) may, if it relates to any functions, property, rights or liabilities transferred by this Order be continued by or in relation to the transferee.

(4) Any authorisation given (by way of approval or otherwise), requirement imposed or appointment made by the transferor in connection with any functions transferred by this Order shall, if in force on the appointed day, have effect as if given, imposed or made by the transferee in so far as that is required for continuing its effect after that day.

(5) Any enactment, instrument or agreement passed or made before the appointed day shall have effect, so far as may be necessary for the purpose or in consequence of the transfers effected by this Order, as if any reference to the transferor or an officer of the transferor (including a reference which is to be construed as such a reference) were a reference to the transferee or an officer of the transferee, as the case may require.

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(6) Documents or forms printed or duplicated for use in connection with any functions transferred by this Order may be so used notwithstanding that they contain references to the transferor or an officer of the transferor and those references shall be construed as references to the transferee or an officer of the transferee, as the case may be.

(7) Where—

- (a) by virtue of section 7(5) of the Constitution Act, a Ministry of Northern Ireland becomes a Northern Ireland department; and
- (b) that department has not a seal;

the seal of that Ministry may, until the department is provided with a seal, be used for any purpose as if it were the seal of that department.

Application of Documentary Evidence Act 1868 to chief executive member

12. The Documentary Evidence Act 1868, as amended by the Documentary Evidence Act 1882, shall apply to the chief executive member of the Northern Ireland Executive as if he were mentioned in column 1 of the Schedule to the first-mentioned Act, and as if he or any person authorised by him to act on his behalf were mentioned in column 2 of that Schedule, and as if the regulations referred to in that Act included any document issued by the chief executive member.

Administration of oath under Constitution Act

13. The oath or affirmation set out in Schedule 4 to the Constitution Act shall be administered by such person as the Secretary of State may determine.

Amendments and repeals

14.—(1) The enactments set out in Schedule 5 shall have effect subject to the amendments specified in that Schedule.

(2) The enactments set out in columns 1 and 2 of Schedule 6 are hereby repealed to the extent specified in column 3 of that Schedule.

(3) Where Schedule 5 amends any provision by substituting a Minister or Department for a Minister or Ministry of Northern Ireland, the amendment shall, for the purposes of this Order, be construed as if it effected the transfer of the functions of the Minister or Ministry of Northern Ireland under that provision.

(4) Notwithstanding anything in Schedule 5 or 6, any person who, immediately before the appointed day, is a person referred to in paragraph (5) shall hold his office on the same tenure as that by which the office is held immediately before the appointed day, with the substitution of an address from both Houses of the Parliament of the United Kingdom for an address from both Houses of the Parliament of Northern Ireland.

(5) The said persons are—

- (a) a member of the Lands Tribunal for Northern Ireland;
- (b) a county court judge in Northern Ireland;
- (c) a resident magistrate in Northern Ireland;
- (d) the chief electoral officer for Northern Ireland.

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W.G. Agnew