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STATUTORY INSTRUMENTS

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**2005 No. 3429**

**The Transfer of Functions (Lord Chancellor  
and Secretary of State) Order 2005**

**Citation and commencement**

1.—(1) This Order may be cited as the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005.

(2) This Order comes into force on 12th January 2006.

**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) References in this Order to functions transferred by a provision of this Order include references to any function of a Minister that that provision directs to be exercisable concurrently with another Minister.

(3) References in this Order to the functions of a Minister under an enactment include references to the functions of that Minister under an instrument having effect under that enactment.

**Transfer of functions to the Lord Chancellor**

3.—(1) The functions of the Secretary of State under the following enactments are transferred to the Lord Chancellor—

- (a) the Legal Aid Act 1988<sup>(1)</sup>;
- (b) in the Courts and Legal Services Act 1990<sup>(2)</sup>, sections 58, 58A and 58B;
- (c) in the Access to Justice Act 1999<sup>(3)</sup>, Parts 1 and 2, and Part 7 so far as relating to any provision of those Parts.

(2) The functions of the Secretary of State under section 2(3)(a) of the Human Rights Act 1998<sup>(4)</sup>, his functions under subsection (9)(a) of section 7 of that Act, and his functions under subsection (11) of that section by virtue of subsection (9)(a), are to be exercisable concurrently with the Lord Chancellor.

**Transfer of property, rights and liabilities to the Lord Chancellor**

4. All property, rights and liabilities to which the Secretary of State for Constitutional Affairs is entitled or subject at the coming into force of this Order in connection with the functions transferred by article 3 are transferred to the Lord Chancellor.

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(1) 1988 c. 34.  
(2) 1990 c. 41.  
(3) 1999 c. 22.  
(4) 1998 c. 42.

### **Transfers to the Lord Chancellor: supplementary**

5.—(1) This Order does not affect the validity of anything done (or having effect as if done) by or in relation to the 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 Secretary of State may, so far as it relates to anything transferred by article 3 or 4, be continued by or in relation to the Lord Chancellor.

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

(4) Documents or forms printed for use in connection with the functions transferred by article 3 may be used in connection with those functions even though they contain, or are to be read as containing, references to the Secretary of State, his department or an officer of his; 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 Lord Chancellor, his department or an officer of his (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 3, as if references to (and references which are to be read as references to) the Secretary of State, his department or an officer of his were or included references to the Lord Chancellor, 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 4, as if references to (and references which are to be read as references to) the Secretary of State for Constitutional Affairs, his department or an officer of his were references to the Lord Chancellor, his department or an officer of his (as appropriate).

### **Transfer of function to the Secretary of State for the Home Department**

6. The function of the Lord Chancellor of appointing a Conservator under section 12 of the Wimbledon and Putney Commons Act 1871<sup>(5)</sup> is transferred to the Secretary of State for the Home Department.

### **Transfer to the Secretary of State for the Home Department: supplementary**

7.—(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 the function transferred by article 6, be continued by or in relation to the Secretary of State for the Home Department.

(3) Anything done (or having effect as if done) by or in relation to the Lord Chancellor in connection with the function transferred by article 6 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 the Home Department.

(4) 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 6, as if references to (and references which are to be read as references to) the Lord Chancellor, his department or an

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(5) 1871 c. cciv.

officer of his were references to the Secretary of State for the Home Department, his department or an officer of his (as appropriate).

**Consequential amendments**

8. The Schedule (consequential amendments) has effect.

*A. K. Galloway*  
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