

2012 No. 2595

NORTHERN IRELAND

CONSTITUTIONAL LAW

**The Northern Ireland Act 1998 (Devolution of Policing and
Justice Functions) Order 2012**

Made - - - - *17th October 2012*

Coming into force in accordance with article 1(2)

At the Court at Buckingham Palace, the 17th day of October 2012

Present,

The Queen's Most Excellent Majesty in Council

In accordance with section 86(6) of the Northern Ireland Act 1998(a), a draft of this Order has been approved by resolution of each House of Parliament.

Her Majesty, in exercise of the powers conferred by section 86(1), (3A) and (4) of the Northern Ireland Act 1998, is pleased, by and with the advice of Her Privy Council, to order as follows:

Title and commencement

1.—(1) This Order may be cited as the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012.

(2) This Order shall come into force on the day after the day on which it is made.

Extent

2.—(1) Subject to paragraphs (2) and (3), an amendment or repeal contained in this Order has the same extent as the enactment or instrument or relevant part of the enactment or instrument to which the amendment or repeal relates.

(2) Article 22(4) extends to Northern Ireland only.

(3) Nothing in this Order extends to a territory outside the United Kingdom.

(a) 1998 c. 47. Subsection (3A) was inserted by section 4 of the Northern Ireland Act 2009 (c. 3); relevant definitions are contained in subsections (7) and (8) of section 86.

Transfers of records

3.—(1) All property and liabilities so far as relating to the following records to which a Minister of the Crown or a government department is entitled or subject immediately before the coming into force of this Order are transferred to the Department of Justice—

(a) written records in respect of a relevant function exercised by—

- (i) the Northern Ireland Prison Service,
- (ii) the Youth Justice Agency of Northern Ireland,
- (iii) Forensic Science Northern Ireland,
- (iv) the Northern Ireland Compensation Agency,

which have been provided to the Department of Justice prior to the coming into force of this Order; and

(b) electronic records in respect of a relevant function which were identified as relevant to the ongoing business of the Department of Justice and provided to that Department before the coming into force of the 2010 Order.

(2) If at any time the Secretary of State is of the opinion that any record referred to in paragraph (1) contains protected information, the Secretary of State may direct that—

- (a) the record (and any copies) be returned to the Northern Ireland Office;
- (b) the record (and any copies) be destroyed or deleted,

and, where a record is returned, the property and liabilities so far as relating to that record are transferred to the person from whom they were transferred under paragraph (1).

(3) The Department of Justice must comply with any directions given by the Secretary of State in accordance with paragraph (2).

(4) Article 22 of the 2010 Order ceases to have effect.

(5) In this article—

“the 2010 Order” means the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010(a);

“the Department of Justice” means the Department of Justice in Northern Ireland;

“government department” means a department of the Government of the United Kingdom;

“relevant function” means—

- (a) a function transferred by or by virtue of any provision of this Order to the Department of Justice;
- (b) a relevant function as defined in article 3 of the 2010 Order transferred to the Department of Justice or the Minister in charge of that Department by or by virtue of that Order; or
- (c) a function which, by virtue of the Northern Ireland Act 1998 (Amendment of Schedule 3) Order 2010 is exercisable on Her Majesty’s behalf under section 23(2) of the Northern Ireland Act 1998,

and the cases covered by paragraphs (a) and (c)(b) include cases where the function transferred was part of a larger function (for example, where a function that is exercisable in relation to England and Wales and Northern Ireland is transferred so far as it is exercisable in relation to Northern Ireland);

“property” includes rights and interests of any description;

“protected information” means information the disclosure of which may, in the opinion of the Secretary of State, be against the interests of national security; and

“records” means written and electronic records.

(a) S.I. 2010/976.

(b) The same provision is made in respect of sub-paragraph (b) in article 3 of the 2010 Order.

Provision consequential on devolution to the Northern Ireland Assembly of legislative power in relation to policing and justice matters

Interpretation Act (Northern Ireland) 1954

4. In section 21(2)(a) of the Interpretation Act (Northern Ireland) 1954(a) (rules regulating procedure of courts and tribunals) for “Treasury” substitute “Department of Finance and Personnel”.

Legal Aid, Advice and Assistance (Northern Ireland) Order 1981

5. In Article 14(7) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(b) (assessment of disposable capital and income and of maximum contribution) for “Treasury” substitute “Department of Finance and Personnel”.

Judicial Pensions and Retirement Act 1993

6.—(1) Amend section 26 of the Judicial Pensions and Retirement Act 1993(c) (retirement date for holders of certain judicial offices etc) as follows.

(2) In subsection (13) omit “or the Lord Chief Justice of Northern Ireland”.

(3) After subsection (13) insert—

“(13A) Where the Lord Chief Justice of Northern Ireland is the appropriate person—

- (a) in cases where the relevant office is one specified in paragraph 11 of Schedule 2 to the Northern Ireland Act 1998(d), the concurrence of the Lord Chancellor must be obtained before any function under this section is exercised;
- (b) in any other case, the concurrence of the Department of Justice in Northern Ireland must be obtained before any function under this section is exercised.”

Airports (Northern Ireland) Order 1994

7.—(1) Amend Article 19 of the Airports (Northern Ireland) Order 1994(e) (appointment of constables for an airport) as follows.

(2) In paragraph (1) for “Secretary of State” substitute “Department of Justice”.

(3) In paragraph (2) for “Secretary of State” substitute “appropriate authority”.

(4) After paragraph (2) insert—

“(2A) In this Article “appropriate authority” means—

- (a) in relation to conditions which affect an excepted or reserved matter otherwise than incidentally, the Secretary of State; and
- (b) otherwise, the Department of Justice;

and for the purposes of this paragraph, “excepted matter” and “reserved matter” have the same meanings as in the Northern Ireland Act 1998(f).

(a) 1954 c. 33 (N.I.). Section 21(2) was amended by section 122(2) of, and Schedule 7 to, the Judicature (Northern Ireland) Act 1978 (c. 23) and by S.I. 1981/1675 (N.I. 26).

(b) S.I. 1981/228 (N.I. 8). Amendments have been made but they are not relevant to this Order.

(c) 1993 c. 8. Subsection (13) was inserted by section 15(1) of, and paragraphs 226 and 228 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4) and amended by section 54 of the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(d) Paragraph 11 of Schedule 2 has been amended by sections 9, 82 and 86 of, and Schedule 13 to, the Justice (Northern Ireland) Act 2002 (c. 26) and section 59(5) of, and paragraph 33 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(e) S.I. 1994/426 (N.I. 1). Amendments have been made but they are not relevant to this Order.

(f) Section 4 makes provision for excepted and reserved matters.

(2B) An authorisation under this Article shall not be granted until the Secretary of State has given notice in writing to the Department of Justice—

- (a) specifying the conditions of the kind referred to in paragraph (2A)(a) to which the authorisation, if granted, is to be subject; or
- (b) declaring that the authorisation, if granted, is not to be subject to any such conditions.”

Registration of Clubs (Northern Ireland) Order 1996

8. In Article 51 of the Registration of Clubs (Northern Ireland) Order 1996(a) (exemptions) after “the authority of” insert “the Department of Justice,”.

Immigration and Asylum Act 1999

9.—(1) Amend the Immigration and Asylum Act 1999(b) as follows.

(2) In section 53(6B)(c) (applications for bail) after “the Lord Chief Justice of Northern Ireland” insert “and the Department of Justice in Northern Ireland”.

(3) In section 83(2) (which establishes the Immigration Services Commissioner) after “Lord Chancellor” insert “, the Department of Justice in Northern Ireland”.

(4) In section 86(d)(designated professional bodies)—

(a) in subsection (5)(a) for “Lord Chancellor” substitute “Department of Justice in Northern Ireland”; and

(b) for subsection (6) substitute—

“(6) Before deciding whether or not to give its approval under subsection (5)(a), the Department of Justice in Northern Ireland must consult the Lord Chief Justice of Northern Ireland.”

(5) In paragraph 4 of Schedule 5(e) (which sets out the Immigration Services Commissioner’s regulatory functions)—

(a) in sub-paragraph (3)(a) for “Lord Chancellor” substitute “Department of Justice in Northern Ireland”; and

(b) for sub-paragraph (4) substitute—

“(4) Before deciding whether or not to give its approval under sub-paragraph (3)(a), the Department of Justice in Northern Ireland must consult the Lord Chief Justice of Northern Ireland.”

Northern Ireland Act 1998 (Designation of Public Authorities) Order 2000

10. In the Schedule to the Northern Ireland Act 1998 (Designation of Public Authorities) Order 2000(f) omit “Northern Ireland Court Service.”.

(a) S.I. 1996/3159 (N.I. 23).

(b) 1999 c.33.

(c) Subsection (6B) and subsection (9) (which is also relevant) were inserted by section 15(1) of, and paragraphs 283 and 284 of schedule 4 to, the Constitutional Reform Act 2005 (c. 4).

(d) Subsections (5)(a) and (6) were amended by sections 86 and 210 of, and paragraphs 9 and 13 of Schedule 18 to, the Legal Services Act 2007 (c. 29).

(e) Sub-paragraphs (3)(a) and (4) were amended by sections 186 and 210 of, and paragraphs 9 and 17 of Schedule 18 to, the Legal Services Act 2007; other amendments made to this paragraph are not relevant to this Order.

(f) S.I. 2000/1787. This Order designates public authorities for the purposes of section 75 (statutory duties relating to equality of opportunity) of the Northern Ireland Act (c. 47). The Northern Ireland Court Service was abolished by S.I. 2010/133 and its functions transferred to the Department of Justice. Amendments have been made to the Schedule but they are not relevant to this Order.

Police (Northern Ireland) Act 2003

- 11.**—(1) Amend the Police (Northern Ireland) Act 2003(a) as follows.
- (2) In section 30A(8)(b) (community support officers) for “Secretary of State” substitute “Department of Justice”.
- (3) In section 41(2) (intimate searches) for “Secretary of State” substitute “Department of Justice”.
- (4) In section 44(c) (orders and regulations)—
- (a) in subsection (5) omit “, 41(2)”;
 - (b) in subsection (6) after “under this Act” insert “(other than an order under section 41(2))”.

Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005

12. In articles 5(3) and 6(3)(a) and in each place in article 7 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005(d) for “Secretary of State” substitute “Department of Justice in Northern Ireland”.

Police and Justice Act 2006

13.—(1) Amend section 49 of the Police and Justice Act 2006(e) (orders and regulations) as follows.

(2) In subsection (9) after “section 13(1)(d)” insert “or paragraph 48 of Schedule 1”.

(3) After subsection (10) insert—

“(11) No order may be made by the Department of Justice in Northern Ireland under paragraph 48 of Schedule 1 unless a draft of the order has been laid before, and approved by a resolution of, the Northern Ireland Assembly.

(12) Section 41(3) of the Interpretation Act (Northern Ireland) 1954(f) applies for the purposes of subsection (11) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.”

14.—(1) Amend Schedule 1(g) to the Police and Justice Act 2006 (National Policing Improvement Agency) as follows.

(2) After paragraph 6(4) (strategic priorities) insert—

“(4ZA) Sub-paragraph (2)(b) to (d) does not apply in relation to strategic priorities for the Agency so far as the priorities relate—

- (a) to the doing of things by the Agency in relation to any of the persons mentioned in sub-paragraph (4ZB) in exercise of its power under paragraph 2(1), or
- (b) to the doing of things by the Agency in exercise of that power that may or will affect what it may do in relation to any of those persons in future exercise of that power,

but before determining any such priorities so far as so relating, the Secretary of State must consult the Department of Justice in Northern Ireland.

(a) 2003 c. 6.

(b) Section 30A was inserted by S.I. 2007/912 (N.I. 6).

(c) Section 44 was amended by S.I. 2010/976.

(d) S.I. 2005/2078. Amendments have been made but they are not relevant to this Order.

(e) 2006 c. 48. Section 49 was amended by article 12 of, and paragraph 90 of Schedule 14 to, S.I. 2010/976. Other amendments have been made but they are not relevant to this Order.

(f) Section 41(3) was substituted by S.I. 1999/663.

(g) Sub-paragraph (2)(b) to (d) of paragraph 6 was substituted by section 99 of, and paragraphs 358 and 360 of Schedule 16 to, the Police Reform and Social Responsibility Act 2011 (c. 13) (“2011 Act”). Until the coming into force of section 1 of the 2011 Act transitional provisions apply and see further article 29 of this Order. Other amendments have been made to this Schedule but they are not relevant to this Order..

- (4ZB) Those persons are—
- (a) the Police Service of Northern Ireland,
 - (b) the Police Service of Northern Ireland Reserve, and
 - (c) persons employed for the purposes of either (or both) of those bodies.”
- (3) In paragraph 48 (power to modify)—
- (a) in sub-paragraph (4)—
 - (i) omit “and” at the end of paragraph (a) and insert—

“(aa) so far as it is power to make provision falling within sub-paragraph (5A), is power of the Department of Justice in Northern Ireland, and”,
 - (ii) in paragraph (b) after “(5)” insert “or (5A)”,
 - (b) after sub-paragraph (5) insert—

“(5A) The provision falling within this sub-paragraph is provision which could be made by an Act of the Northern Ireland Assembly without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998)(a).”,
 - (c) after sub-paragraph (13) insert—

“(13A) Power of the Department of Justice in Northern Ireland under sub-paragraph (1) is exercisable only with the consent of the Secretary of State.

(13B) Power of the Secretary of State under sub-paragraph (1)(a), (b) and (c), so far as it is power to make provision falling within sub-paragraph (13C), is exercisable only with the consent of the Department of Justice in Northern Ireland.

(13C) The provision falling within this sub-paragraph is provision—

 - (a) that affects, or may affect, any of the persons mentioned in paragraph 4(5), or
 - (b) that affects, or may affect, the rights and powers of the Department of Justice in Northern Ireland.

(13D) Power of the Secretary of State under sub-paragraph (1)(d), so far as it is power to impose obligations on any of the persons mentioned in paragraph 4(5), is exercisable only with the consent of the Department of Justice in Northern Ireland.

(13E) Before making an order under sub-paragraph (1), the Department of Justice in Northern Ireland must consult—

 - (a) the Agency,
 - (b) the Northern Ireland Policing Board, and
 - (c) the Chief Constable of the Police Service of Northern Ireland.

(13F) Before deciding whether to give consent for the purposes of sub-paragraph (13B) or (13D), the Department of Justice in Northern Ireland must consult—

 - (a) the Northern Ireland Policing Board, and
 - (b) the Chief Constable of the Police Service of Northern Ireland.”

Policing (Miscellaneous Provisions) (Northern Ireland) Order 2007

15.—(1) Amend Article 1 of the Policing (Miscellaneous Provisions) (Northern Ireland) Order 2007(b) (title and commencement) as follows.

- (2) In paragraph (2)—
- (a) for “Secretary of State” substitute “Department of Justice”;
 - (b) at the end of sub-paragraph (b) insert “and”;

(a) 1998 c. 47. Section 7 was amended by sections 84(1) and 86 of, and Schedule 13 to, the Justice (Northern Ireland) Act 2002 (c. 26) and section 30(1) of, and Schedule 4 to, the Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33).
 (b) S.I. 2007/912 (N.I. 6).

- (c) omit sub-paragraph (c).
- (3) After paragraph (2) insert—
 - “(2A) Article 13 comes into operation on such day as the Secretary of State may by order appoint.”

UK Borders Act 2007

- 16.—(1) Amend section 24 of the UK Borders Act 2007(a) (seizure of cash) as follows.
- (2) In subsection (2)(d) omit “and Northern Ireland”.
- (3) In subsection (2)(e) for “section 293” substitute “sections 293 and 293A”.

Company, Limited Liability Partnership and Business Names (Sensitive Words and Expressions) Regulations 2009

- 17. In column 5 of the table in Part 2 of Schedule 2 to the Company, Limited Liability Partnership and Business Names (Sensitive Words and Expressions) Regulations 2009(b) (applications where situation of registered office or principal place of business is relevant) for “Northern Ireland Office” substitute “Department of Justice in Northern Ireland”.

Policing and Crime Act 2009

- 18.—(1) Amend the Policing and Crime Act 2009(c) as follows.
- (2) In section 57(d) (which amends the Proceeds of Crime Act 2002(e))—
 - (a) in subsection (4) of the inserted section 195H (exercise of powers without judicial approval) for “Secretary of State” substitute “Department of Justice”;
 - (b) in subsection (5) of the inserted section 195H for “Secretary of State” substitute “Department of Justice”;
 - (c) after subsection (5) of the inserted section 195H insert—
 - “(5A) “Government department” includes a Northern Ireland department.”;
 - (d) in subsection (5) of the inserted section 195I (report by appointed person on exercise of powers) for “Secretary of State” substitute “Department of Justice”;
 - (e) in subsection (6) of the inserted section 195I for “Secretary of State” substitute “Department of Justice”;
 - (f) in subsection (6)(b) of the inserted section 195I for “Parliament” substitute “the Northern Ireland Assembly”;
 - (g) after subsection (6) of the inserted section 195I insert—
 - “(6A) Section 41(3) of the Interpretation Act (Northern Ireland) 1954(f) applies for the purposes of subsection (6)(b) in relation to the laying of a copy of a report as it applies in relation to the laying of a statutory document under an enactment.”;
 - (h) in subsections (7) and (8) of the inserted section 195I for “Secretary of State” in each place substitute “Department of Justice”;
 - (i) in the title of the inserted section 195S (codes of practice), at the end insert “: **Secretary of State**”;

(a) 2007 c. 30. Section 24(2)(c) was amended by section 112(1) of, and paragraph 113 of Schedule 7 to, the Policing and Crime Act 2009 (c. 26). Those amendments are not yet in force.

(b) S.I. 2009/2615.

(c) 2009 c. 26.

(d) Section 57 inserts new sections 195A-195S into the Proceeds of Crime Act 2002 (c. 29). Section 57 is not yet in force.

(e) 2002 c. 29

(f) 1954 c. 33 (N.I.). Section 41(3) was substituted by S.I. 1999/663.

- (j) in subsection (1)(a) of the inserted section 195S for “appropriate officers” substitute “officers of Revenue and Customs”;
- (k) in subsection (1)(c) after “property” insert “by officers of Revenue and Customs and members of staff of SOCA”;
- (l) after subsection (1) of the inserted section 195S insert—
 - “(1A) In subsection (1) senior officers means officers of Revenue and Customs of a rank designated by the Commissioners for Her Majesty’s Revenue and Customs as equivalent to that of a police officer of at least the rank of inspector.”;
- (m) at the end of the inserted section 195S insert—

“195T Codes of practice: Department of Justice

- (1) The Department of Justice must make a code of practice in connection with—
 - (a) the carrying out by constables and accredited financial investigators of the functions conferred by sections 195C to 195H,
 - (b) the carrying out by senior officers of their functions under section 195G, and
 - (c) the detention of property by—
 - (i) constables,
 - (ii) accredited financial investigators, and
 - (iii) members of staff of the relevant director (within the meaning of section 352(5A)(b)(a)),
 under or by virtue of sections 190A, 193A and 195J to 195P.
- (2) In subsection (1)(b) senior officers means—
 - (a) police officers of at least the rank of inspector,
 - (b) accredited financial investigators who fall within a description specified in an order made for this purpose by the Secretary of State under section 453(b).
- (3) Where the Department of Justice proposes to issue a code of practice the Department of Justice must—
 - (a) publish a draft,
 - (b) consider any representations made about the draft,
 - (c) if the Department of Justice thinks appropriate, modify the draft in the light of any such representations.
- (4) The Department of Justice must lay a draft of the code before the Northern Ireland Assembly.
- (5) When the Department of Justice has laid a draft of the code before the Assembly the Department of Justice may bring it into operation by order.
- (6) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsection (4) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.
- (7) The Department of Justice may revise the whole or any part of the code and issue the code as revised; and subsections (3) to (6) apply to such a revised code as they apply to the original code.
- (8) A failure by a person to comply with a provision of the code does not of itself make the person liable to criminal or civil proceedings.

(a) Section 352(5A) was inserted by section 74(2)(d) of, and paragraphs 103 and 105 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(b) Section 453 was amended by section 81 of the Serious Crime Act 2007 (c. 27).

(9) The code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.”;

(n) after subsection (4) insert—

“(5) In section 459(a) (orders and regulations)—

(a) in subsection (7A) after “section” (the second time it appears) insert “195T(5),”;

(b) in subsection (7B) after “section” insert “195T(5),”.

(3) In section 116(b) (commencement)—

(a) at the beginning of subsection (1A) insert “Subject to subsection (2A),”;

(b) after subsection (2) insert—

“(2A) The power to make an order under subsection (1) relating to section 57 is exercisable by the Secretary of State only with the consent of the Department of Justice in Northern Ireland.”

Bribery Act 2010

19.—(1) Amend the Bribery Act 2010(c) as follows.

(2) In section 9(3) (guidance about commercial organisations preventing bribery) after “the Scottish Ministers” insert “and the Department of Justice in Northern Ireland”.

(3) In section 17 (consequential provisions)—

(a) at the end of subsection (5)(a) insert “(subject to subsection (9A))”;

(b) after subsection (9) insert—

“(9A) The power of the Department of Justice in Northern Ireland to make an order under this section is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979(d) (and not by statutory instrument).

(9B) Subject to subsection (9C), an order of the Department of Justice in Northern Ireland made under this section is subject to affirmative resolution (within the meaning of section 41(4) of the Interpretation Act (Northern Ireland) 1954)(e).

(9C) An order of the Department of Justice in Northern Ireland made under this section which does not amend or repeal a provision of an Act of the Northern Ireland Assembly or of a public general Act is subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954)(f).”; and

(c) in subsection (10) in the definition of “relevant national authority” omit “and” at the end of paragraph (a) and insert—

“(aa) in the case of provision which could be made by an Act of the Northern Ireland Assembly without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998(g)), the Department of Justice in Northern Ireland, and”

Constitutional Reform and Governance Act 2010

(a) Subsections (7A) and (7B) were inserted by S.I. 2010/976. Other amendments have been made but they are not relevant to this Order.

(b) Section 116 was amended by S.I. 2010/976.

(c) 2010 c. 23.

(d) S.I. 1979/1573 (N.I. 12). Amendments have been made but they are not relevant to this Order

(e) Section 41(4) was amended by S.I. 1999/663.

(f) Section 41(6) was amended by S.I. 1999/663.

(g) Section 7 was amended by sections 84(1) and 86 of, and Schedule 13 to, the Justice (Northern Ireland) Act 2002 (c. 26) and section 30(1) of, and Schedule 4 to, the Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33).

20. In section 1 of the Constitutional Reform and Governance Act 2010(a) (application of Chapter) omit subsection (2)(e).

Corporation Tax Act 2010

21. After section 620(4) of the Corporation Tax Act 2010(b) (court investment funds) insert—
“(5) In the application of this section to Northern Ireland, any reference to the Lord Chancellor is to be read as a reference to the Department of Justice in Northern Ireland.”.

Crime and Security Act 2010

22.—(1) Amend the Crime and Security Act 2010(c) as follows.

(2) In section 13(d) (“qualifying offence”)—

(a) in subsection (1), after paragraph (3) of the inserted Article 53A (“qualifying offence” etc) insert—

“(3A) The power to make an order under paragraph (3) is exercisable by the Department of Justice (and not by the Secretary of State) so far as the power may be used to make provision which could be made by an Act of the Northern Ireland Assembly without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998(e)).”;
and

(b) for subsection (2) substitute—

“(2) Amend Article 89(f) of that Order (orders and regulations) as follows—

(a) in paragraph (1)—

- (i) after “made” insert “by the Secretary of State”; and
- (ii) after “Article” insert “53A or”;

(b) in paragraph (2)—

- (i) after “Article 53,” insert “53A,”; and
- (ii) for “or 66,” insert “, 66 or 81”.

(3) In section 42(g) (extension of licensing scheme)—

(a) in subsection (2), after the inserted section 4A(3) (requirement to license businesses etc) insert—

“(3A) In the application of this section to Northern Ireland—

- (a) the reference in subsection (2)(c) to the Secretary of State must be construed as a reference to the Department of Justice in Northern Ireland; but
- (b) before making any order under subsection (2)(c) the Department of Justice in Northern Ireland must consult the Secretary of State.”;

(b) in subsection (4), after the inserted section 9(2C) (licence conditions) insert—

“(2D) The Secretary of State must consult the Department of Justice in Northern Ireland before approving a nomination under subsection (2B) affecting persons carrying out activities in Northern Ireland.”

(a) 2010 c. 25.

(b) 2010 c. 4.

(c) 2010 c. 17.

(d) Section 13(1) inserts a new Article 53A into the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)). Section 13 is not yet in force.

(e) 1998 c. 47. Section 7 was amended by sections 84(1) and 86 of, and Schedule 13 to, the Justice (Northern Ireland) Act 2002 (c. 26) and section 30(1) of, and Schedule 4 to, the Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33).

(f) Article 89 has been amended by section 72(4) of the Police (Northern Ireland) Act 2000 (c. 32), section 42 of the Police (Northern Ireland) Act 2003 (c. 6), article 42 of S.I. 2007/288 (N.I. 2), and paragraph 12 of Schedule 2 to S.I. 2010/976.

(g) Section 42 inserts new sections 4A and 4B into the Private Security Industry Act 2001 (c. 12) and inserts new subsections into section 9 of that Act. Section 42 is not yet in force.

(4) For section 44(2)(a) (charges for vehicle release: appeals) substitute—

“(2) Before section 23 there is inserted—

“22B Charges for vehicle release: appeals in Northern Ireland

(1) The Department of Justice shall by regulations make provision for the purpose specified in subsection (2) in a case where, in Northern Ireland, a person carries out—

- (a) an activity to which paragraph 3 of Schedule 2 applies by virtue of subparagraph (1)(c) of that paragraph (demanding or collecting a charge as a condition of the removal of an immobilisation device); or
- (b) an activity to which paragraph 3A of Schedule 2 applies by virtue of subparagraph (1)(d) of that paragraph (demanding or collecting a charge as a condition of the release of a vehicle).

(2) The purpose referred to in subsection (1) is to entitle a person otherwise entitled to remove the vehicle to appeal against the charge.

(3) Regulations under this section shall specify the grounds on which an appeal may be made.

(4) The grounds may include in particular—

- (a) contravention of a code of practice issued by the Authority;
- (b) contravention of any requirement imposed by or under this Act (including a condition contained in a licence granted under this Act).

(5) Regulations under this section shall make provision for and in connection with the person to whom an appeal may be made.

(6) That person may in particular be—

- (a) a person exercising functions of adjudication or the hearing of appeals under another enactment;
- (b) a body established by the Department of Justice under the regulations;
- (c) an individual appointed under the regulations by the Department of Justice or by another person specified in the regulations.

(7) Regulations under this section may also include provision—

- (a) as to the procedural conditions to be satisfied by a person before an appeal may be made;
- (b) as to the payment of a fee by the appellant;
- (c) as to the procedure (including time limits) for making an appeal;
- (d) as to the procedure for deciding an appeal;
- (e) as to the payment to the appellant by the respondent of—
 - (i) the charge against which the appeal is made;
 - (ii) other costs incurred by the appellant in consequence of the activity referred to in subsection (1);
- (f) as to the payment by a party to an appeal of—
 - (i) costs of the other party in relation to the adjudication;
 - (ii) other costs in respect of the adjudication;
- (g) as to the payment by the respondent to an appeal, in a case where the appeal is granted, of a charge in respect of the costs of adjudications under the regulations;

(a) Section 44 inserts a new section 22A into the Private Security Industry Act 2001. Section 44 is not yet in force.

- (h) as to the effect and enforcement of a decision of the person to whom an appeal is made;
- (i) requiring or authorising the person to whom an appeal is made to provide information relating to the appeal to the Authority;
- (j) to the effect that a person who makes a representation that is false in a material particular, and does so recklessly or knowing it to be false, commits an offence triable summarily and punishable with a fine not exceeding level 5 on the standard scale.

(8) The provision specified in paragraphs (e), (f) and (g) of subsection (7) includes provision authorising the person to whom an appeal is made to require payment of the matters specified in those paragraphs.””

(5) In section 59 (commencement)—

- (a) in subsection (1), for “and (3)” substitute “to (3B)”;
- (b) after subsection (3) insert—

“(3A) Sections 42 to 44 (private security industry) come into force, so far as extending to Northern Ireland, on such day as the Department of Justice in Northern Ireland may by order appoint after consulting the Secretary of State.

(3B) The following provisions come into force on such day as the Department of Justice in Northern Ireland may by order appoint—

- (a) section 8 (except Article 61(6ZD) inserted by subsection (3) and Article 63(3BD)(c) inserted by subsection (7));
- (b) sections 9 to 11(1);
- (c) section 12;
- (d) section 13 (except paragraph (2)(l), (n) and (r) of the inserted Article 53A).”;

(c) after subsection (5) insert—

“(5A) An order made by the Department of Justice in Northern Ireland under subsection (3A) or (3B) may—

- (a) appoint different days for different purposes; and
- (b) make transitional provision and savings.”;

(d) in subsection (6) at the beginning insert “Subject to subsection (7),”;

(e) after subsection (6) insert—

“(7) An order under subsection (3A) or (3B) shall be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979(a).”

Functions under subordinate legislation and other instruments

23.—(1) This article applies in relation to a relevant function.

(2) The transferor’s functions immediately before the coming into force of this Order under any instrument made (or so far as made) in the exercise of the relevant function are transferred to the transferee.

(3) The functions transferred by paragraph (2) include functions under any provision not yet in force at the time immediately before the coming into force of this Order (and in paragraph (2) the reference to any instrument includes a reference to the instrument as amended by any provision of an enactment or instrument passed or made before that time, but not yet in force).

(a) S.I. 1979/1573 (N.I. 12).

Transitional provisions

24. This Order does not affect the validity of anything done before the coming into force of this Order.

25.—(1) Paragraphs (2) and (3) apply in relation to a relevant function or any relevant property or liability.

(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 transferor may, so far as it relates to the relevant function or relevant property or liability, be continued by or in relation to the transferee.

(3) Anything done (or having effect as if done) by or in relation to the transferor for the purposes of or in connection with the relevant function or relevant property or liability shall have effect as if done by or in relation to the transferee so far as necessary or expedient for continuing its effect after the coming into force of this Order.

(4) Where the thing done (or having effect as if done) by the transferor is the exercise of a relevant function by statutory instrument, paragraph (3) applies in relation to the exercise of the relevant function even though the relevant function is not exercisable by the transferee by statutory instrument.

(5) Documents or forms printed for use in connection with a relevant function may be used in connection with the function even though they contain, or are to be construed as containing, references to the transferor; 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 transferee.

26. Any enactment or instrument passed or made before the coming into force of this Order shall have effect, so far as necessary or expedient in consequence of or for giving full effect to—

- (a) the transfer of a relevant function or any relevant property or liability, or
- (b) article 24 or 25,

as if any references (including references which are to be construed as such references) to the transferor were or included references to the transferee.

27.—(1) An instrument made before the coming into force of this Order is not to be subject (in whole or in part) to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954) despite any provision made by this Order.

(2) If, immediately before the coming into force of this Order, the instrument is subject to annulment in pursuance of a resolution of either House of Parliament, the instrument is to continue to be so subject.

28. For the purposes of articles 23 to 27—

“relevant function” means a function transferred by or by virtue of any provision of this Order;

“relevant property or liability” means any property or liability transferred by article 3 of this Order;

“transferor” and “transferee”, in relation to a relevant function or any relevant property or liability, mean respectively—

- (a) the person from whom the function or property or liability is transferred, and
- (b) the person to whom the function or property or liability is transferred.

29. Until the coming into force of section 1 of the Police and Social Responsibility Act 2011^(a) paragraph 6(4ZA) of Schedule 1 to the Police and Justice Act 2006^(b) (as inserted by article 14(2)

^(a) 2011 c. 13, (“2011 Act”).

^(b) Until the coming into force of section 1 of the 2011 Act amendments made to Schedule 1, whilst in force, are subject to transitional provisions. The amendments made to paragraph 6(4) of Schedule 1 are commenced by article 3 of and paragraphs (ccc) and (nnn) (iii) of Schedule 1 to, S.I.2011/3019. The transitional provision is made by paragraph 78(b) of Schedule 2 to that Order.

of this Order) has effect as if for the words “Sub-paragraph (2)(b) to (d)” there were substituted “Sub-paragraph (2)(aa) to (c)”.

Richard Tilbrook
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends certain statutory provisions in consequence of, or for giving full effect to, the Northern Ireland Act 1998 (Amendment of Schedule 3) Order 2010. That Order amends Schedule 3 to the Northern Ireland Act 1998 (“the 1998 Act”) so that certain policing and justice matters (as defined in section 4(6) of the 1998 Act) cease to be reserved matters and become transferred matters. Provision was made by Order in 2010 (S.I. 2010/976) to similar effect and this Order makes further provision.

Article 3 transfers property and liabilities relating to records.

Article 4 transfers a function under the Interpretation Act (Northern Ireland) 1954.

Article 5 transfers a function under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.

Article 6 amends the Judicial Pensions and Retirement Act 1993.

Article 7 amends the Airports (Northern Ireland) Order 1994.

Article 8 amends the Registration of Clubs (Northern Ireland) Order 1996.

Article 9 amends the Immigration and Asylum Act 1999.

Article 10 amends the Northern Ireland Act 1998 (Designation of Public Authorities) Order 2000.

Article 11 transfers functions under the Police (Northern Ireland) Act 2003.

Article 12 transfers functions under the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005.

Articles 13 and 14 transfer functions under the Police and Justice Act 2006.

Article 15 transfers functions under the Policing (Miscellaneous Provisions) (Northern Ireland) Order 2007.

Article 16 amends the UK Borders Act 2007.

Article 17 amends the Company, Limited Liability Partnership and Business Names (Sensitive Words and Expressions) Regulations 2009.

Article 18 transfers functions under the Policing and Crime Act 2009.

Article 19 transfers functions under the Bribery Act 2010.

Article 20 amends the Constitutional Reform and Governance Act 2010.

Article 21 transfers functions under the Corporation Tax Act 2010.

Article 22 transfers functions under the Crime and Security Act 2010.

Article 23 transfers functions under subordinate legislation and other instruments.

Articles 24 to 29 contain transitional provisions.

A full impact assessment has not been produced for this instrument as no impact on business or the voluntary sector is foreseen.

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