STATUTORY INSTRUMENTS

2015 No. 1897

MINISTERS OF THE CROWN

The Transfer of Functions (Information and Public Records) Order 2015

Made - - - -	*11th November 2015*
Laid before Parliament	*18th November 2015*
Coming into force - -	*9th December 2015*

At the Court at Buckingham Palace, the 11th day of November 2015

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred by sections 1 and 2 of the Ministers of the Crown Act 1975(**1**), is pleased, by and with the advice of Her Privy Council, to order as follows:

Citation and commencement

1.—(1) This Order may be cited as the Transfer of Functions (Information and Public Records) Order 2015.

(2) This Order comes into force on 9th December 2015.

Interpretation

2. In this Order—

"the Chancellor of the Duchy" means the Chancellor of the Duchy of Lancaster;

"instrument" includes Royal Charters, Royal Warrants, Orders in Council, Letters Patent, judgments, decrees, orders, rules, regulations, schemes, bye-laws, awards, licences, authorisations, consents, approvals, contracts and other agreements, memoranda and articles of association, certificates, deeds and other documents.

(**1**) 1975 c. 26. Section 1 was amended by section 20 of the Constitutional Reform Act 2005 (c. 4).

Functions of the Secretary of State to be exercisable concurrently with the Chancellor of the Duchy

3.—(1) The functions of the Secretary of State under a provision of the Freedom of Information Act 2000(**2**) which is listed in paragraph (2) are to be exercisable concurrently with the Chancellor of the Duchy.

(2) The provisions of the Freedom of Information Act 2000 referred to in paragraph (1) are—

(a) section 4(1), (5) and (7)(**3**) (amendment of Schedule 1),

(b) section 5(1) and (3)(**4**) (further power to designate public authorities),

(c) section 7(3), (4) and (8)(**5**) (public authorities to which Act has limited application),

(d) section 75(1)(**6**) (power to amend or repeal enactments prohibiting disclosure of information), and

(e) section 83(2) and (3)(**7**) (power to exclude public authority from definition of "Welsh public authority").

Transfer of functions from the Secretary of State to the Chancellor of the Duchy

4.—(1) The functions of the Secretary of State under a provision of the Freedom of Information Act 2000 which is listed in paragraph (2) are transferred to the Chancellor of the Duchy.

(2) The provisions of the Freedom of Information Act 2000 referred to in paragraph (1) are—

(a) section 9(3)(**8**) (regulations about fees for requests for information),

(b) section 10(4)(**9**) (regulations amending time for compliance with request),

(c) section 11A(8)(**10**) (power, in code of practice issued under section 45, to specify different licences for different purposes),

(d) section 11B(1)(**11**) (regulations about fees for making relevant copyright works available for re-use),

(e) section 12(3) to (5)(**12**) (regulations about costs of complying with requests),

(f) section 13(1)(**13**) (regulations about fees for disclosing information where cost of compliance with request exceeds appropriate limit),

(g) section 45(1), (4) and (5)(**14**) (code of practice giving public authorities guidance in connection with discharge of functions under Part 1 of Act),

(h) section 46(5)(a)(**15**) (requirement to be consulted in relation to code of practice issued under section 46),

(**2**) 2000 c. 36.
(**3**) Section 4 was amended by S.I. 2003/1887, Sch. 2 and by S.I. 2007/1388, Sch. 1.
(**4**) Section 5 was amended by S.I. 2003/1887, Sch. 2.
(**5**) Section 7 was amended by S.I. 2003/1887, Sch. 2 and by S.I. 2007/1388, Sch. 1.
(**6**) Section 75 was amended by S.I. 2003/1887, Sch. 2.
(**7**) Section 83 was amended by S.I. 2003/1887, Sch. 2 and by S.I. 2007/1388, Sch. 1.
(**8**) Section 9 was amended by S.I. 2003/1887, Sch. 2.
(**9**) Section 10 was amended by S.I. 2003/1887, Sch. 2.
(**10**) Section 11A was inserted by section 102(3) of the Protection of Freedoms Act 2012 (c. 9) and amended by S.I. 2015/1415, reg. 21(2).
(**11**) Section 11B was inserted by section 102(3) of the Protection of Freedoms Act 2012 (c. 9).
(**12**) Section 12 was amended by S.I. 2003/1887, Sch. 2.
(**13**) Section 13 was amended by S.I. 2003/1887, Sch. 2.
(**14**) Section 45 was amended by S.I. 2003/1887, Sch. 2. Other amendments have been made to section 45 which are not relevant to this Order.
(**15**) Section 46 was amended by S.I. 2001/3500, Sch. 2 and by S.I. 2003/1887, Sch. 2.

(i) section 47(4B) to (4D)(**16**) (amendment of list of services for which Information Commissioner may charge), and

(j) section 53(1)(a)(iii) and (5)(**17**) (power to designate public authorities for purposes of exemption from duty to comply with decision notice or enforcement notice).

Functions passing under article 3 or 4: supplemental

5.—(1) In this article "information function" means—

(a) a function which is directed by article 3 to be exercisable by the Secretary of State concurrently with the Chancellor of the Duchy, or

(b) a function which is transferred to the Chancellor of the Duchy by article 4.

(2) 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.

(3) There are transferred to the Chancellor of the Duchy all property, rights and liabilities to which the Secretary of State is entitled or subject at the coming into force of this Order in connection with an information function.

(4) 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 an information function or anything transferred by paragraph (3), be continued by or in relation to the Chancellor of the Duchy.

(5) Anything done (or having effect as if done) by or in relation to the Secretary of State in connection with an information function or anything transferred by paragraph (3) 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 Chancellor of the Duchy.

(6) Documents or forms printed for use in connection with an information function may be used in connection with the exercise of that function by the Chancellor of the Duchy even though they contain, or are to be read as containing, references to the Secretary of State; and for the purposes of the use of any such documents or forms in connection with the exercise of that function by the Chancellor of the Duchy, those references are to be read as references to the Chancellor of the Duchy.

(7) Any enactment or instrument passed or made before the coming into force of this Order has effect, so far as necessary for the purposes of or in consequence of article 3 or 4 or paragraph (3), as if references to the Secretary of State (and references which are to be read as references to the Secretary of State) were or included references to the Chancellor of the Duchy.

(8) In paragraphs (2) and (4) to (7)—

(a) references to the Secretary of State are to be read as including references to the department or an officer of the Secretary of State, and

(b) references to the Chancellor of the Duchy are to be read as including references to the Cabinet Office or an officer in that Office accordingly.

Transfer of functions from the Lord Chancellor to the Secretary of State

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

(a) functions under a provision of the Public Records Act 1958(**18**) which is listed in paragraph (2),

(**16**) Section 47 was amended by section 107(3) of the Protection of Freedoms Act 2012 (c. 9).
(**17**) Section 53 was amended by S.I. 2003/1887, Sch. 2 and by S.I. 2007/1388, Sch. 1.
(**18**) 1958 c. 51.

(b) functions under a provision of the Freedom of Information Act 2000 which is listed in paragraph (3),

(c) functions under regulation 17(1)(a) and (4)(a) of the Environmental Information Regulations 2004(**19**) (requirements to be consulted about disclosure of public records), and

(d) functions under sections 147(1), (4) and (5) and 148(1)(f) and (4)(a) of the Government of Wales Act 2006(**20**) (functions in connection with responsibility for Welsh public records).

(2) The provisions of the Public Records Act 1958 referred to in paragraph (1)(a) are—

(a) section 1(1), (2) and (3) (general responsibility for execution of Act and for public records),

(b) section 2(1), (4)(g) and (5) (functions in relation to the Public Record Office),

(c) section 3(4) and (5) to (7)(**21**) (selection and preservation of public records),

(d) section 4(1) to (5) (appointment of places of deposit of public records),

(e) section 5(5)(**22**) (arrangements for inspection of public records in appointed places of deposit),

(f) section 6 (approval of destruction or other disposal of public records in certain circumstances), and

(g) paragraph 7(2) of Schedule 1 (determining whether records are public records for purposes of the Act).

(3) The provisions of the Freedom of Information Act 2000 referred to in paragraph (1)(b) are—

(a) section 46(1), (3), (5) and (6)(**23**) (code of practice providing guidance in connection with keeping, management and destruction of records),

(b) section 65(1)(a) (requirement to be consulted about proposal to refuse request for information contained in a historical record), and

(c) section 66(5)(a) (requirement to be consulted about whether public interest exemption applies to information contained in a transferred public record).

Functions transferred by article 6: supplemental

7.—(1) In this article "public records function" means a function which is transferred by article 6.

(2) 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.

(3) There are transferred to the Secretary of State for Culture, Media and Sport all property, rights and liabilities to which the Lord Chancellor is entitled or subject at the coming into force of this Order in connection with a public records function.

(4) 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 a public records function or anything transferred by paragraph (3), be continued by or in relation to the Secretary of State for Culture, Media and Sport.

(5) Anything done (or having effect as if done) by or in relation to the Lord Chancellor in connection with a public records function or anything transferred by paragraph (3) 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 Culture, Media and Sport.

(**19**) S.I. 2004/3391.
(**20**) 2006 c. 32. Section 147(1) and (4) were amended by section 4(2)(a) of the Wales Act 2014 (c. 29).
(**21**) Section 3(4) was amended by section 45(1)(a) of the Constitutional Reform and Governance Act 2010 (c. 25).
(**22**) Section 5(5) was amended by Schedule 5 to the Freedom of Information Act 2000 (c. 36).
(**23**) Section 46(5)(a) was inserted by S.I. 2003/1887, Sch.2.

(6) Documents or forms printed for use in connection with a public records function may be used in connection with the exercise of that function by the Secretary of State for Culture, Media and Sport even though they contain, or are to be read as containing, references to the Lord Chancellor; and for the purposes of the use of any such documents or forms in connection with the exercise of that function by the Secretary of State for Culture, Media and Sport, those references are to be read as references to the Secretary of State for Culture, Media and Sport.

(7) Any enactment or instrument passed or made before the coming into force of this Order has effect—

(a) so far as necessary for the purposes of or in consequence of article 6, as if references to the Lord Chancellor (and references which are to be read as references to the Lord Chancellor) were or included references to the Secretary of State, and

(b) so far as necessary for the purposes of or in consequence of paragraph (3), as if references to the Lord Chancellor (and references which are to be read as references to the Lord Chancellor) were or included references to the Secretary of State for Culture, Media and Sport.

(8) In paragraphs (2) and (4) to (7)—

(a) references to the Lord Chancellor are to be read as including references to the department or an officer of the Lord Chancellor, and

(b) references to the Secretary of State for Culture, Media and Sport or the Secretary of State are to be read accordingly.

Functions passing from Secretary of State for Justice to Secretary of State for Culture, Media and Sport: supplemental

8.—(1) In this article "data protection function" means a function which—

(a) relates to the subject matter of the Data Protection Act 1998(**24**),

(b) was entrusted to the Secretary of State for Justice immediately before 17th September 2015, and

(c) has been entrusted to the Secretary of State for Culture, Media and Sport before the making of this Order.

(2) 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 for Justice before the coming into force of this Order.

(3) There are transferred to the Secretary of State for Culture, Media and Sport all property, rights and liabilities to which the Secretary of State for Justice is entitled or subject at the coming into force of this Order in connection with a data protection function.

(4) 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 for Justice may, so far as it relates to a data protection function or anything transferred by paragraph (3), be continued by or in relation to the Secretary of State for Culture, Media and Sport.

(5) Anything done (or having effect as if done) by or in relation to the Secretary of State for Justice in connection with a data protection function or anything transferred by paragraph (3) 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 Secretary of State for Culture, Media and Sport.

(6) Documents or forms printed for use in connection with a data protection function may be used in connection with the exercise of that function by the Secretary of State for Culture, Media and Sport even though they contain, or are to be read as containing, references to the Secretary of

(**24**) 1998 c. 29.