Draft Order in Council laid before Parliament under section 86(6) of the Northern Ireland Act 1998, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2012 No.

NORTHERN IRELAND CONSTITUTIONAL LAW

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

Made - - - - 2012

Coming into force in accordance with article 1(2)

At the Court at Buckingham Palace, the *** day of ***

Present,

The Queen's Most Excellent Majesty in Council

In accordance with section 86(6) of the Northern Ireland Act 1998(**1**), 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.

(**1**) 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.

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

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(**2**);

"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)(**3**) 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);

(**2**) S.I. 2010/976.
(**3**) The same provision is made in respect of sub-paragraph (b) in article 3 of the 2010 Order.

"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.

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(**4**) (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(**5**) (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(**6**) (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(**7**), 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(**8**) (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;

(**4**) 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).
(**5**) S.I. 1981/228 (N.I. 8). Amendments have been made but they are not relevant to this Order.
(**6**) 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).
(**7**) 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).
(**8**) S.I. 1994/426 (N.I. 1). Amendments have been made but they are not relevant to this Order.

and for the purposes of this paragraph, "excepted matter" and "reserved matter" have the same meanings as in the Northern Ireland Act 1998(**9**).

(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(**10**) (exemptions) after "the authority of" insert "the Department of Justice,".

Immigration and Asylum Act 1999

9.—(1) Amend the Immigration and Asylum Act 1999(**11**) as follows.

(2) In section 53(6B)(**12**) (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(**13**)(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(**14**) (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(**15**) omit "Northern Ireland Court Service.".

(**9**) Section 4 makes provision for excepted and reserved matters.
(**10**) S.I. 1996/3159 (N.I. 23).
(**11**) 1999 c.33.
(**12**) 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).
(**13**) 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).
(**14**) 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.
(**15**) 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

Police (Northern Ireland) Act 2003

11.—(1) Amend the Police (Northern Ireland) Act 2003(**16**) as follows.

(2) In section 30A(8)(**17**) (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(**18**) (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(**19**) 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(**20**) (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(**21**) 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(**22**) 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

its functions transferred to the Department of Justice. Amendments have been made to the Schedule but they are not relevant to this Order.

(**16**) 2003 c. 6.

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

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

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

(**20**) 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.

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

(**22**) 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..