Draft Order laid before Parliament under sections 86(6) and 86A(4) of the Northern Ireland Act 1998, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2010 No.

NORTHERN IRELAND

CONSTITUTIONAL LAW

The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010

Made - - - - ***

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

A draft of this Order has been approved by resolution of each House of Parliament:

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

PART 1

Introductory

Title and commencement

1.—(1) This Order may be cited as the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010.

(2) This Order shall come into force on the day on which the Northern Ireland Act 1998 (Amendment of Schedule 3) Order 2010(**b**) (which devolves to the Northern Ireland Assembly legislative power in relation to policing and justice matters) comes into force.

(**a**) 1998 c. 47. Section 86 was amended by section 4 of the Northern Ireland Act 2009 (c. 3). Section 86A was inserted by section 19 of the Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33).
(**b**) S.I. 2010/xxxx.

Extent

2.—(1) Subject to paragraph (2), 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) Nothing in this Order extends to a territory outside the United Kingdom.

Definitions

3. In this Order—

"the Department of Justice" means the Department of Justice in Northern Ireland;

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

"property" includes rights and interests of any description;

"records" includes written records and records conveying information by any other means;

"relevant function" means—

(a) a function transferred by article 4(1), 15(1) to (4) or 17(2), or

(b) a function transferred by or by virtue of any provision of Schedules 2 to 19,

and the cases covered by paragraphs (a) and (b) include (in particular) 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);

"relevant property or liability" means any property or liability transferred by article 18;

"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.

PART 2

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

Transfer of certain policing and justice functions

4.—(1) The Secretary of State's functions immediately before the coming into force of this Order under the enactments specified in Schedule 1 are transferred to the Department of Justice.

(2) The functions transferred by paragraph (1) include functions under any provision not yet in force at the time immediately before the coming into force of this Order (and a reference in Schedule 1 to an enactment includes a reference to the enactment as amended by any provision of an enactment or instrument passed or made before that time, but not yet in force).

(3) Schedule 2 (which makes amendments to enactments specified in Schedule 1 etc) has effect.

Functions relating to policing

5. Schedule 3 (which makes amendments relating to policing) has effect.

Functions relating to the treatment of offenders

6.—(1) Schedule 4 (which makes amendments relating to prisons) has effect.

(2) Schedule 5 (which makes amendments relating to the release of prisoners on licence) has effect.

(3) Schedule 6 (which makes amendments relating to miscarriages of justice and the Royal prerogative of mercy) has effect.

(4) Schedule 7 (which amends the Criminal Justice and Public Order Act 1994(**a**)) has effect.

(5) Schedule 8 (which amends the Repatriation of Prisoners Act 1984(**b**) and the Crime (Sentences) Act 1997(**c**)) has effect.

Functions under the Corporate Manslaughter and Corporate Homicide Act 2007

7. Schedule 9 (which amends the Corporate Manslaughter and Corporate Homicide Act 2007(**d**)) has effect.

Functions under the Serious Crime Act 2007

8. Schedule 10 (which amends the Serious Crime Act 2007(**e**)) has effect.

Functions relating to firearms

9. Schedule 11 (which amends the Firearms (Northern Ireland) Order 2004(**f**) and the Violent Crime Reduction Act 2006(**g**)) has effect.

Functions relating to explosives

10. Schedule 12 (which makes provision in relation to explosives) has effect.

Functions under the Justice (Northern Ireland) Act 2002

11. Schedule 13 (which amends the Justice (Northern Ireland) Act 2002(**h**)) has effect.

Functions relating to criminal justice

12. Schedule 14 (which makes amendments relating to criminal justice) has effect.

Functions under the Serious Organised Crime and Police Act 2005

13. Schedule 15 (which amends the Serious Organised Crime and Police Act 2005(**i**)) has effect.

Functions relating to the private security industry

14. Schedule 16 (which amends the Private Security Industry Act 2001(**j**)) has effect.

Functions of the Lord Chancellor etc

15.—(1) The Lord Chancellor's functions immediately before the coming into force of this Order under the enactments specified in Schedule 17 are transferred to the Department of Justice.

(**a**) 1994 c. 33.
(**b**) 1984 c. 47.
(**c**) 1997 c. 43.
(**d**) 2007 c. 19.
(**e**) 2007 c. 27.
(**f**) S.I. 2004/702 (N.I. 3).
(**g**) 2006 c. 38.
(**h**) 2002 c. 26.
(**i**) 2005 c. 15.
(**j**) 2001 c. 12.

(2) The Lord Chancellor's functions immediately before the coming into force of this Order under sections 3(2)(b) and (8)(a), 5A(6) and 19(4) of, and paragraphs 1(2), 2(4), 3, 4(1), 5(6) and 6 of Schedule 2 to, the Justice (Northern Ireland) Act 2002(**a**) are transferred to the First Minister and deputy First Minister in Northern Ireland acting jointly.

(3) The Lord Chancellor's functions immediately before the coming into force of this Order under paragraphs 1(3), 2(3) and 5(5) of Schedule 2 to the Justice (Northern Ireland) Act 2002(**b**) are transferred to the Office of the First Minister and deputy First Minister in Northern Ireland.

(4) The functions immediately before the coming into force of this Order of the Treasury or the Minister for the Civil Service under the following enactments are transferred to the Department of Finance and Personnel in Northern Ireland—

(a) sections 2(1), (3) and (4) and 20(1) of the Administration of Justice Act (Northern Ireland) 1954(**c**);

(b) sections 56(2), 75(7) and (9)(c), 79(1), 82(1) and 116(1) and (2) of the Judicature (Northern Ireland) Act 1978(**d**);

(c) Article 53 of the County Courts (Northern Ireland) Order 1980(**e**);

(d) Article 141(4) of the Judgments Enforcement (Northern Ireland) Order 1981(**f**);

(e) Article 36(1) and (3) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(**g**);

(f) Articles 10(1), 86A(6) and 139(3) of the Magistrates' Courts (Northern Ireland) Order 1981(**h**);

(g) Article 104(5) of the Mental Health (Northern Ireland) Order 1986(**i**);

(h) Article 28(1) and (3) of the Juries (Northern Ireland) Order 1996(**j**);

(i) Article 40(7)(b) of the Fair Employment and Treatment (Northern Ireland) Order 1998(**k**);

(j) Articles 11(6)(d) and 21(5)(d) of the Access to Justice (Northern Ireland) Order 2003(**l**);

(k) paragraphs 4(2)(b), (5)(c), (8) and (10) and 5(5)(b), (7) and (9) of Schedule 3 to that Order.

(5) Schedule 18 (which makes amendments relating to paragraphs (1) to (4) and other functions of the Lord Chancellor etc) has effect.

(6) The functions transferred by paragraphs (1) to (4) include functions under any provision not yet in force at the time immediately before the coming into force of this Order (and a reference in Schedule 17 or in paragraphs (2) to (4) to an enactment includes a reference to the enactment as amended by any provision of an enactment or instrument passed or made before that time, but not yet in force).

(**a**) 2002 c. 26. Section 3(2)(b) was amended by Schedule 1 to the Justice (Northern Ireland) Act 2004 (c. 4). Section 3(8) was amended by section 2 of the Justice (Northern Ireland) Act 2004 (c. 4). Section 5A was inserted by the Constitutional Reform Act 2005 (c. 4), section 123; and amended by the Northern Ireland Act 2009 (c. 3), Schedule 3, paragraph 4. Schedule 2 was amended by section 2 of, and Schedule 1 to, the Justice (Northern Ireland) Act 2004 (c. 4).

(**b**) 2002 c. 26. Schedule 2 was amended by section 2 of, and Schedule 1 to, the Justice (Northern Ireland) Act 2004 (c. 4).

(**c**) 1954 c. 9 (N.I.). Functions of the Ministry of Finance under sections 2 and 20 were transferred to the Treasury by S.I. 1973/2163.

(**d**) 1978 c. 23. Functions under the Act were transferred to the Treasury by S.I. 1981/1670. Section 75 was substituted by S.R. (N.I.) 1982/300; subsection (1) was substituted, and subsections (6) to (9) were inserted, by section 103 of the Courts Act 2003 (c. 39). Section 78(1) was amended by the Administration of Justice Act 1982 (c. 53) section 70, Schedule 8, paragraph 6. Section 82 was amended by the Administration of Justice Act 1982 (c. 53) section 70, Schedule 8, paragraph 8 and the Constitutional Reform Act 2005 (c. 4), section 59(5), Schedule 11, Part 3, paragraph 6.

(**e**) S.I. 1980/397 (N.I. 3).

(**f**) S.I. 1981/226 (N.I. 6).

(**g**) S.I. 1981/228 (N.I. 8). Article 36 was amended by S.I. 1982/159 and the Justice (Northern Ireland) Act 2002 (c. 26), Schedule 12, paragraph 26.

(**h**) S.I. 1981/1675 (N.I. 26). Article 86A(6) was inserted by S.I. 1993/1576 (N.I. 6).

(**i**) S.I. 1986/595 (N.I. 4).

(**j**) S.I. 1996/1141 (N.I. 6). There are amendments to the Order, but none are relevant to this Article.

(**k**) S.I. 1998/3162 (N.I. 21). There are amendments to the Order, but none are relevant to this Article.

(**l**) S.I. 2003/435 (N.I. 10). There are amendments to the Order, but none are relevant to this Article.

Public bodies etc

16. Schedule 19 (which makes amendments relating to public bodies etc) has effect.

Functions under subordinate legislation and other instruments

17.—(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).

(4) This article is subject to—

(a) paragraphs 90 and 91 of Schedule 3 (which make provision in relation to the Royal Ulster Constabulary (Complaints etc.) Regulations 2000(**a**) etc);

(b) paragraph 92 of Schedule 3 (which makes provision in relation to the Royal Ulster Constabulary GC Regulations 2002(**b**));

(c) paragraph 110 of Schedule 3 (which makes provision in relation to the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005(**c**));

(d) paragraphs 111 and 112 of Schedule 3 (which make provision in relation to the Police Powers for Designated Staff (Complaints and Misconduct) Regulations (Northern Ireland) 2008(**d**) etc);

(e) paragraphs 8 to 25 of Schedule 4 (which make provision in relation to the Prison and Young Offenders Centre Rules (Northern Ireland) 1995(**e**));

(f) paragraphs 32 to 40 of Schedule 5 (which make provision in relation to the Parole Commissioners' Rules (Northern Ireland) 2009(**f**) etc);

(g) paragraph 10(2) of Schedule 11 (which makes provision in relation to regulations about firearms etc);

(h) paragraph 4 of Schedule 12 (which makes provision in relation to regulations about explosives etc).

Transfers of property etc

18.—(1) Paragraph (2) applies in relation to a function which—

(a) is a relevant function being transferred to the Department of Justice or the Minister in charge of that Department,

(b) is a function which, by virtue of the Northern Ireland Act 1998 (Amendment of Schedule 3) Order 2010, becomes exercisable on Her Majesty's behalf under section 23(2) of the Northern Ireland Act 1998(**g**), or

(c) is a function being transferred to the Department of Justice or the Minister in charge of that Department by or by virtue of the Northern Ireland Court Service (Abolition and Transfer of Functions) Order (Northern Ireland) 2010.

(**a**) S.R. (N.I.) 2000 No. 318.
(**b**) S.R. (N.I.) 2002 No. 260.
(**c**) S.I. 2005/2042
(**d**) S.R. (N.I.) 2008 No. 242.
(**e**) S.R. (N.I.) 1995 No. 8.
(**f**) S.R. (N.I.) 2009 No. 82.
(**g**) 1998 c. 47.