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STATUTORY INSTRUMENTS

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**1995 No. 2986**

**MINISTERS OF THE CROWN**

**The Transfer of Functions (Education  
and Employment) Order 1995**

*Made - - - - 23rd November 1995*  
*Laid before Parliament 4th December 1995*  
*Coming into force - - 1st January 1996*

At the Court at Buckingham Palace, the 23rd day of November 1995

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in pursuance of 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, and it is hereby ordered, as follows:

**Citation and commencement**

1.—(1) This Order may be cited as the Transfer of Functions (Education and Employment) Order 1995.

(2) This Order shall come into force on 1st January 1996.

**Interpretation**

2. In this Order “instrument”, without prejudice to the generality of that expression, includes in particular Royal Charters, Orders in Council, Letters Patent, judgments, decrees, orders, rules, regulations, schemes, bye-laws, awards, contracts and other agreements, memoranda and articles of association, warrants, certificates and other documents.

**Education**

3.—(1) Subject to paragraph (2), the functions of the Secretary of State for Education are hereby transferred to the Secretary of State.

(2) The functions of the Secretary of State for Education under the following enactments are hereby transferred to the Secretary of State for Education and Employment:

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(1) 1975 c. 26.

- (a) section 2(1) of the Commonwealth Institute Act 1958(2) (trustees);
- (b) paragraph 4(1)(c) of Schedule 1 to the Professions Supplementary to Medicine Act 1960(3) (constitution of boards); and
- (c) article 4(b) of the Health Education Authority (Establishment and Constitution) Order 1987 (constitution of the Authority)(4).

### **Education: provisions supplementary to article 3**

4.—(1) All property, rights and liabilities to which the Secretary of State for Education is entitled or subject at the coming into force of this Order are hereby transferred to the Secretary of State for Education and Employment.

(2) Any contract, offer or other thing which—

- (a) has been, or has effect as if, made or done by or in relation to the Secretary of State for Education, and
- (b) is in force at the coming into force of this Order,

shall have effect as if made or done by or in relation to the Secretary of State for Education and Employment.

(3) Without prejudice to paragraph (2), this Order shall not affect the validity of anything done by or in relation to the Secretary of State for Education before the coming into force of this Order.

(4) Anything (including any legal proceedings) in the process of being done by or in relation to the Secretary of State for Education at the coming into force of this Order may be continued by or in relation to the Secretary of State for Education and Employment.

(5) Subject to article 11, any Act passed or subordinate legislation made before the coming into force of this Order shall have effect, so far as may be necessary for the purposes of or in consequence of article 3(1), as if any reference to the Secretary of State for Education, to the Department for Education or to an officer of the Secretary of State for Education (including any reference which is to be construed as such a reference) were a reference to the Secretary of State, to the Department for Education and Employment, or, as the case may be, to an officer of the Secretary of State.

(6) Subject to paragraph (5), any instrument made before the coming into force of this Order shall have effect, so far as may be necessary for the purposes of or in consequence of article 3(1) or (2), as if any reference to the Secretary of State for Education, to the Department for Education or to an officer of the Secretary of State for Education (including any reference which is to be construed as such a reference) were a reference to the Secretary of State for Education and Employment, to the Department for Education and Employment or, or the case may be, to an officer of the Secretary of State for Education and Employment.

(7) Documents or forms printed for use in connection with any function transferred by article 3(1) or (2) may be used in connection with those functions notwithstanding that they contain, or are to be construed as containing, references to the Secretary of State for Education; and for the purposes of the use of any such documents or forms after the coming into force of this Order, those references shall be construed as references to the Secretary of State for Education and Employment.

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- (2) 1958 c. 16: the reference to the Minister of Education is required to be construed as a reference to the Secretary of State for Education by virtue of the Secretary of State for Education and Science Order 1964 (S.I. 1964/490), art. 3(2)(a) and the Transfer of Functions (Science) Order 1992 (S.I. 1992/1296), art. 6.
  - (3) 1960 c. 66: the reference to the Minister of Education is required to be construed as a reference to the Secretary of State for Education by virtue of the Secretary of State for Education and Science Order 1964 (S.I. 1964/490), art. 3(2)(a) and the Transfer of Functions (Science) Order 1992 (S.I. 1992/1296), art. 6.
  - (4) The reference to the Secretary of State for Education and Science is to be construed as a reference to the Secretary of State for Education by virtue of the Transfer of Functions (Science) Order 1992 (S.I. 1992/1296), art. 6.

## **Education: Wales**

5.—(1) The functions of the Secretary of State for Wales relating to education are hereby transferred to the Secretary of State.

(2) This Order shall not affect the validity of anything done by or in relation to the Secretary of State for Wales before the coming into force of this Order.

(3) Subject to article 11, any Act passed or subordinate legislation made before the coming into force of this Order shall have effect, so far as may be necessary for the purposes of or in consequence of paragraph (1) above, as if any reference to the Secretary of State for Wales or to an officer of the Secretary of State for Wales (including any reference which is to be construed as, or as including, such a reference) were a reference to the Secretary of State or, as the case may be, to an officer of the Secretary of State.

## **Principal employment functions**

6.—(1) In this article “the principal employment function” means the functions which were entrusted to the Secretary of State for Employment immediately before July 1995 and which have, before the making of this Order, been entrusted to the Secretary of State for Education and Employment.

(2) All property, rights and liabilities to which the Secretary of State for Employment is entitled or subject at the coming into force of this Order in connection with the principal employment functions are hereby transferred to the Secretary of State for Education and Employment.

(3) Any contract, offer, warrant or other thing which—

(a) has been, or has effect as if, made, issued or done by or in relation to the Secretary of State for Employment in connection with the principal employment functions or anything transferred by paragraph (2), and

(b) is in force at the coming into force of this Order,

shall have effect as if made, issued or done by or in relation to the Secretary of State for Education and Employment.

(4) Without prejudice to paragraph (3), anything (including any 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 Employment may, so far as it relates to—

(a) any of the principal employment functions, or

(b) anything to which paragraph (2) or (3) relates,

be continued by or in relation to the Secretary of State for Education and Employment.

(5) Subject to article 11, any enactment or instrument passed or made before the coming into force of this Order shall have effect, so far as may be necessary for the purpose of or in consequence of the entrusting to the Secretary of State for Education and Employment of the principal employment functions, as if any reference to the Secretary of State for Employment, to the Department of Employment or to an officer of the Secretary of State for Employment (including any reference which is to be construed as such a reference) were a reference to the Secretary of State for Education and Employment, to the Department for Education and Employment or, as the case may be, to an officer of the Secretary of State for Education and Employment.

(6) Documents or forms printed for use in connection with any of the principal employment functions may be used in connection with those functions notwithstanding that they contain, or are to be construed as containing, references to the Secretary of State for Employment; and for the purposes of the use of any such documents or forms after the coming into force of this Order, those references shall be construed as references to the Secretary of State for Education and Employment.

### **Employment (trade and industry) functions**

7.—(1) In this article “the employment (trade and industry) functions” means the functions which were entrusted to the Secretary of State for Employment immediately before July 1995 and which have, before the making of this Order, been entrusted to the Secretary of State for Trade and Industry.

(2) All property, rights and liabilities to which the Secretary of State for Employment is entitled or subject at the coming into force of this Order in connection with the employment (trade and industry) functions are hereby transferred to the Secretary of State for Trade and Industry.

(3) Any contract, offer, warrant or other thing which—

(a) has been, or has effect as if, made, issued or done by or in relation to the Secretary of State for Employment in connection with the employment (trade and industry) functions or anything transferred by paragraph (2), and

(b) is in force at the coming into force of this Order,

shall have effect as if made, issued or done by or in relation to the Secretary of State for Trade and Industry.

(4) Without prejudice to paragraph (3), anything (including any 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 Employment may, so far as it relates to—

(a) any of the employment (trade and industry) functions, or

(b) anything to which paragraph (2) or (3) relates,

be continued by or in relation to the Secretary of State for Trade and Industry.

(5) Subject to article 11, any enactment or instrument passed or made before the coming into force of this Order shall have effect, so far as may be necessary for the purposes of or in consequence of the entrusting to the Secretary of State for Trade and Industry of the employment (trade and industry) functions, as if any reference to the Secretary of State for Employment, to the Department of Employment or to an officer of the Secretary of State for Employment (including any reference which is to be construed as such a reference) were a reference to the Secretary of State for Trade and Industry, to the Department of Trade and Industry or, as the case may be, to an officer of the Secretary of State for Trade and Industry.

(6) Documents or forms printed for use in connection with any of the employment (trade and industry) functions may be used in connection with those functions notwithstanding that they contain, or are to be construed as containing, references to the Secretary of State for Employment; and for the purposes of the use of any such documents or forms after the coming into force of this Order, those references shall be construed as references to the Secretary of State for Trade and Industry.

### **Health and safety**

8.—(1) In this article “the employment (health and safety) functions” means the functions of the Secretary of State under or by virtue of the Health and Safety at Work etc. Act 1974(5) which were entrusted to the Secretary of State for Employment immediately before July 1995 and which have, before the making of this Order, been entrusted to the Secretary of State for the Environment.

(2) Any contract or other agreement, offer or other thing which—

(a) has been, or has effect as if, made, issued or done by or in relation to the Secretary of State for Employment in connection with the employment (health and safety) functions, and

(b) is in force at the coming into force of this Order,

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(5) 1974 c. 37.

shall have effect as if made, issued or done by or in relation to the Secretary of State for the Environment.

(3) Without prejudice to paragraph (2), anything (including any 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 Employment may, so far as it relates to any of the employment (health and safety) functions, be continued by or in relation to the Secretary of State for the Environment.

(4) Any instrument made before the coming into force of this Order shall have effect, so far as may be necessary for the purposes of or in consequence of the entrusting to the Secretary of State for the Environment of the employment (health and safety) functions, as if any reference to the Secretary of State for Employment, the Department of Employment or to an officer of the Department of Employment (including any reference which is to be construed as such a reference) were a reference to the Secretary of State for the Environment, to the Department of the Environment or, as the case may be, to an officer of the Secretary of State for the Environment.

(5) Documents or forms printed for use in connection with any of the employment (health and safety) functions may be used in connection with those functions notwithstanding that they contain, or are to be construed as containing, references to the Secretary of State for Employment; and for the purposes of the use of any such documents or forms after the coming into force of this Order, those references shall be construed as references to the Secretary of State for the Environment.

### **Employment statistics**

9.—(1) In this article “the employment (statistics) functions” means the functions relating to employment statistics and labour market surveys which were entrusted to the Secretary of State for Employment immediately before July 1995 and which are, immediately before the making of this Order, entrusted to the Chancellor of the Exchequer.

(2) Any contract, offer, warrant or other thing which—

- (a) has been, or has effect as if, made, issued or done by or in relation to the Secretary of State for Employment in connection with the employment (statistics) functions, and
- (b) is in force at the coming into force of this Order,

shall have effect as if made, issued or done by or in relation to the Chancellor of the Exchequer.

(3) Any instrument made before the coming into force of this Order shall have effect, so far as may be necessary for the purposes of or in consequence of the entrusting to the Chancellor of the Exchequer of the employment (statistics) functions, as if any reference to the Secretary of State for Employment, to the Department of Employment or to an officer of the Secretary of State for Employment (including any reference which is to be construed as such a reference) were a reference to the Chancellor of the Exchequer, to the Central Statistical Office of the Chancellor of the Exchequer or, as the case may be, to an officer of the Chancellor of the Exchequer.

(4) The Secretary of State’s function of disclosing information obtained under the Statistics of Trade Act 1947<sup>(6)</sup> in reliance upon section 4 of the Employment and Training Act 1973<sup>(7)</sup> (obtaining and disclosure of information) shall be exercisable by the Secretary of State and the Chancellor of the Exchequer concurrently.

(5) Any notice issued by or for the Secretary of State under section 4(3A) of the Employment and Training Act 1973 before the coming into force of this Order shall be construed as if any requirement to obtain the consent of the Secretary of State for Employment were a requirement to obtain the consent of the Chancellor of the Exchequer.

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(6) 1947 c. 39.

(7) 1973 c. 50: relevant amendments were made by the Employment Act 1989 (c. 38), Sched. 6, para. 9.

## **Incorporation of Secretary of State for Education and Employment**

**10.**—(1) The person who at the coming into force of this Order is the Secretary of State for Education and Employment and any successors to that person shall be, by that name, a corporation sole (with a corporate seal).

(2) The corporate seal of the Secretary of State for Education and Employment shall be authenticated by the signature of a Secretary of State, or of a Secretary to the Department for Education and Employment, or of a person authorised by a Secretary of State to act in that behalf.

(3) The corporate seal of the Secretary of State for Education and Employment shall be officially and judicially noticed, and every document purporting to be an instrument made or issued by the Secretary of State for Education and Employment, and to be sealed with that seal authenticated in the manner provided by paragraph (2), or to be signed or executed by a Secretary to the Department for Education and Employment, or a person authorised as above, shall be received in evidence and be deemed to be so made or issued without further proof, unless the contrary is shown.

(4) A certificate signed by the Secretary of State for Education and Employment that any instrument purporting to be made or issued by him was so made or issued shall be conclusive evidence of that fact.

(5) The Documentary Evidence Act 1868<sup>(8)</sup> shall apply in relation to the Secretary of State for Education and Employment—

- (a) as if references to orders and regulations included references to any document, and
- (b) as if the officers mentioned in column 2 of the Schedule included any officer authorised to act on behalf of the Secretary of State.

## **Consequential amendments, & c.**

**11.**—(1) The enactments mentioned in the Schedule to this Order shall have effect with the amendments specified in that Schedule.

(2) Notwithstanding anything in articles 3 to 5 of the Schedule to this Order, there shall continue to be an officer appointed by the Secretary of State as Registrar of Independent Schools for England and an officer appointed by the Secretary of State as Registrar of Independent Schools for Wales; and separate registers shall continue to be kept, under section 70 of the Education Act 1944<sup>(9)</sup>, of independent schools in England and of independent schools in Wales.

*N. H. Nicholls*  
Clerk of the Privy Council

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<sup>(8)</sup> 1868 c. 37.

<sup>(9)</sup> 1944 c. 31. The reference to the Minister of Education is required to be construed as a reference to the Secretary of State for Education by virtue of the Secretary of State for Education and Science Order 1964 (S.I. 1964/490), art. 3(2)(a) and the Transfer of Functions (Science) Order 1992 (S.I. 1992/1296), art. 6. As to the appointment of separate Registrars and the keeping of separate registers, see the Transfer of Functions (Wales) Order 1970 (S.I. 1970/1536), art. 5(2).

## SCHEDULE

Article 11.

### Consequential Amendments

#### *Education Act 1944 (c. 31)*

1. Section 70(5) of the Education Act 1944 (registration of independent schools: making of regulations)(10) is hereby repealed.

#### *Reserve and Auxiliary Forces (Protection of Civil Interest) Act 1951 (c. 65)*

2. In paragraph 14 of Schedule 2 to the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(11) (capacities in respect of which payments may be made: education), the words which are to be construed as referring to the Secretary of State for Education and the words “or, as respects Scotland,” shall be omitted.

#### *Commonwealth Institute Act 1958 (c. 16)*

3. In section 2(1) of the Commonwealth Institute Act 1958 (trustees), for the words which are to be construed as referring to the Secretary of State for Education there shall be substituted the words “the Secretary of State for Education and Employment”.

#### *Professions Supplementary to Medicine Act 1960 (c. 66)*

4. In paragraph 4(1)(c) of Schedule 1 to the Professions Supplementary to Medicine Act 1960 (constitution of boards), for the words which are to be construed as reference to the Secretary of State for Education there shall be substituted the words “the Secretary of State for Education and Employment”.

#### *Parliamentary Commissioner Act 1967 (c. 13)*

5. In Schedule 2 to the Parliamentary Commissioner Act 1967(12) (departments, & c. subject to investigation)—

- (a) the entries relating to the Department for Education and the Department of Employment are hereby repealed; and
- (b) there shall be inserted at the appropriate place—  
“The Department for Education and Employment.”.

#### *Finance Act 1969 (c. 32)*

6. In section 58(2) of the Finance Act 1969 (disclosure of information for statistical purposes by Board of Inland Revenue: earnings)—

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- (10) The reference to the Minister of Education is required to be construed as a reference to the Secretary of State for Education by virtue of the Secretary of State for Education and Science Order 1964 (S.I. 1964/490), art. 3(2)(a) and the Transfer of Functions (Science) Order 1992 (S.I. 1992/1296), art. 6.
- (11) The reference to the Minister of Education is required to be construed as a reference to the Secretary of State for Education by virtue of the Secretary of State for Education and Science Order 1964 (S.I. 1964/490), art. 3(2)(a) and the Transfer of Functions (Science) Order 1992 (S.I. 1992/1296), art. 6.
- (12) Relevant amendments are as follows—
- (a) Schedule 2 was substituted by the Parliamentary and Health Service Commissioners Act 1987 (c. 39), S. 1(2) & Sched. 1; and
  - (b) the entry relating to the Department for Education was substituted for an earlier entry by the Transfer of Functions (Science) Order 1992, art. 6(1) & Sched., para. 3(a).

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (a) for the words “Department of Employment” there shall be substituted the words “Central Statistical Office of the Chancellor of the Exchequer”; and
- (b) for the words “that Department” there shall be substituted the words “that Office”.

*Education Act 1973 (c. 16)*

7. For paragraph 1(5) of Schedule 1 to the Education Act 1973(13) (transitional and supplementary provisions as to charities) there is substituted—

“(5) Where it appears to the Secretary of State that any reference, which in accordance with sub-paragraph (4) above ceased on the appointed day to extend to the Secretary of State for Education and Science or the Secretary of State for Wales, was not related (or not wholly related) to the functions ceasing to belong to that Minister by the repeal of section 2(1) of the Charities Act 1960, he may by order exclude the operation of that sub-paragraph in relation to the reference and make such modifications of the relevant instrument as appear to him appropriate in the circumstances.”.

*Employment and Training Act 1973 (c. 50)*

8. In section 4 of the Employment and Training Act 1973 (disclosure of information)(14), after the words “Secretary of State”, in each place where they occur, there shall be inserted the words “or the Chancellor of the Exchequer”.

*Health Education Authority (Establishment and Constitution) Order 1987 (S.I.1987/6)*

9. In article 4(b) of the Health Education Authority (Establishment and Constitution) Order 1987 (constitution of the Authority)(15), for the words which are to be construed as referring to the Secretary of State for Education there shall be substituted the words “the Secretary of State for Education and Employment”.

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**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order in Council, made under the Ministers of the Crown Act 1975, constitutes the Secretary of State for Education and Employment a corporation sole with a corporate seal.

The Order transfers to the Secretary of State for Education and Employment the functions of the Secretary of State for Education listed in article 3(2). The functions of the Secretary of State for Wales relating to education and the remainder of the functions of the Secretary of State for Education are transferred to the Secretary of State. The transfer of the education functions of the Secretary of State for Wales to the Secretary of State will still permit them to be exercised by the Secretary of

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(13) The reference to the Secretary of State for Education and Science is to be construed as a reference to the Secretary of State for Education by virtue of the Transfer of Functions (Science) Order 1992 (S.I. 1992/1296), art. 6.

(14) Relevant amendments were made by the Employment Act 1989 (c. 38), Sched. 6, para. 9 and Sched. 7.

(15) The reference to the Secretary of State for Education and Science is to be construed as a reference to the Secretary of State for Education by virtue of the Transfer of Functions (Science) Order 1992 (S.I. 1992/1296), art. 6.



State for Wales. The transfer of the functions of the Secretary of State for Education to the Secretary of State will permit them to be exercised by the Secretary of State for Education and Employment.

All property, rights and liabilities of the Secretary of State for Education are transferred to the Secretary of State for Education and Employment.

The Order transfers to the Secretary of State for Trade and Industry all the property, rights and liabilities of the Secretary of State for Employment in connection with the functions formerly entrusted to the Secretary of State for Employment and now entrusted to the Secretary of State for Trade and Industry, namely his functions in respect of—

- (1) Responsibility for redundancy payments and for payments to employees on the insolvency of their employer.
- (2) Policy on industrial relations, including pay and disputes, and advice on public holidays.
- (3) Administration and enforcement of employment agency legislation.
- (4) Policy on employment rights and trade union legislation.
- (5) Administration of industrial tribunals and the Employment Appeal Tribunal.
- (6) Responsibility for the Advisory, Conciliation and Arbitration Service (ACAS) and for the Office of Manpower Economics.

The Order also makes provisions consequential upon the transfer of those functions.

The Order makes provisions consequential upon the transfer to the Secretary of State for the Environment of health and safety functions formerly entrusted to the Secretary of State for Employment.

The Order makes provisions consequential upon the transfer to the Chancellor of the Exchequer of functions relating to employment statistics and labour market surveys formerly entrusted to the Secretary of State for Employment.

The Order transfers to the Secretary of State for Education and Employment all the property, rights and liabilities of the Secretary of State for Employment in connection with the remaining functions formerly entrusted to the Secretary of State for Employment and now entrusted to the Secretary of State for Education and Employment and makes provisions consequential upon the transfer of those functions.