

**2006 No. 1016**

**LORD CHANCELLOR**

**LORD CHIEF JUSTICE**

**TRANSFER OF FUNCTIONS**

**The Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No.2) Order 2006**

*Made* - - - -

*2nd April 2006*

*Coming into force in accordance with article 1*

The Lord Chancellor makes the following Order in exercise of the powers conferred upon him by section 19 and 143 of the Constitutional Reform Act 2005(a).

In accordance with section 144(4) and (5)(b), (c) and (d) of that Act, a draft of this instrument was laid before and approved by a resolution of each House of Parliament.

**Citation and commencement**

1. This Order may be cited as the Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No.2) Order 2006 and shall come into force on the day after the day on which it is made.

**Transfer and modification of functions**

2. Schedule 1 has effect with respect to the transfer, modification and abolition of functions of the Lord Chancellor contained in primary legislation.

3. Schedule 2 has effect with respect to the transfer and modification of functions of the Lord Chancellor contained in secondary legislation.

**Supplementary provision**

4. Schedule 3 has effect with respect to making provision supplementary to that under the Constitutional Reform Act 2005.

Dated 2nd April 2006

*Falconer of Thoroton, C*

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(a) 2005 c.4.

Transfer, modification and abolition of functions of the Lord Chancellor  
— primary legislation

**Appellate Jurisdiction Act 1876**

1. The Appellate Jurisdiction Act 1876(a) is amended as follows.
2. In section 5, omit subsection (1).
3. In section 25, in the definition of “High judicial office”, omit the words “Lord Chancellor of Great Britain or of”.

**Appellate Jurisdiction Act 1887**

- 4.—(1) Section 3 of the Appellate Jurisdiction Act 1887(b) is amended in accordance with this paragraph.
- (2) Omit “unless he is for the time being the Lord Chancellor of Great Britain”.

**Matrimonial and Family Proceedings Act 1984**

5. The Matrimonial and Family Proceedings Act 1984(c) is amended as follows.
- 6.—(1) Section 36A is amended in accordance with this paragraph.
- (2) In subsections (1) and (8) after “Lord Chancellor may” insert “, with the concurrence of the Lord Chief Justice,”.
- (3) After subsection (9) insert—
 

“(10) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.”
- 7.—(1) Section 36D is amended in accordance with this paragraph.
- (2) That section becomes subsection (1) of section 36D.
- (3) In that subsection, for “Lord Chancellor may direct” substitute “Lord Chief Justice may, after consulting the Lord Chancellor, direct”.
- (4) After that subsection insert—
 

“(2) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.”

**Nationality, Immigration and Asylum Act 2002**

8. Schedule 4 to the Nationality, Immigration and Asylum Act 2002(d) is amended as follows.
- 9.—(1) Paragraph 4 is amended in accordance with this paragraph.

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(a) 1876 c.59. Section 25 was amended by Schedule 1 to the Statute Law Revision Act 1894 (c.56), Schedule 2 to the Administration of Justice Act 1965 (c.2), Schedule 5 the Justices of the Peace Act 1968 (c.69) and by Schedule 5 the Judicature (Northern Ireland) Act 1978 (c.23).

(b) 1887 c.70. Section 3 was amended by paragraph 1(1) of Schedule 6 to the Judicial Pensions and Retirement Act 1993 (c.8).

(c) 1984 c.42. Sections 36A and 36D were inserted by paragraph 92 of Schedule 27 to the Civil Partnership Act 2004 (c.33).

(d) 2002 c.41. Schedule 4 was substituted by section 26(4) of, and Schedule 1 to, the Asylum and Immigration (Treatment of claimants, etc) Act 2004 (c. 19).

- (2) That paragraph becomes sub-paragraph (1) of paragraph 4.
- (3) After that sub-paragraph insert—
- “(2) An order under sub-paragraph (1) relating to members sitting in England and Wales may only be made with the concurrence of Lord Chief Justice of England and Wales.
- (3) An order under sub-paragraph (1) relating to members sitting in Scotland may only be made with the concurrence of the Lord President of the Court of Session.
- (4) An order under sub-paragraph (1) relating to members sitting in Northern Ireland may only be made with the concurrence of the Lord Chief Justice of Northern Ireland.”.

**10.** After paragraph 5(2) insert—

- “(3) The Lord Chancellor may appoint a person under sub-paragraph (1)(a) only with the concurrence of all of the following—
- (a) the Lord Chief Justice of England and Wales;
  - (b) the Lord President of the Court of Session;
  - (c) the Lord Chief Justice of Northern Ireland.”.

**11.** After paragraph 11 insert—

*“Delegation*

**12.**—(1) The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise any of his functions under this Schedule.

(2) The Lord President of the Court of Session may nominate a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court to exercise his functions under this Schedule.

(3) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under this Schedule—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).”.

**Gender Recognition Act 2004**

**12.** Schedule 1 to the Gender Recognition Act 2004(a) is amended as follows.

**13.** In paragraph 1(1), for “The Lord Chancellor” substitute “Subject to sub-paragraph (1A), the Lord Chancellor”.

**14.** After paragraph 1(1) insert—

- “(1A) The Lord Chancellor may appoint a person under sub-paragraph (1) only with the concurrence of all of the following—
- (a) the Lord Chief Justice of England and Wales;
  - (b) the Lord President of the Court of Session;
  - (c) the Lord Chief Justice of Northern Ireland.”.

**15.** In paragraph 2(1), for “The Lord Chancellor” substitute “Subject to sub-paragraph (1A), the Lord Chancellor”.

**16.** After paragraph 2(1) insert—

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(a) 2004 c.7.

“(1A) The Lord Chancellor may appoint a person under sub-paragraph (1) only with the concurrence of all of the following—

- (a) the Lord Chief Justice of England and Wales;
- (b) the Lord President of the Court of Session;
- (c) the Lord Chief Justice of Northern Ireland.”.

17. After paragraph 8 insert—

*“Delegation*

**8A.**—(1) The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise any of his functions under this Schedule.

(2) The Lord President of the Court of Session may nominate a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court to exercise his functions under this Schedule.

(3) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under this Schedule—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).”.

#### **Traffic Management Act 2004**

18. Section 81 of the Traffic Management Act 2004(a) is amended as follows.

19. For subsection (3)(b) substitute—

- “(b) for the consent of the Lord Chancellor to be required for any decision by those authorities to appoint a person as an adjudicator;
- (c) for the consent of the Lord Chancellor and the Lord Chief Justice to be required for any decision by those authorities—
  - (i) not to re-appoint a person as an adjudicator, or
  - (ii) to remove a person from his office as an adjudicator.”.

20. After subsection (3) insert—

“(3A) The regulations may provide for the Lord Chief Justice to nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise any of his functions under the regulations.”.

#### **Civil Partnership Act 2004**

21. The Civil Partnership Act 2004(b) is amended as follows.

22.—(1) Section 188 is amended in accordance with this paragraph.

(2) After subsection (4) insert—

“(4A) The Lord Chancellor may make an order under subsection (4) only with the concurrence of the Lord Chief Justice of Northern Ireland.”.

23. In paragraph 47 of Schedule 6, after sub-paragraph (2) insert—

“(3) The Lord Chancellor may make a determination for the purposes of sub-paragraph (1) only with the concurrence of the Lord Chief Justice.

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(a) 2004 c.18.  
(b) 2004 c.33.

(4) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this paragraph.”.

**24.**—(1) Paragraph 2 of Schedule 16 is amended in accordance with this paragraph.

(2) In sub-paragraph (2)(b), after “may” insert “, after consultation with the Lord Chief Justice of Northern Ireland,”.

#### **Pensions Act 2004**

**25.** Schedule 4 to the Pensions Act 2004(a) is amended as follows.

**26.** After paragraph 2(8) insert—

“(9) The Lord Chancellor may appoint a person to be President or Deputy President, or appoint a person under sub-paragraph (8)(b), only with the concurrence of all of the following—

- (a) the Lord Chief Justice of England and Wales;
- (b) the Lord President of the Court of Session;
- (c) the Lord Chief Justice of Northern Ireland.”.

**27.**—(1) Paragraph 8 is amended in accordance with this paragraph.

(2) That paragraph becomes sub-paragraph (1) of paragraph 8.

(3) After that sub-paragraph insert—

“(2) Before giving a direction under sub-paragraph (1) in relation to sittings in England and Wales the Lord Chancellor must consult the Lord Chief Justice of England and Wales.

(3) Before giving a direction under sub-paragraph (1) in relation to sittings in Scotland the Lord Chancellor must consult the Lord President of the Court of Session.

(4) Before giving a direction under sub-paragraph (1) in relation to sittings in Northern Ireland the Lord Chancellor must consult the Lord Chief Justice of Northern Ireland.”.

**28.** After paragraph 21 insert—

*“Delegation*

**22.**—(1) The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise any of his functions under this Schedule.

(2) The Lord President of the Court of Session may nominate a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court to exercise his functions under this Schedule.

(3) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under this Schedule—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).”.

#### **Prevention of Terrorism Act 2005**

**29.**—(1) Paragraph 6 of the Schedule to the Prevention of Terrorism Act 2005(b) is amended in accordance with this paragraph.

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(a) 2004 c.35.  
(b) 2005 c.2.

(2) After sub-paragraph (1) insert—

“(1A) The Lord Chancellor may appoint an adviser under this paragraph only with the concurrence of the appropriate senior judge.”.

(3) After sub-paragraph (3) insert—

“(4) In this paragraph “the appropriate senior judge” means—

- (a) in relation to an adviser who may be called in aid wholly or mainly in Scotland, the Lord President of the Court of Session;
- (b) in relation to an adviser who may be called in aid wholly or mainly in Northern Ireland, the Lord Chief Justice of Northern Ireland;
- (c) in any other case, the Lord Chief Justice of England and Wales.

(5) The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise any of his functions under this paragraph.

(6) The Lord President of the Court of Session may nominate a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court to exercise his functions under this paragraph.

(7) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under this paragraph—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).”.

## **Mental Capacity Act 2005**

**30.** The Mental Capacity Act 2005(a) is amended as follows.

**31.—**(1) Section 21 is amended in accordance with this paragraph.

(2) That section becomes subsection (1) of section 21.

(3) In that subsection for “Lord Chancellor” substitute “Lord Chief Justice, with the concurrence of the Lord Chancellor,”.

(4) After that subsection insert—

“(2) The Lord Chief Justice may nominate any of the following to exercise his functions under this section—

- (a) the President of the Court of Protection;
- (b) a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005).”.

**32.—**(1) Section 45 is amended in accordance with this paragraph.

(2) In subsection (4) after “Lord Chancellor” insert “, after consulting the Lord Chief Justice”.

(3) In subsection (5) after “may” insert “, after consulting the Lord Chief Justice,”.

(4) After subsection (5) insert—

“(5A) The Lord Chief Justice may nominate any of the following to exercise his functions under this section—

- (a) the President of the Court of Protection;
- (b) a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005).”.

**33.—**(1) Section 46 is amended in accordance with this paragraph.

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(a) 2005 c.9.

(2) In subsection (1)(a), for “Lord Chancellor” substitute “Lord Chief Justice”.

(3) For subsection (1)(b) substitute—

“(b) where nominated by the Lord Chief Justice to act on his behalf under this subsection—

(i) the President of the Court of Protection; or

(ii) a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005).”.

(4) In subsection (3), for “Lord Chancellor” substitute “Lord Chief Justice, after consulting the Lord Chancellor,”.

(5) In subsection (4)—

(a) for “Lord Chancellor” in the first place substitute “Lord Chief Justice, after consulting the Lord Chancellor,”;

(b) after “Lord Chancellor” in the second place insert “, after consulting the Lord Chief Justice,”.

**34.** For section 51(1) substitute—

“(1) Rules of court with respect to the practice and procedure of the court (to be called “Court of Protection Rules”) may be made in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005.”.

**35.** For section 52 substitute—

**“52 Practice directions**

(1) Directions as to the practice and procedure of the court may be given in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005.

(2) Practice directions given otherwise than under subsection (1) may not be given without the approval of—

(a) the Lord Chancellor, and

(b) the Lord Chief Justice.

(3) The Lord Chief Justice may nominate any of the following to exercise his functions under this section—

(a) the President of the Court of Protection;

(b) a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005).”.

**36.—**(1) Section 59 is amended in accordance with this paragraph.

(2) Omit subsection (4).

(3) After subsection (5) insert—

“(5A) Where a person to be appointed as a member of the Board is a judge of the court, the appointment is to be made by the Lord Chief Justice after consulting the Lord Chancellor.

(5B) In any other case, the appointment of a person as a member of the Board is to be made by the Lord Chancellor.”.

(4) After subsection (9) insert—

“(10) The Lord Chief Justice may nominate any of the following to exercise his functions under this section—

(a) the President of the Court of Protection;

(b) a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005).”.

**37.—**(1) Section 65 is amended in accordance with this paragraph.

- (2) In subsection (1), after “this Act” insert “, other than the power in section 21”.
- (3) After subsection (4) insert—
- “(5) An order under section 21—
- (a) may include supplementary, incidental, consequential, transitional or saving provision;
  - (b) may make different provision for different cases;
  - (c) is to be made in the form of a statutory instrument to which the Statutory Instruments Act 1946 applies as if the order were made by a Minister of the Crown; and
  - (d) is subject to annulment in pursuance of a resolution of either House of Parliament.
- ”.

### **Education Act 2005**

**38.**—(1) Paragraph 1 of Schedule 3 to the Education Act 2005(**a**) is amended in accordance with this paragraph.

(2) In paragraph 1(1)(a), for “Lord Chancellor” substitute “Lord Chief Justice after consulting the Lord Chancellor”.

(3) After sub-paragraph (3) insert—

“(4) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this paragraph.”.

### **Gambling Act 2005**

**39.**—(1) Paragraph 3 of Schedule 8 to the Gambling Act 2005(**b**) is amended in accordance with this paragraph.

(2) After sub-paragraph (3) insert—

“(3A) The Lord Chancellor may dismiss a person under sub-paragraph (3) only with the concurrence of the appropriate senior judge.

(3B) The appropriate senior judge is the Lord Chief Justice of England and Wales, unless the person to be dismissed exercises functions wholly or mainly in Scotland, in which case it is the Lord President of the Court of Session.

(3C) The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise any of his functions under this paragraph.

(3D) The Lord President of the Court of Session may nominate a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court to exercise his functions under this paragraph.”.

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(a) 2005 c.18.  
(b) 2005 c.19.



Transfer and modification of functions of the Lord Chancellor —  
secondary legislation

**Iron and Steel (Compensation to Officers and Servants) (No. 2) Regulations 1953**

1.—(1) Regulation 2 of the Iron and Steel Regulations (Compensation to Officers and Servants) (No. 2) Regulations 1953(a) is amended in accordance with this paragraph.

(2) In the definition of “tribunal” in paragraph (1), after “Lord Chancellor” insert “and the Lord Chief Justice”.

(3) After that paragraph insert—

“(1A) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions referred to in the definition of “tribunal” in paragraph (1).”.

**British Transport Reorganisation (Compensation to Employees) Regulations 1962**

2.—(1) Regulation 1 of the British Transport Reorganisation (Compensation to Employees) Regulations 1962(b) is amended in accordance with this paragraph.

(2) In the definition of “tribunal” in paragraph (3), after “Lord Chancellor” insert “and the Lord Chief Justice”.

(3) After that paragraph insert—

“(3A) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions referred to in the definition of “tribunal” in paragraph (3).”.

**National Assembly for Wales (Representation of the People) Order 2003**

3. In article 112 of the National Assembly for Wales (Representation of the People) Order 2003(c) after “Lord Chancellor” insert “and the Lord Chief Justice”.

**Courts Boards (Appointments and Procedure) Regulations 2004**

4. The Courts Boards (Appointments and Procedure) Regulations 2004(d) are amended as follows.

5.—(1) Regulation 8 is amended in accordance with this paragraph.

(2) In paragraph (2), for “paragraph (3)”, substitute “paragraphs (2A) and (3)”.

(3) After paragraph (2) insert—

“(2A) The Lord Chancellor must not re-appoint a judge under paragraph (2) unless the Lord Chief Justice concurs.”.

6. In regulation 9, after paragraph (2) insert—

“(2A) The Lord Chancellor must not suspend or remove a judge from office under paragraph (2) unless the Lord Chief Justice concurs.”.

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(a) S.I. 1953/1849; paragraph 2(1) was amended by S.I. 1967/1370.

(b) S.I. 1962/2834.

(c) S.I. 2003/284.

(d) S.I. 2004/1193.

7. After regulation 12 insert—

**“Delegation by Lord Chief Justice**

**13.** The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under these Regulations.”.

## SCHEDULE 3

Article 4

### Supplementary provision

#### **Copyright, Designs and Patents Act 1988**

In section 146(8) of the Copyright, Designs and Patents Act 1988(a), after “functions” in both places where it occurs insert “, or the person to be appointed is to exercise functions,”.

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(a) 1988 c.48. Section 146(8) was inserted by the paragraph 199 of Schedule 4 to the Constitutional Reform Act 2005.

## EXPLANATORY NOTE

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

This Order transfers, modifies or abolishes certain functions of the Lord Chancellor contained in primary legislation and contained in secondary legislation which is subject to the approval of either or both Houses of Parliament.

The transfers and modifications form part of the implementation of the Concordat agreed between the Lord Chancellor and the Lord Chief Justice in January 2004. The Concordat sets out the principles governing the allocation of functions between the Lord Chancellor and the Lord Chief Justice, following the removal of the Lord Chancellor's judicial functions by the Constitutional Reform Act 2005 (c. 4).

The amendments enacted by Schedules 1 and 2 to this Order transfer certain of the Lord Chancellor's functions to the Lord Chief Justice, and require certain functions to be exercised by the Lord Chancellor only after consulting, or obtaining the concurrence of the Lord Chief Justice (or vice-versa). In relation to certain functions applicable beyond England and Wales the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland have equivalent roles to that of the Lord Chief Justice in relation to England and Wales.

In addition, Schedule 1 abolishes the functions of the Lord Chancellor as a Lord of Appeal.

A separate Order made under the negative resolution procedure, the Lord Chancellor (Transfer of Functions and Supplementary Provisions) Order 2006, makes similar amendments to provisions contained in secondary legislation which are subject to annulment by either House of Parliament.

Schedule 3 to this Order makes a supplementary provision to the amendment made by paragraph 199 of Schedule 4 to the Constitutional Reform Act 2005.

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