
STATUTORY INSTRUMENTS

2010 No. 976

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

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.

Commencement Information

I1 Art. 4 in force at 12.4.2010, see [art. 1\(2\)](#)

Functions relating to policing

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

Commencement Information

I2 Art. 5 in force at 12.4.2010, see [art. 1\(2\)](#)

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(1)) has effect.

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Changes to legislation: There are currently no known outstanding effects for the The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010, PART 2. (See end of Document for details)

(5) Schedule 8 (which amends the Repatriation of Prisoners Act 1984(2) and the Crime (Sentences) Act 1997(3)) has effect.

Commencement Information

I3 Art. 6 in force at 12.4.2010, see [art. 1\(2\)](#)

Functions under the Corporate Manslaughter and Corporate Homicide Act 2007

7. Schedule 9 (which amends the Corporate Manslaughter and Corporate Homicide Act 2007(4)) has effect.

Commencement Information

I4 Art. 7 in force at 12.4.2010, see [art. 1\(2\)](#)

Functions under the Serious Crime Act 2007

8. Schedule 10 (which amends the Serious Crime Act 2007(5)) has effect.

Commencement Information

I5 Art. 8 in force at 12.4.2010, see [art. 1\(2\)](#)

Functions relating to firearms

9. Schedule 11 (which amends the Firearms (Northern Ireland) Order 2004(6) and the Violent Crime Reduction Act 2006(7)) has effect.

Commencement Information

I6 Art. 9 in force at 12.4.2010, see [art. 1\(2\)](#)

Functions relating to explosives

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

Commencement Information

I7 Art. 10 in force at 12.4.2010, see [art. 1\(2\)](#)

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- (2) 1984 c. 47.
(3) 1997 c. 43.
(4) 2007 c. 19.
(5) 2007 c. 27.
(6) S.I. 2004/702 (N.I. 3).
(7) 2006 c. 38.

Functions under the Justice (Northern Ireland) Act 2002

11. Schedule 13 (which amends the Justice (Northern Ireland) Act 2002(8)) has effect.

Commencement Information

I8 Art. 11 in force at 12.4.2010, see [art. 1\(2\)](#)

Functions relating to criminal justice

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

Commencement Information

I9 Art. 12 in force at 12.4.2010, see [art. 1\(2\)](#)

Functions under the Serious Organised Crime and Police Act 2005

13. Schedule 15 (which amends the Serious Organised Crime and Police Act 2005(9)) has effect.

Commencement Information

I10 Art. 13 in force at 12.4.2010, see [art. 1\(2\)](#)

Functions relating to the private security industry

14. Schedule 16 (which amends the Private Security Industry Act 2001(10)) has effect.

Commencement Information

I11 Art. 14 in force at 12.4.2010, see [art. 1\(2\)](#)

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.

(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(11) 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(12) are transferred to the Office of the First Minister and deputy First Minister in Northern Ireland.

(8) 2002 c. 26.

(9) 2005 c. 15.

(10) 2001 c. 12.

(11) 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).

(12) 2002 c. 26. Schedule 2 was amended by section 2 of, and Schedule 1 to, the Justice (Northern Ireland) Act 2004 (c. 4).

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Changes to legislation: There are currently no known outstanding effects for the The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010, PART 2. (See end of Document for details)

(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(13);
- (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(14);
- (c) Article 53 of the County Courts (Northern Ireland) Order 1980(15);
- (d) Article 141(4) of the Judgments Enforcement (Northern Ireland) Order 1981(16);
- (e) Article 36(1) and (3) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(17);
- (f) Articles 10(1), 86A(6) and 139(3) of the Magistrates' Courts (Northern Ireland) Order 1981(18);
- (g) Article 104(5) of the Mental Health (Northern Ireland) Order 1986(19);
- (h) Article 28(1) and (3) of the Juries (Northern Ireland) Order 1996(20);
- (i) Article 40(7)(b) of the Fair Employment and Treatment (Northern Ireland) Order 1998(21);
- (j) Articles 11(6)(d) and 21(5)(d) of the Access to Justice (Northern Ireland) Order 2003(22);
- (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).

Commencement Information

I12 Art. 15 in force at 12.4.2010, see [art. 1\(2\)](#)

Public bodies etc

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

(13) 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.

(14) 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.

(15) S.I. 1980/397 (N.I. 3).

(16) S.I. 1981/226 (N.I. 6).

(17) 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.

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

(19) S.I. 1986/595 (N.I. 4).

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

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

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

Commencement Information

I13 Art. 16 in force at 12.4.2010, see [art. 1\(2\)](#)

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(**23**) etc);
- (b) paragraph 92 of Schedule 3 (which makes provision in relation to the Royal Ulster Constabulary GC Regulations 2002(**24**));
- (c) paragraph 110 of Schedule 3 (which makes provision in relation to the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005(**25**));
- (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(**26**) 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(**27**));
- (f) paragraphs 32 to 40 of Schedule 5 (which make provision in relation to the Parole Commissioners’ Rules (Northern Ireland) 2009(**28**) 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).

Commencement Information

I14 Art. 17 in force at 12.4.2010, see [art. 1\(2\)](#)

Transfers of property etc

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

(23) S.R. (N.I.) 2000 No. 318.
(24) S.R. (N.I.) 2002 No. 260.
(25) S.I. 2005/2042
(26) S.R. (N.I.) 2008 No. 242.
(27) S.R. (N.I.) 1995 No. 8.
(28) S.R. (N.I.) 2009 No. 82.

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- (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(29), 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.
- (2) Subject to paragraphs (3) and (4), all property and liabilities 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 so far as relating to the function.
- (3) All property and liabilities to which a Minister of the Crown or a government department is entitled or subject immediately before the coming into force of this Order in relation to the premises known as the Royal Courts of Justice, Chichester Street, Belfast BT1 3JY, are transferred to the Department of Justice.
- (4) All property and liabilities 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 Director of Public Prosecutions for Northern Ireland so far as relating to the premises listed in Schedule 20 or the contents of those premises.
- (5) Nothing in this article transfers—
- (a) any property or liabilities so far as relating to land outside Northern Ireland or the contents of such land;
 - (b) any property or liabilities so far as relating to any premises listed in Schedule 21 or the contents of those premises;
 - (c) any property or liabilities so far as relating to records (apart from records held by the Northern Ireland Court Service immediately before its abolition);
 - (d) any property or liabilities so far as relating to a person's employment in the civil service of the State.
- (6) The Department of Justice must make arrangements appearing to it to correspond to any arrangements in place immediately before the coming into force of this Order under which the Crown Solicitor and the staff of the Crown Solicitor's Office occupy parts of the premises mentioned in paragraph (3).
- (7) In particular, the arrangements—
- (a) must provide for the Crown Solicitor and staff to continue to be able to occupy those parts of the premises;
 - (b) may provide for the Crown Solicitor to pay to the Department of Justice amounts akin to a commercial rent and contributions to the costs of running the premises.
- (8) Paragraph (6) ceases to have effect on 12 April 2012 and is subject to any other agreement made between the Department of Justice and the Crown Solicitor.
- (9) In this article "government department" means—
- (a) a department of the Government of the United Kingdom, or
 - (b) the Northern Ireland Court Service (before its abolition).

Commencement Information

I15 Art. 18 in force at 12.4.2010, see [art. 1\(2\)](#)

19.—(1) Persons who are members of the Northern Ireland Court Service immediately before its abolition are transferred to the Northern Ireland Civil Service to be employed in the Department of Justice.

(2) Persons—

- (a) to whom this paragraph applies, and
- (b) who are members of the Northern Ireland Civil Service holding positions in the Northern Ireland Office immediately before the coming into force of this Order,

are transferred to be employed in the Department of Justice.

(3) Paragraph (2) applies to a person if, after a draft of this Order was laid before Parliament but before the coming into force of this Order, the Secretary of State—

- (a) determined that the person’s duties in the Northern Ireland Office related wholly or mainly to functions within article 18(1)(a) to (c), and
- (b) notified the person in writing that the person would transfer to the Department of Justice on the coming into force of this Order.

(4) Persons—

- (a) to whom this paragraph applies, and
- (b) who, immediately before 12 October 2010, are civil servants (but not members of the Northern Ireland Civil Service) holding positions in the Department of Justice in accordance with arrangements made between the Secretary of State and the Department of Justice,

transfer on that date to the Northern Ireland Civil Service to be employed in the Department of Justice.

(5) Paragraph (4) applies to a person if—

- (a) immediately before the coming into force of this Order the person is a civil servant (but not a member of the Northern Ireland Civil Service),
- (b) after a draft of this Order was laid before Parliament but before the coming into force of this Order, the Secretary of State determined that the person’s duties as a civil servant related wholly or mainly to functions within article 18(1)(a) to (c), and
- (c) after the coming into force of this Order but before 12 October 2010—
 - (i) the person notifies the Secretary of State and the Department of Justice in writing that the person agrees to transfer to the Northern Ireland Civil Service on 12 October 2010, and
 - (ii) the Secretary of State, with the agreement of the Department of Justice, notifies the person in writing that the person is to transfer to the Northern Ireland Civil Service on 12 October 2010.

(6) Persons—

- (a) to whom this paragraph applies, and
- (b) who, immediately before 12 April 2011, are civil servants (but not members of the Northern Ireland Civil Service) holding positions in the Department of Justice in

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accordance with arrangements made between the Secretary of State and the Department of Justice,

transfer on that date to the Northern Ireland Civil Service to be employed in the Department of Justice.

- (7) Paragraph (6) applies to a person if—
- (a) immediately before the coming into force of this Order the person is a civil servant (but not a member of the Northern Ireland Civil Service),
 - (b) after a draft of this Order was laid before Parliament but before the coming into force of this Order, the Secretary of State determined that the person's duties as a civil servant related wholly or mainly to functions within article 18(1)(a) to (c), and
 - (c) after the coming into force of this Order but before 12 April 2011—
 - (i) the person notifies the Secretary of State and the Department of Justice in writing that the person agrees to transfer to the Northern Ireland Civil Service on 12 April 2011, and
 - (ii) the Secretary of State, with the agreement of the Department of Justice, notifies the person in writing that the person is to transfer to the Northern Ireland Civil Service on 12 April 2011.

- (8) Persons—
- (a) to whom this paragraph applies, and
 - (b) who, immediately before 12 April 2012, are civil servants (but not members of the Northern Ireland Civil Service) holding positions in the Department of Justice in accordance with arrangements made between the Secretary of State and the Department of Justice,

transfer on that date to the Northern Ireland Civil Service to be employed in the Department of Justice.

- (9) Paragraph (8) applies to a person if—
- (a) immediately before the coming into force of this Order the person is a civil servant (but not a member of the Northern Ireland Civil Service),
 - (b) after a draft of this Order was laid before Parliament but before the coming into force of this Order, the Secretary of State determined that the person's duties as a civil servant related wholly or mainly to functions within article 18(1)(a) to (c), and
 - (c) after the coming into force of this Order but before 12 April 2012—
 - (i) the person notifies the Secretary of State and the Department of Justice in writing that the person agrees to transfer to the Northern Ireland Civil Service on 12 April 2012, and
 - (ii) the Secretary of State, with the agreement of the Department of Justice, notifies the person in writing that the person is to transfer to the Northern Ireland Civil Service on 12 April 2012.

- (10) Paragraph (11) applies if—
- (a) in accordance with arrangements made between the Secretary of State and the Department of Justice, a person who is a civil servant (but not a member of the Northern Ireland Civil Service) is holding a position in the Department of Justice at any time after the coming into force of this Order,
 - (b) immediately before the coming into force of this Order the person was a member of the Senior Civil Service (and not the Northern Ireland Senior Civil Service), and

(c) after a draft of this Order was laid before Parliament but before the coming into force of this Order, the Secretary of State determined that the person's duties in the Senior Civil Service related wholly or mainly to functions within article 18(1)(a) to (c).

(11) While the person is holding the position in the Department of Justice, the Departments (Northern Ireland) Order 1999(30) has effect as if the person were a member of the Northern Ireland Senior Civil Service employed in the Department of Justice and, accordingly, the person is to be treated for the purposes of that Order as if the person were a senior officer of the Department of Justice.

(12) Paragraph (11) ceases to have effect on 12 April 2012.

(13) The Transfer of Undertakings (Protection of Employment) Regulations 2006(31) apply to a transfer by this article whether or not the transfer would, apart from this paragraph, be a relevant transfer for the purposes of those Regulations.

Commencement Information

I16 Art. 19 in force at 12.4.2010, see [art. 1\(2\)](#)

20. Subject to article 19(13), articles 18 and 19 operate so as to transfer property and liabilities—

- (a) whether or not they would otherwise be capable of being transferred,
- (b) without any instrument or other formality being required, and
- (c) irrespective of any kind of requirement for consent that would otherwise apply.

Commencement Information

I17 Art. 20 in force at 12.4.2010, see [art. 1\(2\)](#)

21.—(1) The Secretary of State may give such directions extending or restricting the operation of article 18 as the Secretary of State considers appropriate for the purpose of—

- (a) making minor adjustments of any property or liabilities transferred by that article, or
- (b) removing uncertainty as to the application of that article to any property or liabilities.

(2) A direction under paragraph (1) may (in particular) provide for dividing or apportioning any property or liabilities between, on the one hand, a Minister of the Crown or a department of the Government of the United Kingdom and, on the other hand, the Department of Justice or the Director of Public Prosecutions for Northern Ireland.

(3) Before giving a direction under paragraph (1) the Secretary of State must consult the Department of Justice or, if the Secretary of State considers appropriate, the Director of Public Prosecutions for Northern Ireland.

(4) A certificate issued by the Secretary of State to the effect that any property or liabilities specified in the certificate were, or were not, transferred by article 18 to the Department of Justice or to the Director of Public Prosecutions for Northern Ireland is conclusive evidence of the matters stated in the certificate.

(30) [S.I. 1999/283 \(N.I. 1\)](#). A reference to the Department of Justice is inserted into Schedule 1 by section 1(3) of the Department of Justice Act (Northern Ireland) 2010 (c. 3) (N.I.).

(31) [S.I. 2006/246](#).

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(5) But the issue of a certificate under paragraph (4) does not prevent a subsequent direction being given under paragraph (1) in relation to the property or liabilities in question.

(6) A direction may not be given under paragraph (1) after 12 April 2012.

(7) A direction under paragraph (1) operates so as to adjust, apportion, divide or otherwise affect any property or liabilities—

- (a) whether or not they would otherwise be capable of being adjusted, apportioned, divided or otherwise affected,
- (b) without any instrument or other formality being required, and
- (c) irrespective of any kind of requirement for consent that would otherwise apply.

Commencement Information

I18 Art. 21 in force at 12.4.2010, see [art. 1\(2\)](#)

22.—(1) The Secretary of State must give directions, as the Secretary of State considers appropriate in consequence of the Northern Ireland Act 1998 (Amendment of Schedule 3) Order 2010 (taking into account the provisions of this Order and the Northern Ireland Court Service (Abolition and Transfer of Functions) Order (Northern Ireland) 2010), setting out arrangements under which the Department of Justice may use, or otherwise have access to, existing Northern Ireland Office records.

(2) Paragraph (3) applies if—

- (a) property or liabilities in a computer system are transferred to the Department of Justice by article 18, and
- (b) on the coming into force of this Order, existing Northern Ireland Office records are held on that system.

(3) The Department of Justice is to hold the records on that system on behalf of the Northern Ireland Office, so far as required by, and in accordance with, arrangements directed by the Secretary of State.

(4) Arrangements directed under this article may (in particular) provide—

- (a) for records to be excluded from the arrangements;
- (b) for access to records to be prohibited or restricted;
- (c) for conditions to be imposed in relation to the use or accessing of records;
- (d) for records to be handed back to the Northern Ireland Office.

(5) In this article “existing Northern Ireland Office records” means any records which, immediately before the coming into force of this Order, are held by the Northern Ireland Office.

Commencement Information

I19 Art. 22 in force at 12.4.2010, see [art. 1\(2\)](#)

Status:

Point in time view as at 12/04/2010.

Changes to legislation:

There are currently no known outstanding effects for the The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010, PART 2.