

PRIME MINISTER

Office of the Social Security Commissioners

The attached papers concern the proposed transfer from DHSS to the Lord Chancellor's Office of administrative responsibility for the Social Security Commissioners. The Ministers concerned are in favour of the change, as are the Chief Secretary and Sir Robert Armstrong.

There is no doubt a good case for the transfer on merits. But the proposed timing (1 January 1985, which would mean a Parliamentary announcement in the near future) looks awkward in relation to the miners' strike. Unfortunately, any change at all in the arrangements which govern appeals on social security matters is likely to be presented by critics as an attack on strikers and their families.

In the circumstances, you may like to agree to the transfer in principle, but ask for implementation to be deferred until the strike is resolved.

Agree?

Es. Once date of transfer

I think it adds to their independence to have them under the Lord Chancellor's office.

ans

not

18 October 1984



Anant

RJA admin

PRIME MINISTER

OFFICE OF THE SOCIAL SECURITY COMMISSIONERS

This minute seeks your consent to the transfer of responsibility for the Office of the Social Security Commissioners (OSSC) from myself to the Lord Chancellor in relation to England and Wales and to the Secretary of State for Scotland in relation to Scotland. The Commissioners hear appeals against decisions on entitlement to social security benefits.

At present, responsibility for this small office falls between two Departments. Commissioners are judicial officers appointed by the Queen on the advice of the Lord Chancellor, in consultation with colleagues as appropriate. DHSS Ministers are answerable in Parliament for all matters concerning them except for personal conduct which is a matter for the Lord Chancellor.

For several years, the office has attracted criticism about the excessive length of time it takes to have appeals determined by a Commissioner. Although improvements have been achieved from time to time, it has never been possible to sustain them and recently there have been some appeals where more than a year has elapsed between an oral hearing and a determination being given. This unsatisfactory situation has been able to persist because the need to respect the judicial independence of the Commissioners has acted as a barrier to the effective and accountable management of their office.

In the circumstances, the Lord Chancellor and I agree that it would be sensible to end the division between judicial and administrative responsibility and to transfer administrative responsibilities to him, including the pay and pension arrangements for the Commissioners themselves. This would make the Commissioners properly accountable to the Minister who advises on their appointment and it would enable

the Lord Chancellor to explore ways of reducing the isolation and monotony of Commissioners' work, and of making better use of judicial resources. To achieve this, we also propose that the procedural rules governing appeals to the Commissioners should be determined by the Lord Chancellor - in association with the Lord Advocate - this includes items such as the time limits within which appeals must be made. DHSS Ministers would, however, retain responsibility for policy on appeal rights in the context of the social security system.

I have consulted the Lord Advocate and the Secretaries of State for Scotland, Wales and Northern Ireland because there are two Commissioners in Scotland, one in Wales and three under the separate Northern Ireland jurisdiction. The Secretary of State for Wales is content with my proposal. The Secretary of State for Scotland and the Lord Advocate are content also but, because the Lord Chancellor's jurisdiction does not extend to Scotland, the Secretary of State has agreed to assume responsibility for the office in Edinburgh (6 staff) which will be administered by the Scottish Courts Administration. No change is proposed in the responsibility for the appointment of the Commissioners in Scotland.

The Secretary of State for Northern Ireland agrees in principle to follow suit, but transfer of responsibility for the separate office there requires amendment of the Northern Ireland Constitution Act 1973. He therefore intends to postpone action until a suitable opportunity to amend the legislation arises.

A Transfer of Functions Order (subject to Negative Resolution) will be required, and the change would be announced by you in an arranged Parliamentary Question. A draft is attached for your consideration. A small PESC transfer is necessary but there are no extra costs. The support staff of 37 will be transferred or loaned to Lord Chancellor's Department (31 staff) and the Scottish Courts Administration (6 staff). Future vacancies will be filled by those Departments. The bulk of support work is of a procedural nature and particular knowledge of social security is not essential. The transfer could be effected on 1 January 1985.

E. R.

The transfer is likely to be welcomed by interests outside Government, because it will put beyond doubt that the Commissioners are independent of the Department whose litigation they have to decide. The Council on Tribunals favours such a transfer for this reason.

I am sending copies of this minute to the Lord Chancellor, the Lord Advocate, the Secretaries of State for Scotland, Wales and Northern Ireland, the Chancellor of the Exchequer and Sir Robert Armstrong.



N F

11 October 1984

PQ

To ask the Prime Minister whether she will consider changing the arrangements for administering the Office of the Social Security Commissioners.

DRAFT ANSWER

I have decided to transfer responsibility for administering the Office from the Secretary of State for Social Services to the Lord Chancellor in relation to England and Wales, and for Scotland the Secretary of State for Scotland. The Lord Chancellor is already responsible for advising on the appointment of the Commissioners and it is appropriate that their office should be administered from his Department. In Scotland, to which the Lord Chancellor's jurisdiction does not extend, the office will be administered by the Scottish Courts Administration.

The necessary Transfer of Functions Order is in preparation, to take effect from 1 January 1985.

To ask the Prime Minister whether she will consider changing the arrangements for administering the Office of the Social Security Commissioners.

DRAFT ANSWER

I have decided to transfer responsibility for administering the Office from the Secretary of State for Social Services to the Lord Chancellor in relation to England and Wales, and for Scotland ^{to} the Secretary of State for Scotland. ^{Since the} The Lord Chancellor is already responsible for advising on the appointment of the Commissioners, ^{and it is appropriate that their Office} ~~and it is appropriate that their Office~~ ^{should be administered} ~~from his Department.~~ ^{by} In Scotland, ^{to which the Lord Chancellor's jurisdiction} ~~to which the Lord Chancellor's jurisdiction~~ ^{does not extend,} ~~does not extend,~~ the Office will be administered by the Scottish Courts Administration.

The necessary Transfer of Functions Order is in preparation, to take effect from 1 January 1985.



Prime Minister (4)

Ref. A084/2741

PRIME MINISTER

Social Security Commissioners: Transfer of Responsibility

attached ✓ The Secretary of State for Social Services' minute of 11 October seeks your agreement to the transfer to the Lord Chancellor of his responsibility for administering the Office of the Social Security Commissioners. In Scotland, which lies outside the Lord Chancellor's jurisdiction, responsibility would be transferred to the Secretary of State for Scotland.

2. The argument for the transfer is that the Lord Chancellor and Scottish Secretary should be better able, because of their parallel experience with the courts administration, to control the Commissioners' administration and spending. DHSS has found this difficult because the Commissioners have argued that their judicial independence makes it inappropriate for DHSS to interfere in their management. There may also be some presentational value in making the Commissioners fully independent of the department which is a party to the appeals they decide.

3. I think the transfer is a sensible one and I recommend that you agree it. There are two points you may want to note.

4. First, the transfers will need a Transfer of Functions Order, which would be subject to negative resolution. There may be some Parliamentary interest because of the criticisms the Office has attracted in recent years.

5. Second, this particular transfer, like the recent transfer of the Special Commissioners of Income Tax to the Lord Chancellor, stands on its own merit. But it does raise the question of whether we should at some stage look more generally at Ministerial responsibility for the various tribunals. You may remember that, when I advised you earlier this year on the transfer of responsibility for the Special Commissioners of Income Tax from



the Chancellor of the Exchequer to the Lord Chancellor, I pointed out that the general rule until now has been that the department responsible for a particular tribunal's area of operation also administers it. I suggested that you would want to look carefully at the arguments if there were proposals for a wholesale transfer of tribunals to the Lord Chancellor's Department. These two transfers should together provide some useful working evidence of the advantages of bringing together judicial and administrative responsibility which would help towards an assessment of the general case.

A handwritten signature in black ink, consisting of the letters 'R' and 'A' in a stylized, cursive font.

ROBERT ARMSTRONG

15 October 1984



FROM: CHIEF SECRETARY
DATE: 17 October 1984

PRIME MINISTER

OFFICE OF THE SOCIAL SECURITY COMMISSIONERS

with AT.
The Secretary of State for Social Security in his minute of 11 October, sought your consent to the transfer of responsibility for the Office of the Social Security Commissioners (OSSC) from himself, to the Lord Chancellor in relation to England and Wales and to the Secretary of State for Scotland in relation to Scotland.

2 I agree that it is sensible to make this transfer of responsibility which entails no extra public expenditure costs.

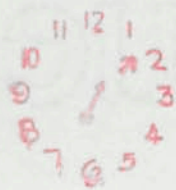
3 Copies of this minute go to the Lord Chancellor, the Lord Advocate, the Secretaries of State for Scotland, Wales and Northern Ireland, the Chancellor of the Exchequer and Sir Robert Armstrong.

for PETER REES

[Approved by the Chief Secretary]



7 OCT 1984





10 DOWNING STREET

Andrew

To see PM's reaction.

Do you want to
go back on this?

No

AT

DMS
19/10

PRIME MINISTER

Office of the Social Security
Commissioners

OK
I will need to alter my
letter to DSS confirming
this. May I have it
back please?

DWS
22/10

You were content with Mr Fowler's
proposal to transfer responsibility for
the Office of the Social Security
Commissioners to the Lord Chancellor,
and to the Secretary of State for Scotland.

Are you also content with the attached
draft Answer please?

DWS

Yes
ml

19 October 1984

PQ:

To ask the Prime Minister whether she will consider changing the arrangements for administering the Office of the Social Security Commissioners.

DRAFT ANSWER

I have decided to transfer responsibility for administering the Office from the Secretary of State for Social Services to the Lord Chancellor in relation to England and Wales, and for Scotland to the Secretary of State for Scotland. Since the Lord Chancellor is already responsible for advising on the appointment of the Commissioners, it makes sense for their Office to be administered by his Department. In Scotland, the Office will be administered by the Scottish Courts Administration.

The necessary Transfer of Functions Order is in preparation, to take effect from 1 January 1985.

Answered

Questions *DB*

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MISS ROCHE/MRS PLATMAN

OFFICE OF THE SOCIAL SECURITY COMMISSIONERS

Could you please arrange for the attached Question to be tabled as soon as is conveniently possible. The Prime Minister is content with the terms of the draft Answer.

I have told Steve Godber (DHSS Private Office) that we will be keeping him in touch about the timing, and perhaps you could make sure this is done.

DB

23 October 1984

file



10 DOWNING STREET

From the Private Secretary

23 October 1984

Dear Steve,

Office of the Social Security Commissioners

The Prime Minister was grateful for your Secretary of State's minute of 11 October proposing the transfer of responsibility for the Office of the Social Security Commissioners from himself to the Lord Chancellor, and to the Secretary of State for Scotland.

The Prime Minister is content with the proposed transfer, but has slightly amended the draft Answer which was attached to your Secretary of State's minute. I enclose a copy of the revised version. We shall be arranging for the Question to be answered shortly, and will keep you in touch with the precise timing.

I am sending copies of this letter to Richard Stoate (Lord Chancellor's Office), Iain Jack (Lord Advocate's Department), John Graham (Scottish Office), Colin Jones (Welsh Office), Graham Sandiford (Northern Ireland Office), Margaret O'Mara (H M Treasury) and to Richard Hatfield (Cabinet Office).

Yours ever,
David

David Barclay

S A Godber, Esq.,
Department of Health and Social Security

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