STATUTORY INSTRUMENTS

1964 No. 263

MINISTERS OF THE CROWN

The Transfer of Functions (Building Control) Order 1964

Made - - - -	*26th February* 1964
Laid before Parliament	*27th February* 1964
Coming into Operation	*28th February* 1964

At the Court at Buckingham Palace, the 26th day of February 1964

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in pursuance of section 1 of the Ministers of the Crown (Transfer of Functions) Act 1946(a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation, interpretation and commencement

1.—(1) This Order may be cited as the Transfer of Functions (Building Control) Order 1964.

(2) The Interpretation Act 1889(b) applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

(3) In this Order "the Minister" means the Minister of Housing and Local Government, and "instrument" (without prejudice to the generality of that expression) includes in particular Orders in Council, judgments, decrees, orders, rules, regulations, byelaws, awards, contracts, certificates and other documents.

(4) Any reference in this Order to any enactment is a reference thereto as amended by or under any other enactment.

(5) This Order shall come into operation on 28th February 1964.

Transfer to Minister of Public Building and Works of certain functions relating to building regulations, building byelaws and the construction and drainage of new buildings

2.—(1) The functions of the Minister under the enactments described in Part I of the Schedule to this Order are hereby transferred to the Minister of Public Building and Works.

(2) In so far as any functions of the Minister under any enactment described in the first column of Part II of the Schedule to this Order are exercisable by him in relation to, or in consequence of, any enactment described in the corresponding entry in the second column of the said Part II, those functions are hereby transferred to the Minister of Public Building and Works.

(a) 9 & 10 Geo. 6. c. 31. (b) 52 & 53 Vict. c. 63.

(3) In so far as any functions of the Minister as regards the confirmation of byelaws are exercisable by him in relation to byelaws made under or by virtue of any provision in a local Act or provisional or other order, being a provision the purposes of which are similar to the purposes of any enactment described in Part I of the Schedule to this Order or in the second column of Part II of that Schedule, those functions are hereby transferred to the Minister of Public Building and Works.

Transfer to Secretary of State of functions relating to exits, entrances and means of escape from fire in the case of certain buildings

3. In so far as any functions of the Minister under Part XII of the Public Health Act 1936(a) are exercisable by him in relation to section 59(2), (3) or (4) of that Act, or in relation to section 60 of that Act so far as it relates to buildings other than proposed buildings, those functions are hereby transferred to the Secretary of State.

Transfer to Minister of Labour of functions as to confirmation of byelaws about provision in factories of means of escape from fire

4. The functions of the Minister and of the Secretary of State under subsection (5) of section 46 of the Factories Act 1961(b), and under section 8 of the London Building Act (Amendment) Act 1935(c) so far as that section relates to byelaws under the said section 46, are hereby transferred to the Minister of Labour.

Supplementary

5.—(1) Any enactment or instrument shall, so far as may be necessary for or in consequence of any transfer effected by this Order, have effect as if references to, or which are to be construed as references to, the Minister or the Secretary of State were, or, as the case may require, included, references to the appropriate Minister.

(2) This Order shall not affect the validity of anything done by or in relation to the Minister or the Secretary of State before the coming into operation of this Order; and anything which, at the time of the coming into operation of this Order, is in process of being done by or in relation to the Minister or the Secretary of State (including in particular any legal proceeding then pending to which he is a party) may, if it relates to any functions transferred by this Order, be continued by or in relation to the appropriate Minister.

(3) Any authority or appointment given or made by the Minister for the purposes of any of the functions transferred by this Order shall, if in force at the coming into operation of this Order, continue in force as if given or made by the appropriate Minister.

(4) In this Article "the appropriate Minister", in relation to a transfer effected by Article 2 of this Order, means the Minister of Public Building and Works, in relation to a transfer effected by Article 3 of this Order means the Secretary of State, and in relation to a transfer effected by Article 4 of this Order means the Minister of Labour.

W. G. Agnew.

(a) 26 Geo. 5 & 1 Edw. 8. c. 49. (b) 9 & 10 Eliz. 2. c. 34.
(c) 25 & 26 Geo. 5. c. xcii.

SCHEDULE

Article 2.

ENACTMENTS IN RESPECT OF WHICH FUNCTIONS ARE TRANSFERRED TO MINISTER OF PUBLIC BUILDING AND WORKS

PART I

26 Geo. 5 & 1 Edw. 8. c. 49.	The Public Health Act 1936	Section 53(7). Sections 61 to 63. Section 67. Sections 69 and 70.
4 & 5 Eliz. 2. c. 52.	The Clean Air Act 1956 ...	Section 24.
5 & 6 Eliz. 2. c. 56.	The Housing Act 1957 ...	Section 145 so far as it relates to new buildings. Section 146 so far as it relates to enactments or byelaws relating to the construction of buildings. Section 148 so far as it relates to byelaws with respect to buildings.
6 & 7 Eliz. 2. c. xxi.	The London County Council (General Powers) Act 1958.	Section 14 so far as it relates to functions— (*a*) in respect of any of the matters described in section 61(1) or 62(1) of the Public Health Act 1936, or (*b*) in respect of any other matters as regards works, fittings or the construction of buildings.
9 & 10 Eliz. 2. c. 64.	The Public Health Act 1961	Section 4. Sections 6 to 9. Section 86(2). Schedule 1.
1963 c. 33 ...	The London Government Act 1963.	Section 43 so far as it relates to functions— (*a*) in respect of any of the matters described in section 61(1) or 62(1) of the Public Health Act 1936, or (*b*) in respect of any other matters as regards works, fittings or the construction of buildings.

PART II

Section 250 of the Local Government Act 1933(a).	In the London Government Act 1963— In Schedule 9, in Part III, paragraph 6 except so far as it relates to maintenance, cleansing and repair. In Schedule 11, in Part II, paragraphs 3 and 4.
Section 8 of the London Building Act (Amendment) Act 1935.	In the London Building Act (Amendment) Act 1935— Section 4 as extended by sections 97 to 99 of the London Building Acts (Amendment) Act 1939(b), except so far as that section relates to the matters described in paragraphs (*a*) and (*p*) of subsection (1) thereof. In the London County Council (General Powers) Act 1955(c)— Section 11 except so far as it relates to fees in respect of dangerous or neglected structures.

(a) 23 & 24 Geo. 5. c. 51. (b) 2 & 3 Geo. 6. c. xcvii. (c) 4 & 5 Eliz. 2. c. xxix.

Part XII of the Public Health Act 1936.	In the Public Health Act 1936— Section 25. Sections 37 and 38. Section 43. Sections 53 to 55. Section 59(1). Section 60 so far as it relates to proposed buildings. Sections 61 to 67. Sections 69 to 71. Section 137. In the Clean Air Act 1956— Section 24. In the Public Health Act 1961— Section 4. Sections 6 to 9. Section 31. Section 33. Schedule 1. In the London Government Act 1963— In Schedule 9, in Part III, paragraph 6, except so far as it relates to maintenance, cleansing and repair. In Schedule 11, in Part II, paragraphs 3 and 4.
Part XIV of the Public Health (London) Act 1936(a).	In the Public Health (London) Act 1936— In section 34(1), paragraph (*a*) except so far as it relates to maintenance, cleansing and repair, and paragraph (*c*). In section 107, subsection (1), and subsection (3) so far as it relates to byelaws under subsection (1).
Part VII of the Housing Act 1957.	In the Housing Act 1957— Section 145 so far as it relates to new buildings. Section 146 so far as it relates to enactments or byelaws relating to the construction of buildings. Section 148 so far as it relates to byelaws with respect to buildings.
Section 82 of the Public Health Act 1961.	In the Public Health Act 1961— Sections 4 to 11. Section 31. Section 33. Schedule 1.

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

The main effect of this Order is to transfer to the Minister of Public Building and Works the functions of the Minister of Housing and Local Government with respect to byelaws and regulations relating to building control, and certain related ancillary functions of that Minister. In England and Wales outside the administrative county of London this control is at present exercised principally through byelaws under sections 61 and 62 of the Public Health Act 1936 (known as building byelaws). Within the administrative county of London the control is exercised principally through byelaws under section 4 of the London Building Act (Amendment) Act 1935, as extended by later Acts, and under sections 34 and 107 of the Public

(a) 26 Geo. 5 & 1 Edw. 8. c. 50.

Health (London) Act 1936, which enable the London County Council to make similar byelaws. By virtue of section 43 of the London Government Act 1963 and of Schedule 9, Part III, paragraph 6 and Schedule 11, Part II, paragraphs 3 and 4 of that Act, the above-mentioned powers now exercisable by the London County Council will with effect from 1st April 1965 be exercisable by the Greater London Council in respect of the inner London boroughs as defined in that Act. On the coming into force of section 4 of the Public Health Act 1961, building byelaws will cease to have effect and the corresponding control will be exercised through building regulations made under that section (which provides for the making of regulations with respect to the matters to which sections 61 and 62 of the Public Health Act 1936 relate, in substitution for byelaws of local authorities under those sections). References in the statutes to building byelaws under sections 61 and 62 of the Act of 1936 will then be translated into references to building regulations.

The functions under the Public Health Act 1936, the Public Health (London) Act 1936 and the London Building Act (Amendment) Act 1935 with which the Order is concerned are at present vested in the Minister of Housing and Local Government by virtue of three Orders under the Ministers of the Crown (Transfer of Functions) Act 1946. The first of these (S.I. 1951/142 (1951 I, p. 1348)) altered the style and title of the Minister of Town and Country Planning to " the Minister of Local Government and Planning " and transferred to him the functions under the Public Health Act 1936 and the Public Health (London) Act 1936 with which this Order is concerned. The second (S.I. 1951/753 (1951 I, p. 1354)) transferred further functions from the Minister of Health to the Minister of Local Government and Planning, including the functions under local Acts with which this Order is concerned. The third Order (S.I. 1951/1900 (1951 I, p. 1347)) altered the style and title of the Minister of Local Government and Planning to " the Minister of Housing and Local Government ".

Article 2(1) of the Order transfers to the Minister of Public Building and Works functions under the enactments listed in Part I of the Schedule. The principal functions transferred are the functions already mentioned with respect to building byelaws and the corresponding functions in relation to London, together with the prospective functions under section 4 of the Public Health Act 1961. The ancillary functions transferred under Part I are as follows:—

In the Public Health Act 1936, those under—

- section 53(7) as amended by the Public Health Act 1961, Schedule 1, Part III (specifying of materials which are unsuitable for use in permanent buildings);
- section 63 (relaxation);
- section 67 (determination of questions as to applicability etc.);
- section 69 (making of byelaws in default and revocation of unreasonable byelaws);
- section 70 (determination of questions as to keeping copies of local enactments).

In the Clean Air Act 1956, those under section 24 as amended by the Public Health Act 1961, Schedule 1, Part III (building regulations as to arrangements for heating and cooking calculated to prevent emission of smoke).

In the Housing Act 1957, those under—

section 145 (approval of plans and specifications with respect to new buildings, with effect that building byelaws or regulations will not apply);

section 146 (consent to suspension, alteration or relaxation in London of enactments and byelaws and regulations relating to the construction of buildings);

section 148 (revocation of byelaws).

In the London County Council (General Powers) Act 1958, those under section 14 (consent to delegation by London County Council of their functions under the London Building Acts, so far as the functions correspond with the functions under the Public Health Act 1936 relating to building byelaws).

In the Public Health Act 1961, those under—

sections 6 to 8 (relaxation of building regulations);

section 9 (appointment of Building Regulations Advisory Committee);

section 86(2) (appointing of date for coming into force of Part II);

Schedule 1 (relaxation for existing work, and transitional provisions).

In the London Government Act 1963, those under section 43 (direction to Greater London Council as to delegation of their functions under the London Building Acts, so far as the functions correspond with the functions under the Public Health Act 1936 relating to building byelaws).

Article 2(2) of the Order transfers to the Minister of Public Building and Works such functions as—

under section 250 of the Local Government Act 1933, the confirmation of byelaws under Schedule 9, Part III, paragraph 6 of the London Government Act 1963 (pipes, drains and other connections with sewers) except as to the maintenance, cleansing and repair thereof, and Schedule 11, Part II, paragraphs 3 and 4 of that Act (relating to sanitary conveniences, etc., and certain incinerators);

under section 8 of the London Building Act (Amendment) Act 1935, functions in relation to the procedure for making byelaws with respect to buildings, works and fittings and to certain fees under the London Building Acts;

under Part XII of the Public Health Act 1936, the prescribing of forms (section 283), the confirmation of byelaws (section 312), the holding of local inquiries (section 318), and default powers (sections 321 and 325), in relation mainly (apart from the provisions which have already been described) to provisions which require a local authority to reject plans for buildings on various grounds relating to sanitation, water supplies, unsuitable materials or sites, access, food storage and bathrooms (Part XII is applied to the provisions of the London Government Act 1963 here listed by section 37 and Schedule 9, Part II, paragraph 17, and section 40 and Schedule 11, Part I, paragraph 24, of that Act);

under Part XIV of the Public Health (London) Act 1936, the confirmation of byelaws (section 276), the extension of byelaws to the Port of London (section 278), default powers (section 292), and the holding of inquiries (section 297), in relation to section 34(1)(*a*) and (*c*) of that Act (byelaws of the London County Council as to construction of pipes, drains, etc.) except as to the maintenance, cleansing and repair thereof, to section 107(1) of that Act (byelaws as to sanitary conveniences, etc.), and to

section 107(3) (duty of sanitary authority to enforce such byelaws) so far as it relates to section 107(1);

under Part VII of the Housing Act 1957, in relation to sections 145, 146 and 148 of that Act (the effect of which has already been described), the prescribing of forms (section 178), dispensing with advertisements and notices (section 179), and the holding of local inquiries and the requiring of reports (section 181);

under section 82 of the Public Health Act 1961, the amendment of local Acts.

Article 2(3) of the Order transfers to the Minister of Public Building and Works the functions of the Minister of Housing and Local Government, whether under section 250 of the Local Government Act 1933 or otherwise, with respect to the confirmation of byelaws for similar purposes under local Acts and other local legislation.

Article 3 of the Order transfers to the Secretary of State the functions of the Minister of Housing and Local Government under Part XII of the Public Health Act 1936 in relation to ingress to and egress from, and passages and gangways in, certain existing theatres, restaurants, shops, stores, clubs, schools and places of worship (section 59(2) to (4) of that Act), and in relation to means of escape from fire in the case of certain existing high buildings such as tenements, hotels, hospitals and boarding schools, and restaurants and stores with employees' sleeping accommodation on an upper floor (section 60 of that Act).

Article 4 transfer to the Minister of Labour the functions of the Minister of Housing and Local Government in England and Wales and of the Secretary of State in Scotland with respect to byelaws as to means of escape from fire in factories under section 46(5) of the Factories Act 1961 outside London, and in London (by virtue of section 46 (7) of that Act) under section 8 of the London Building Act (Amendment) Act 1935.

Article 5 is common form.