



The Law Commission
and
The Scottish Law Commission

(LAW COM. No. 66)

(SCOT. LAW COM. No. 38)

SUPPLY POWERS BILL

REPORT ON THE CONSOLIDATION
OF CERTAIN ENACTMENTS RELATING
TO SUPPLY POWERS

*Presented to Parliament by the
Lord High Chancellor and the Lord Advocate
by Command of Her Majesty
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THE LAW COMMISSION AND THE SCOTTISH LAW COMMISSION
SUPPLY POWERS BILL
REPORT ON THE CONSOLIDATION OF CERTAIN ENACTMENTS
RELATING TO SUPPLY POWERS

*To the Right Honourable the Lord Elwyn-Jones,
Lord High Chancellor of Great Britain, and*

*the Right Honourable Ronald King Murray, Q.C. M.P.,
Her Majesty's Advocate.*

The Supply Powers Bill which is the subject of this Report consolidates the outstanding provisions of the Ministry of Supply Act 1939 and enactments and instruments amending those provisions. In order to facilitate a satisfactory consolidation we are making the recommendations set out in the Appendix to this Report.

Neither of the recommendations could have been made, in our view, under the Consolidation of Enactments (Procedure) Act 1949.

The Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland and the Secretary of State for the Home Department, who are affected by the first recommendation, and the Secretary of State for Social Services, who is affected by the second, have been consulted and they agree with the recommendations.

SAMUEL COOKE,
Chairman of the Law Commission.

J. O. M. HUNTER,
Chairman of the Scottish Law Commission.

9 December 1974.

APPENDIX

RECOMMENDATIONS

1. This paragraph is concerned with the following definition, which was inserted in the Ministry of Supply Act 1939 by Schedule 3 to the Industrial Expansion Act 1968:—

“the Minister” means the Minister of Technology or other Minister of the Crown within the meaning of the Ministers of the Crown (Transfer of Functions) Act 1946 in whom functions under this Act are vested by any Order in Council under that Act.

Section 2 of the 1939 Act enabled the Minister of Supply to acquire, produce, store and transport articles required for the public service, section 4 enabled him to make payments by way of grant or loan to persons producing, dealing in or having control of such articles and section 5 enabled him to require such persons to make periodical and other returns of the stocks of such articles for the time being held by them. The expression “articles required for the public service” was defined by section 19 as articles required by any government department for the purpose of the discharge of its functions or articles which, in the opinion of the Minister, would be essential for the needs of the community in the event of war.

Functions under sections 2, 4 and 5 in relation to articles required for the public service as so defined were exercisable immediately before the passing of the 1968 Act as follows:—

- (a) functions under section 2 in relation to the articles specified in the Schedule to the Transfer of Functions (Various Commodities) Order 1946, and functions under sections 2 and 4 in relation to the articles specified in Schedule 1 or 2 to the Transfer of Functions (Various Materials) Order 1951, by the Board of Trade by virtue of the said Order of 1946 and the Transfer of Functions (Ministry of Materials) Order 1954;
- (b) functions under sections 2, 4 and 5 in relation to medical supplies by the Minister of Health by virtue of the Transfer of Functions (Medical Supplies) Order 1947;
- (c) functions under section 2 in relation to raw wool grown in the United Kingdom by the Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland and the Secretary of State for the Home Department acting jointly by virtue of the Transfer of Functions (Home-Grown Raw Wool) Order 1947;
- (d) functions under section 2 in relation to kitchen waste by the Minister of Agriculture, Fisheries and Food in relation to England and Wales, the Secretary of State for Scotland in relation to Scotland and the Secretary of State for the Home Department in relation to Northern Ireland by virtue of the Transfer of Functions (Kitchen Waste) Order 1950; and
- (e) functions under sections 2, 4 and 5 in relation to all other articles by the Minister of Technology by virtue of the Ministry of Aviation (Dissolution) Order 1967.

Meanwhile section 6(1) of the Supplies and Services (Transitional Powers) Act 1945 as amended by section 3(2) of the Emergency Laws (Repeal) Act 1959 had provided that for the purposes of the 1939 Act “articles required for the public service” should also include, among other things, articles required for the defence of the Commonwealth or for the maintenance or restoration of peace in any part of the world, experimental or research work in connection with such articles and surplus material of any government department. However section 3(3) of the 1959 Act (as amended by Schedule 2 to the Emergency Laws (Re-enactment and Repeals) Act 1964) had provided that, notwithstanding the various Orders in Council under the 1946 Act, functions under the 1939 Act as so extended should be exercisable exclusively by the Minister of Supply. And immediately before the passing of the 1968 Act the Minister of Technology had succeeded to those and indeed all functions of the Minister of Supply (see the Ministry of Aviation (Dissolution) Order 1967).

Section 13 of the 1968 Act then repealed subsections (1) to (3) of section 6 of the 1945 Act and provided that the 1939 Act should have effect subject to the amendments specified in Schedule 3, "being amendments re-enacting those provisions with minor modifications and additions but without limitation of time". The new section 2(1) and (4) of the 1939 Act and the definitions of "articles", "articles required for the public service" and "government surplus materials", reproduced with minor modifications and additions the original section 2(1) (as amended by section 6(2) and (3) of the 1945 Act) and the original and extended definitions of "articles required for the public service". But functions under the 1939 Act as originally enacted ("original functions") had been exercisable by various Ministers in relation to their own particular articles, whereas functions under that Act as extended by section 6(1) of the 1945 Act ("extended functions") had been exercisable exclusively by the Minister of Technology. How were the corresponding functions under the 1939 Act as amended by the 1968 Act to be exercisable? It seems likely that the definition of "the Minister" was intended to resolve that question. Unfortunately, however, we have been unable to determine its precise effect.

At first sight it made any Minister who held any functions in relation to any articles the Minister for the purposes of the 1939 Act, thereby conferring on him all functions in relation to all articles. But this would mean, for example, the Minister of Agriculture, Fisheries and Food having power to supply air-to-air missiles for the defence of the Commonwealth. And that can hardly be described, in the words of section 13 of the 1968 Act, as a minor modification or addition. Moreover if that had been Parliament's intention, the desired result would have been achieved so much more easily by revoking the Orders in Council and by defining "the Minister" as the Minister of Technology, the Board of Trade, the Minister of Health, the Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland or the Secretary of State for the Home Department.

It is possible, therefore, that Parliament intended the Orders in Council to operate exactly as before. This would mean original functions being exercisable by the various Ministers in relation to their own particular articles and extended functions being exercisable by the Minister of Technology. The argument against this construction is that section 3(3) of the 1939 Act, which had precluded the operation of the pre-1959 Orders in Council in relation to extended functions, was repealed by the 1968 Act and not re-enacted.

Another possibility, therefore, is that Parliament intended the Orders in Council to operate, but without the limitation imposed by section 3(3) of the 1959 Act. This would mean each Minister acquiring both original and extended functions in relation to his own particular articles. But it would also mean the Minister of Technology losing functions which he had previously exercised, namely extended functions in relation to medical supplies, raw wool, kitchen waste and the articles specified in the 1946 and 1951 Orders.

Yet another possible construction meets that objection. It assumes that the words "in whom functions under this Act are vested by any Order in Council under that Act" were intended to apply only in relation to the other Ministers, and not in relation to the Minister of Technology. This construction, which confers all functions in relation to all articles on the Minister of Technology and concurrent functions in relation to their own particular articles on the other Ministers, relies heavily on the particular mention of the Minister of Technology and might be more convincing if the word "any" had been inserted in the definition before the words "other Minister".

There is, in our view, something to be said for each of these constructions. If, therefore, the position had remained unchanged, a worthwhile consolidation would have been very difficult, if not impossible. But in the event the functions of the Minister of Health have been transferred to the Secretary of State by the Secretary of State for Social Services Order 1968 and the functions of the Minister of Technology and the Board of Trade have been transferred to the Secretary of State by the Ministry of Aviation Supply (Dissolution) Order 1971. That leaves only the functions of the Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland

and the Secretary of State for the Home Department, which, according to the view taken, are either—

- (a) all functions under the 1939 Act in relation to all articles and exercisable concurrently with any Secretary of State; or
- (b) original functions under section 2 in relation to raw wool and kitchen waste and exercisable by those Ministers alone; or
- (c) all functions under section 2 in relation to raw wool and kitchen waste and exercisable by those Ministers alone; or
- (d) all functions under section 2 in relation to raw wool and kitchen waste and exercisable concurrently with any Secretary of State.

And the Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland and the Secretary of State for the Home Department have not exercised any functions under the 1939 Act for upwards of 20 years. Indeed until our enquiry their administrators were quite unaware that the functions existed. In these circumstances it would hardly effect a substantial change in the law, and would certainly facilitate a satisfactory consolidation, if all functions in relation to all articles were made functions of the Secretary of State.

Accordingly we recommend that the definition of “the Minister” be repealed without being re-enacted and that the Secretary of State be the Minister for the purposes of the Bill.

Effect is given to this recommendation in clause 1(1) and in each of the many other contexts affected.

2. This paragraph is concerned with the outstanding provisions of the Ministry of Supply (Transfer of Powers) (No. 1) Order 1939, namely articles 5 and 6 and Schedules 1 and 2. They applied in relation to the Ministry of Supply, or property vested in or under the control of the Minister of Supply, the enactments set out in Parts I and II of the Schedule to the Ministry of Supply Act 1939, so as to confer on that Minister certain land acquisition and other powers.

Those powers were transferred to the Secretary of State by the Secretary of State for Social Services Order 1968, but only for the purposes of his functions in relation to medical supplies and only in so far as they related to the acquisition of land and derived from the Defence Acts 1842 to 1873, section 7 of the Lands Clauses Consolidation Acts Amendment Act 1860 or section 7 of the Militia (Lands and Buildings) Act 1873 (see article 4(1) and (2) of the Transfer of Functions (Medical Supplies) Order 1947). They were not transferred to the Minister of Agriculture and Fisheries, the Secretary of State for Scotland or the Secretary of State for the Home Department by the Transfer of Functions (Home-Grown Raw Wool) Order 1947 or the Transfer of Functions (Kitchen Waste) Order 1950. And their transfer to the Secretary of State for the purposes of his functions in relation to articles other than medical supplies was specifically precluded by paragraph 1(2) of the Schedule to the Ministry of Aviation Supply (Dissolution) Order 1971.

Since the reproduction of that anomalous situation in the Bill, whether by revocation and re-enactment or by suitably drawn savings, would seriously detract from the consolidation, we decided to find out, if we could, whether the powers still served a useful purpose. Although in theory functions in relation to medical supplies are exercisable by any Secretary of State, they are in practice always exercised by the Secretary of State for Social Services. Our enquiries revealed that that Minister has never exercised the powers and has in fact no wish to retain them, because he already has adequate land acquisition powers under or by virtue of other enactments.

There is, however, one minor complication. By virtue of section 2(2) of the Atomic Energy Act 1946 and the Secretary of State for Trade and Industry Order 1970, articles 5 and 6 of the 1939 Order also apply in relation to any functions of the Secretary of State under that Act or any property vested in him or under his control by virtue of that Act. Clearly that application should not be affected by the consolidation.

We accordingly recommend that, except as applied by section 2(2) of the Atomic Energy Act 1946, the Ministry of Supply (Transfer of Powers) (No. 1) Order 1939 be revoked.

Effect is given to this recommendation in clause 8(7) and in Part II of Schedule 2.

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