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STATUTORY INSTRUMENTS

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**1999 No. 1750**

**The Scotland Act 1998 (Transfer of Functions  
to the Scottish Ministers etc.) Order 1999**

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 and shall come into force on the principal appointed day<sup>(1)</sup>

(2) In this Order, “the 1998 Act” means the Scotland Act 1998 and any reference to a numbered section (except any such reference in any of the Schedules to this Order) shall be read as a reference to the section bearing that number in the 1998 Act.

(3) In Schedules 1 to 3 to this Order, except where the context requires otherwise—

- (a) any reference in an entry in column 2 to a numbered section or Schedule shall be read as a reference to the section or Schedule bearing that number in the Act to which the entry relates; and
- (b) any expression used in an entry in that column which is defined in the enactment to which the entry relates shall bear the meaning in that enactment.

(4) A reference in article 2, 3 or 5 to a function so far as it is exercisable by a Minister of the Crown in or as regards Scotland is, if the function is treated by virtue of section 106 (power to adapt functions) as exercisable in or as regards Scotland to any extent, a reference to the function only so far as it is exercisable to that extent.

**Transfer of statutory functions to the Scottish Ministers**

2. The functions which are conferred on a Minister of the Crown by the enactments specified in column 1 of Schedule 1 to this Order shall—

- (a) so far as they are exercisable by him in or as regards Scotland; and
- (b) subject to any restriction or requirement in the corresponding entry in column 2 of that Schedule,

be exercisable by the Scottish Ministers instead of by the Minister of the Crown.

**Functions shared by the Scottish Ministers and a Minister of the Crown**

3. The functions which are conferred on a Minister of the Crown by the enactments specified in column 1 of Schedule 2 to this Order shall—

- (a) so far as they are exercisable by him in or as regards Scotland; and
- (b) subject to any restriction or requirement in the corresponding entry in column 2 of that Schedule,

be exercisable by the Scottish Ministers concurrently with the Minister concerned.

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(1) Article 3 of the Scotland Act 1998 (Commencement) Order 1998 (S.I.1998/3178) appoints 1st July 1999 as the principal appointed day for the purposes of the 1998 Act.

### **Functions exercisable with agreement of, or after consultation with, the Scottish Ministers**

4. The functions which are conferred on a Minister of the Crown by the enactments specified in column 1 of Schedule 3 to this Order shall—

- (a) so far as they are exercisable by him in or as regards Scotland; and
- (b) subject to any restrictions in the corresponding entry in column 2 of that Schedule,

be exercisable by him subject to the requirements as to agreement or consultation which are set out in the corresponding entry in column 2 of the Schedule.

### **Transfer of non-statutory functions to the Scottish Ministers**

5. The functions described in Schedule 4 to this Order shall, so far as they are exercisable by a Minister of the Crown in or as regards Scotland, be exercisable by the Scottish Ministers instead of by the Minister of the Crown.

### **Modifications of enactments**

6.—(1) Schedule 5 to this Order (modifications of enactments) shall have effect.

(2) Subject to the modifications set out in Schedule 5—

- (a) sections 94, 117 and 118 shall apply in relation to the exercise of functions by the Scottish Ministers by virtue of articles 2, 3 or 5 of this Order as they apply in relation to the exercise of functions by the Scottish Ministers within devolved competence; and
- (b) sections 119 to 121 shall apply in relation to functions exercisable by the Scottish Ministers by virtue of those articles as they apply in relation to functions of the Scottish Ministers exercisable within devolved competence,

and as if any reference in those sections to a pre-commencement enactment were to any enactment.

(3) Any reference in any enactment or prerogative instrument or in any other instrument or document—

- (a) to government departments; or
- (b) to, or to any part or officer of, any government department,

(however described) is to be read, so far as the effect of this Order makes it necessary or expedient to do so, as including or being a reference to, or to any corresponding part or member of the staff of, the Scottish Administration.

### **Transitional and saving provision**

7.—(1) The transfer, by virtue of this Order, of any function exercisable by a Minister of the Crown to the Scottish Ministers shall not affect the validity of anything done (or having effect as if done) by or in relation to a Minister of the Crown before the date on which the transfer takes effect.

(2) Anything (including legal proceedings) which, at the time when that transfer takes effect, is in the process of being done by or in relation to a Minister of the Crown may, so far as it relates to any function transferred, be continued by or in relation to the Scottish Ministers.

(3) Anything done (or having effect as if done) by or in relation to a Minister of the Crown for the purposes of or in connection with any function transferred to the Scottish Ministers by virtue of this Order shall, if in force at the time when that transfer takes effect, have effect as if done by or in relation to the Scottish Ministers in so far as that is required for continuing its effect after that time.

(4) Despite the transfer to the Scottish Ministers of functions by virtue of this Order, any function of a Minister of the Crown in relation to any matter shall continue to be exercisable by him as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972(2)

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