

Draft Order in Council laid before Parliament and the Scottish Parliament under section 115 of the Scotland Act 1998 and paragraphs 1 and 2 of Schedule 7 to that Act, for approval by resolution of each House of Parliament and of the Scottish Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No.

**CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND**

**The Scotland Act 1998 (Transfer of Functions
to the Scottish Ministers etc.) Order 2014**

Made - - - -

Coming into force - -

At the Court , the day of

Present,

The Queen's Most Excellent Majesty in Council

This Order is made by Her Majesty in Council in exercise of the powers conferred upon Her by sections 63(1), 113(3), (4) and (5) and 124(2) of the Scotland Act 1998(1).

In accordance with section 115 of, and paragraphs 1 and 2 of Schedule 7 to, that Act(2) a draft of this Order has been—

- (a) laid before and approved by a resolution of each House of Parliament; and
- (b) laid before and approved by a resolution of the Scottish Parliament.

Accordingly Her Majesty, by and with the advice of Her Privy Council, makes the following Order:

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 2014 and comes into force on the day after the day on which it is made.

(2) In this Order “year” means a financial year within the meaning of the Local Government Finance Act 1992(3).

(1) 1998 c.46.

(2) Paragraphs 1 and 2 of Schedule 7 have been modified by paragraph 3(2) of schedule 4 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

(3) 1992 c.14. The definition of “financial year” is in section 116 of that Act.

Transfer of functions to the Scottish Ministers

2.—(1) The function of making an order under section 70(3)(a) of the Child Support, Pensions and Social Security Act 2000 (limit on the total amount of expenditure a local authority can incur in making discretionary housing payments)(4), so far as it is exercisable by a Minister of the Crown in or as regards Scotland, is exercisable by the Scottish Ministers instead of by the Minister of the Crown.

(2) Paragraph (1) applies only to the exercise of that function in relation to the year ending 31st March 2015 and each subsequent year.

General modifications of enactments

3.—(1) Section 117 of the Scotland Act 1998 applies in relation to the exercise of the function by the Scottish Ministers by virtue of article 2 as it applies in relation to the exercise of functions by the Scottish Ministers within devolved competence.

(2) In the application of that section by virtue of this article, the reference in the section to any pre-commencement enactment is to be read as if it were a reference to any enactment.

Parliamentary procedure

4.—(1) Section 70(5) of the Child Support, Pensions and Social Security Act 2000 does not apply in relation to an order made by the Scottish Ministers by virtue of article 2.

(2) An order made by the Scottish Ministers by virtue of article 2 is subject to the negative procedure.

Transitional and saving provisions

5.—(1) The transfer of the function to the Scottish Ministers by virtue of article 2 does 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 the 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 the function transferred to the Scottish Ministers by virtue of article 2, if in force at the time when that transfer takes effect, is to 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.

Name
Clerk of the Privy Council

(4) 2000 c.19; section 70 is amended by the Welfare Reform Act 2012 (c.5), Schedule 3, paragraph 12 but those amendments are not yet in force.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the Scotland Act 1998 (c.46), provides for a function of a Minister of the Crown, so far as it is exercisable in or as regards Scotland, to be exercisable by the Scottish Ministers instead. The function to be transferred concerns the setting of the limit on the total amount of expenditure that may be incurred by a local authority in making discretionary housing payments.

Article 2 transfers, from the Secretary of State for Work and Pensions to the Scottish Ministers, the function of making an order under section 70(3)(a) of the Child Support, Pensions and Social Security Act 2000 (c.19) (so far as that function is exercisable in or as regards Scotland). That transfer only applies in relation to the financial year 2014/15 and subsequent years.

Article 3 provides for the general modification of enactments in connection with provision made by this Order. Article 4 provides for the procedure which applies to orders made by the Scottish Ministers by virtue of the transfer. Article 5 makes transitional and saving provisions.