
STATUTORY INSTRUMENTS

1999 No. 901

**The Scotland Act 1998 (General Transitory,
Transitional and Savings Provisions) Order 1999**

Citation and commencement

1. This Order may be cited as the Scotland Act 1998 (General Transitory, Transitional and Savings Provisions) Order 1999 and shall come into force on 6th May 1999.

Interpretation

2.—(1) In this Order—

“the Act” means the Scotland Act 1998;

“Advocate General” means the Advocate General for Scotland;

“LO-date” means the date when section 44(1)(c) of the Act comes into force⁽¹⁾; and

“transitional period” means the period beginning with the LO-date and ending with the principal appointed day⁽²⁾.

(2) Unless otherwise expressly provided, any reference in this Order to a numbered article is a reference to an article bearing that number in this order and any reference in an article to a numbered paragraph is to a paragraph bearing that number in that Article.

Transfer of Functions to the Scottish Ministers

3.—(1) The transfer, by virtue of section 53 of the Act, 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 section 53 of the Act 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.

(1) In terms of the Scotland Act 1998 (Commencement) Order 1998 (S.I. 1998/3179), section 44(1)(c) comes into force on 20th May 1999. It is the date when the Lord Advocate ceases to be a Minister of the Crown and becomes a member of the Scottish Executive.

(2) Article 3 by virtue of the Scotland Act 1998 (Commencement) Order 1998 specifies 1st July 1999 as the principal appointed day for the purposes of the Act.

Functions of the Lord Advocate

4.—(1) The transfer of the office of Lord Advocate to the Scottish Executive on the LO-date shall not affect the validity of anything done (or having effect as if done) by or in relation to the Lord Advocate before he ceased to be a Minister of the Crown.

(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 the Lord Advocate in connection with any of his retained functions may, so far as it relates to that function, be continued by or in relation to the Lord Advocate as a member of the Scottish Executive.

(3) Anything done (or having effect as if done) by or in relation to the Lord Advocate for the purposes of or in connection with any of his retained functions before that time shall, if in force at that time, have effect as if done by or in relation to the Lord Advocate as a member of the Scottish Executive in so far as that is required for continuing its effect after that time.

(4) Paragraphs (2) and (3) have effect subject to articles 5, 6 and 8.

Functions of the Lord Advocate: Transitional Period

5.—(1) For the transitional period the functions of the Lord Advocate under the enactments specified in the Schedule to this Order shall be exercisable by the Advocate General instead of by the Lord Advocate.

(2) During that period all rights and liabilities to which the Lord Advocate is entitled or subject on the LO-date in connection with those functions shall be treated as rights and liabilities of the Advocate General.

(3) At the end of that period, those functions shall become exercisable by the Lord Advocate and any rights and liabilities which were treated as rights and liabilities of the Advocate General during that period or to which the Advocate General became entitled or subject in connection with the exercise of those functions shall become rights and liabilities of the Lord Advocate.

Civil proceedings

6.—(1) On the LO-date, any interest of the Lord Advocate to which this paragraph applies in civil proceedings pending before any court or tribunal immediately before that date shall transfer to, and become exercisable by, the Advocate General.

(2) Paragraph (1) applies to any interest of the Lord Advocate in civil proceedings, whether as a party or otherwise and whether in pursuance of the Crown Suits (Scotland) Act 1857⁽³⁾ or otherwise, other than any interest of his derived from his position as head of the systems of criminal prosecution and investigation of deaths in Scotland.

7.—(1) On the principal appointed day, any interest of the Advocate General to which this paragraph applies in civil proceedings pending before any court or tribunal immediately before that date shall transfer to, and become exercisable by, the Lord Advocate.

(2) Paragraph (1) applies to any interest of the Advocate General in civil proceedings whether as a party or otherwise—

- (a) where the proceedings, if they had been commenced on that date, would have been on behalf of or against any part of what will then be the Scottish Administration; or
- (b) where the interest is a matter of public interest for which the Lord Advocate will then be responsible as the principal Law Officer of the Crown in right of the Scottish Administration.

(3) 1857 c. 44. Relevant amendments are made to the 1857 Act by the Scotland Act 1993, Schedule 8, paragraph 2.

Supplementary and consequential

8.—(1) Articles 5 and 6 shall not affect the validity of anything done (or having effect as if done) by or in relation to the Lord Advocate before the LO-date.

(2) Anything which, on that date, is in the process of being done by or in relation to the Lord Advocate may, so far as it relates to any function exercisable by, or anything transferred to, the Advocate General by or by virtue of article 5 or 6, be continued by or in relation to the Advocate General.

(3) Anything done (or having effect as if done) by or in relation to the Lord Advocate for the purposes of or in connection with any function exercisable by, or anything transferred to, the Advocate General by or by virtue of article 5 or 6 shall, if in force on the LO-date, have effect as if done by or in relation to the Advocate General in so far as that is required for continuing its effect on and after the LO-date.

(4) Any document made before that date shall have effect, so far as may be necessary for the purposes of or in consequence of article 5 or 6, as if for any reference to the Lord Advocate, there were substituted a reference to the Advocate General.

9.—(1) Articles 5 and 7 shall not affect the validity of anything done (or having effect as if done) by or in relation to the Advocate General before the principal appointed day.

(2) Anything which, on that date, is in the process of being done by or in relation to the Advocate General may, so far as it relates to any function exercisable by or anything transferred to the Lord Advocate or by virtue of Article 5 or 7, be continued by or in relation to the Lord Advocate.

(3) Anything done (or having effect as if done) by or in relation to the Advocate General for the purposes of or in connection with or any function exercisable by or anything transferred to, the Lord Advocate by or by virtue of Article 5 or 7 shall, if in force on the LO-date, have effect as if done by or in relation to the Lord Advocate in so far as that is required for continuing its effect on and after the LO-date.

(4) Any document made before that date shall have effect, so far as may be necessary for the purposes of or in consequence of article 5 or 7, as if for any reference to the Advocate General, there were substituted a reference to the Lord Advocate.

Modification of Enactments

10. For any period beginning with the appointment of the Advocate General and ending with the beginning of the transitional period, the Advocate General shall be taken not to fall within head 2 of Part 11 of Schedule 1 to the Ministerial and other Salaries Act 1975(4).

11. For the transitional period, references to the Scottish Administration in the Crown Suits (Scotland) Act 1857 or in the Crown Proceedings Act 1947(5) shall be taken not to include the offices specified in section 126(8)(a) of the Act.

12. For the transitional period, references in any enactment to a government department (however expressed) shall be taken to include any part of the Scottish Administration, other than the offices specified in section 126(8)(a) of the Act.

(4) 1975 c. 27.

(5) 1947 c. 44. Relevant amendments are made to the 1947 Act by the Scotland Act 1998, Schedule 8, paragraph 7.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

St Andrew's House,
Edinburgh
19th March 1999

Henry B McLeish
Minister of State Scottish Office