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STATUTORY INSTRUMENTS

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**2019 No. 183**

**CONSTITUTIONAL LAW  
DEVOLUTION, SCOTLAND  
FORESTRY**

**The Scotland Act 1998 (Specification of Functions  
and Transfer of Property etc.) Order 2019**

*Made - - - - 13th February 2019*  
*Laid before Parliament 20th February 2019*  
*Laid before the Scottish  
Parliament - - - - 20th February 2019*  
*Coming into force in accordance with article 1(2)*

At the Court at Buckingham Palace, the 13th day of February 2019

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 90(2) and (4), 93(3) and 113(4) of the Scotland Act 1998<sup>(1)</sup> and all other powers enabling Her Majesty to do so.

The Forestry Commissioners have been specified as a cross-border public authority<sup>(2)</sup>.

Section 81 of the Forestry and Land Management (Scotland) Act 2018<sup>(3)</sup> provides that the functions of the Forestry Commissioners which were exercisable in or as regards Scotland immediately before the date on which that section comes into force are no longer exercisable in or as regards Scotland.

In accordance with section 90(5) of the Scotland Act 1998, the Forestry Commissioners were consulted prior to a recommendation being made to Her Majesty in Council to make this Order.

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

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(1) 1998 c.46; section 93 was amended by the Scotland Act 2012 (c.11), section 23(3).

(2) For the purposes of the Scotland Act 1998 (c.46) ("the 1998 Act") "cross-border public authorities" are those bodies, government departments, offices or office-holders specified as a cross-border public authority in an Order in Council made under section 88(5) of the 1998 Act. The Forestry Commissioners are so specified in S.I. 1999/1319.

(3) 2018 asp 8.

### **Citation and commencement**

1.—(1) This Order may be cited as the Scotland Act 1998 (Specification of Functions and Transfer of Property etc.) Order 2019.

(2) This Order comes into force on the day on which section 81 of the Forestry and Land Management (Scotland) Act 2018 comes into force.

### **Interpretation**

2. In this Order—

“the 1967 Act” means the Forestry Act 1967(4);

“the 2018 Act” means the Forestry and Land Management (Scotland) Act 2018;

“the Forestry Commissioners” means the Forestry Commissioners referred to in section 1(1) of the 1967 Act;

“the transfer date” means the date specified in article 1(2);

“enactment” includes an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;

“excepted property” means the property, rights and liabilities specified in the Schedule;

“instrument” includes Royal Charters, Royal Warrants, Orders in Council, Letters Patent, judgements, decrees, orders, rules, regulations, schemes, byelaws, awards, licences, authorisations, consents, approvals, contracts and other agreements, memoranda and articles of association, certificates, deeds and other documents.

### **Specification of functions**

3.—(1) The functions listed in paragraph (2) are specified for the purposes of section 93(1) of the Scotland Act 1998.

(2) The functions are—

(a) the Scottish Ministers’ functions under the 2018 Act;

(b) the Scottish Ministers’ functions exercisable by or under any order made under the Plant Health Act 1967(5);

(c) the Scottish Ministers’ functions under section 44 of the Climate Change (Scotland) Act 2009(6) (duties of public bodies relating to climate change);

(d) the Scottish Ministers’ functions under the Forest Reproductive Material (Great Britain) Regulations 2002(7); and

(e) the Scottish Ministers’ functions under the Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015(8).

### **Transfer of property and liabilities**

4.—(1) On the transfer date there shall transfer to and vest in the Scottish Ministers—

(a) all rights and interests held by the Forestry Commissioners in—

(i) any land in Scotland;

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(4) 1967 c.10.

(5) 1967 c.8.

(6) 2009 asp 12.

(7) S.I. 2002/3026.

(8) S.I. 2015/350.

- (ii) any relevant timber;
    - (iii) any relevant corporeal moveable property;
    - (iv) any other property which is held, immediately before the transfer date, wholly or mainly for or in connection with the exercise of the functions of the Forestry Commissioners in or as regards Scotland;
  - (b) any liability of the Forestry Commissioners arising wholly or mainly in connection with the exercise, immediately before the transfer date, of their functions in or as regards Scotland.
- (2) Paragraph (1) does not apply to any right, interest or liability held by the Forestry Commissioners in respect of the excepted property.
- (3) In this article—
- (a) a reference to a right or liability is a reference to a right or liability—
    - (i) which has arisen or otherwise exists immediately before the transfer date; or
    - (ii) which arises or otherwise comes into existence on or after the transfer date but does so in respect of any act or omission of, or in relation to, the Forestry Commissioners in connection with the exercise of their functions immediately before the transfer date in or as regards Scotland,but does not include any right or liability in connection with any contract of employment of any employee of the Forestry Commissioners;
  - (b) “relevant timber” means timber—
    - (i) of the type mentioned in section 3(1)(b) and (3) of the 1967 Act; and
    - (ii) which is held, immediately before the transfer date, wholly or mainly for or in connection with the exercise of the functions of the Forestry Commissioners in or as regards Scotland;
  - (c) “relevant corporeal moveable property” means any corporeal moveable property—
    - (i) other than relevant timber; and
    - (ii) which is held, immediately before the transfer date, wholly or mainly for or in connection with the exercise of the functions of the Forestry Commissioners in or as regards Scotland.

### **Consequential and supplementary provision**

**5.—(1)** So far as may be necessary in consequence of the transfer of any property, right or liability under this Order, references to the Forestry Commissioners in any enactment or prerogative instrument, or in any other instrument, shall be read as if they were or included references to the Scottish Ministers.

(2) Nothing in this Order shall have the effect of completing the title of the Scottish Ministers to any right or interest in land transferred by this Order, or to any other right or interest transferred by this Order, title to which requires to be completed by recording or registration for the purpose of making it a real right.

(3) Any property to which this Order applies and which would, but for this Order, require—

- (a) delivery or possession; or
- (b) intimation of its assignation,

in order to complete title to it, shall transfer to and vest in the Scottish Ministers by virtue of this Order as if on the transfer date the Scottish Ministers had taken delivery or possession of the property, or had intimated its assignation (as the case may be).

### **Transitional and saving provision**

6.—(1) In so far as it relates to, or is connected with, any property, right or liability transferred by this Order—

- (a) anything (including legal proceedings) which on the transfer date is in the process of being done by or in relation to the Forestry Commissioners may be continued by the Scottish Ministers;
- (b) any right that was, immediately before the transfer date, enforceable by or against the Forestry Commissioners is, on and after the transfer date, to be enforceable by or against the Scottish Ministers; and
- (c) anything done (or having effect as if done) by or in relation to the Forestry Commissioners has effect on and after the transfer date as if done by or in relation to the Scottish Ministers.

(2) Despite any provision to the contrary in any instrument—

- (a) no additional formalities are required in order for paragraph (1) or article 4 to have full effect;
- (b) no consent, permission or authorisation is required in order for paragraph (1) or article 4 to have full effect;
- (c) nothing in paragraph (1) or article 4 triggers any option, right of variation, right of forfeiture, right of termination, right to payment, right to demand payment or any other benefit.

(3) This Order does not affect the validity of anything done (or having effect as if done) by or in relation to the Forestry Commissioners before the transfer date.

*Richard Tilbrook*  
Clerk of the Privy Council

## SCHEDULE

Article 2

### Excepted property

#### Interpretation

**1.** In this Schedule—

“grid reference” means Ordnance Survey National Grid reference<sup>(9)</sup>;

“National Forest Estate” has the same meaning as in section 13 of the 2018 Act.

#### Excepted property

**2.—**(1) Standing timber located in Black Crane Cleuch Woodland (grid reference NY593924) which has been sold by or on behalf of the Forestry Commissioners prior to the transfer date and in relation to which there is a contract of sale concluded prior to the transfer date.

(2) Felled timber located in Black Crane Cleuch Woodland (grid reference NY593924).

(3) All contractual rights and liabilities held by the Forestry Commissioners in relation to standing and felled timber located in the Black Crane Cleuch Woodland (grid reference NY593924) in respect of which a contract of sale is in place.

(4) In this paragraph a “contract of sale” means a contract to which the Forestry Commissioners are a party and which—

(a) relates to the sale of standing or felled timber situated in Black Crane Cleuch Woodland (grid reference NY593924) and over which the Forestry Commissioners have, immediately before the transfer date, the power of disposal;

(b) disposes of the timber mentioned in paragraph (a) by the Forestry Commissioners to another person or persons; and

(c) is in writing.

**3.** Tree seed collected by or on behalf of the Forestry Commissioners from the National Forest Estate prior to 1 April 2018.

**4.** Tree seed collected by or on behalf of the Forestry Commissioners from land outwith the National Forest Estate.

**5.** All rights, property, interests and liabilities held by the Forestry Commissioners in Forest Holidays Group Limited<sup>(10)</sup>.

**6.** All rights, property, interests and liabilities held by the Forestry Commissioners in Camping in the Forest LLP<sup>(11)</sup>.

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<sup>(9)</sup> The National Grid is the map reference system used on all Ordnance Survey maps to identify the position of a feature.

<sup>(10)</sup> Registered company number 08159281.

<sup>(11)</sup> Registered limited liability partnership number OC370500.

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

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

Section 81 of the Forestry and Land Management Scotland Act 2018 provides that the functions of the Forestry Commissioners which are exercisable in or as regards Scotland immediately before the date on which that section comes into force are no longer exercisable in or as regards Scotland.

Section 90 of the Scotland Act 1998 provides that where the Scottish Parliament legislates to remove the devolved functions of a cross-border public authority, an Order may be made to transfer property and liabilities held by the cross-border public authority.

This Order provides for the transfer of certain property and liabilities held by the Forestry Commissioners to the Scottish Ministers, subject to certain excepted property. The Order also specifies particular functions exercisable by the Scottish Ministers for the purposes of section 93(1) of the Scotland Act 1998. Section 93(1) provides that the Scottish Ministers may make arrangements for their specified functions to be exercised by a Minister of the Crown on their behalf.

Article 4 specifies the property and liabilities which will transfer under the Order.

Articles 5 and 6 make supplementary, consequential, transitional and saving provision.

The Schedule sets out excepted property which is not subject to transfer under article 4.

An impact assessment has not been prepared for this instrument because no impact on the private or voluntary sector is foreseen.