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SCOTTISH STATUTORY INSTRUMENTS

2010 No. 40

The Transfer of Property etc. (Scottish Court Service) Order 2010

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Transfer of Property etc. (Scottish Court Service) Order 2010 and comes into force on 1st April 2010.

(2) In this Order—

"the Act" means the Judiciary and Courts (Scotland) Act 2008; and

"paragraph 20(2)(a)" means paragraph 20(2)(a) of schedule 3 to the Act.

Transfer of property and liabilities

2.—(1) All rights and interests in property held or used wholly or mainly for or in connection with the purposes in paragraph 20(2)(a) shall transfer to and vest in the Scottish Court Service.

(2) All liabilities in paragraph 20(2)(b) of schedule 3 to the Act shall transfer to and vest in the Scottish Court Service.

Land or corporeal moveable property with mixed use

3.—(1) This article applies where—

(a) any property consisting of land or corporeal moveable property is, in addition to being used by the Scottish Ministers for the purposes referred to in paragraph 20(2)(a), used by the Scottish Ministers for other purposes or by any other person; and

(b) the use of that property is regulated by a written agreement.

(2) Where such property is used by the Scottish Ministers mainly for or in connection with the purposes referred to in paragraph 20(2)(a), then the transfer of any right or interest in that property to the Scottish Court Service by article 2 of this Order shall have effect subject to the rights of the Scottish Ministers for other purposes or the rights of any other person under any such written agreement.

(3) Where such property is not used mainly for or in connection with the purposes referred to in paragraph 20(2)(a), then the rights and liabilities under any such written agreement relating to the use of that property for those purposes shall transfer to and vest in the Scottish Court Service.

Records

4. The Scottish Ministers shall have the right of access to, and the right to use and deal with, any records which are transferred to the Scottish Court Service by virtue of article 2.

Determination of disputes

5.—(1) Any question as to whether or to what extent any property or liability transfers to the Scottish Court Service by virtue of this Order shall be determined by the Scottish Ministers.

(2) Any dispute as to—

(a) whether any and, if so, how much compensation is payable by virtue of paragraph 20(7) of schedule 3 to the Act as a result of any transfer of property by this Order;

(b) the person to whom or by whom such compensation shall be paid,

is to be determined by arbitration; and, where there is no agreement as to who is to be appointed as arbiter, by an arbiter appointed by the President of the Chartered Institute of Arbitrators.

Consequential and supplementary provision

6.—(1) So far as may be necessary in consequence of the transfer of any property or liability to the Scottish Court Service by this Order, references to the Scottish Ministers in any document shall be read as if they were or included references to the Scottish Court Service.

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

(3) Any property, in respect of which but for this Order—

(a) delivery or possession; or

(b) intimation of its assignation,

would be required in order to complete title to it, shall transfer to and vest in the Scottish Court Service by virtue of this Order as if at the date on which the transfer of the property by this Order takes effect the Scottish Court Service had taken delivery or possession of the property or had made intimation of its assignation to it, as the case may be.

Transitional and saving provision

7.—(1) The transfer by this Order of any property or liability of the Scottish Ministers shall not affect the validity of anything done (or having effect as if done) by or in relation to the Scottish Ministers before the date on which the transfer takes effect.

(2) Anything (including legal proceedings) which, at the time when the transfer takes effect, is in the process of being done by or in relation to the Scottish Ministers may, so far as it relates to any property or liability transferred by this Order, be continued by or in relation to the Scottish Court Service.

(3) Anything done (or having effect as if done) by or in relation to the Scottish Ministers in connection with any property or liability transferred to the Scottish Court Service by this Order shall, if in force at the time when the transfer takes effect, have effect as if done by or in relation to the Scottish Court Service in so far as that is required for continuing its effect after that time.

St Andrew's House,
Edinburgh
9th February 2010

FERGUS EWING
Authorised to sign by the Scottish Ministers