

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

---

DRAFT STATUTORY INSTRUMENTS

---

**2019 No.**

**CONSTITUTIONAL LAW  
DEVOLUTION, SCOTLAND  
ELECTRICITY  
ENVIRONMENTAL PROTECTION**

The Scotland Act 1998 (Transfer of Functions  
to the Scottish Ministers etc.) Order 2019

*Made* - - - - *\*\*\*\**

*Coming into force in accordance with article 1*

At the Court at \*\*\*, 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 30(3), 63(1)(b), 113(3) and 124(2) of the Scotland Act 1998(1).

In accordance with paragraphs 1 and 2 of Schedule 7 to that Act, a draft of this Order was—

- (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 and commencement**

1.—(1) This Order may be cited as the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2019.

(2) This Order comes into force on the day after the day on which it is made.

---

(1) 1998 c.46.

### Functions to be treated as being exercisable in or as regards Scotland

2.—(1) The functions described in paragraph (2) are, for the purposes of section 63 (power to transfer functions) of the Scotland Act 1998, to be treated as being functions which are exercisable in or as regards Scotland.

(2) The functions are those conferred on the Secretary of State by—

- (a) section 2(2) of the European Communities Act 1972(2), and
- (b) the European Communities (Designation) Order 2008(3),

so far as they are exercisable by that person in relation to the assessment of the effects on the environment in connection with applications for consent under section 36 of the Electricity Act 1989(4), or for the variation of such consents under section 36C of that Act(5), for the construction, extension or operation of generating stations in the area designated by the Renewable Energy Zone (Designation of Area) (Scottish Ministers) Order 2005(6) as the area in relation to which the Scottish Ministers are to have functions.

### Functions to be exercised concurrently by the Secretary of State and Scottish Ministers

3. The functions conferred on the Secretary of State referred to in article 2(2) are, so far as they are exercisable by that person in or as regards Scotland, to be exercisable by the Scottish Ministers concurrently with the Secretary of State.

### General modification of enactments

4.—(1) Section 117 (general modification of enactments: Ministers of the Crown) of the 1998 Act(7) applies in relation to the exercise of functions by the Scottish Ministers by virtue of article 3 of this Order 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, any reference in that section to a pre-commencement enactment is to be read as if it were a reference to any enactment.

Date

*Name*  
Clerk of the Privy Council

---

(2) [1972 c.68](#). Section 2(2) is amended by the Legislative and Regulatory Reform Act [2006 \(c.51\)](#) section 27(1)(a) and the European Union (Amendment) Act [2008 \(c.7\)](#) section 3(3) and is modified by paragraph 15 of Schedule 8 to the Scotland Act 1998.

(3) [S.I. 2008/301](#).

(4) [1989 c.29](#). Section 36 is amended by the Energy Act [2004 \(c.20\)](#) section 93(1) and (3), the Planning Act [2008 \(c.29\)](#) Schedule 2, paragraph 32, the Marine and Coastal Access Act [2009 \(c.23\)](#) section 12(7)(a) and (8), the Energy Act [2016 \(c.20\)](#) section 78 and the Wales Act [2017 \(c.4\)](#) section 39 and Schedule 6, paragraph 47, and [S.I. 2006/1054](#).

(5) Section 36C is inserted into the Electricity Act 1989 by the Growth and Infrastructure Act [2013 \(c.27\)](#) section 20(1) and (2).

(6) [S.I. 2005/3153](#).

(7) Section 117 is amended by the Scotland Act [2012 \(c.11\)](#) section 12(1) and (2)(a).

---

## EXPLANATORY NOTE

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

This Order, made under the Scotland Act 1998 (c.46) (“the 1998 Act”), provides for certain functions of the Secretary of State, so far as they are exercisable by that Minister in or as regards Scotland, to be exercisable concurrently by the Scottish Ministers.

Article 2, made under section 30(3) of the 1998 Act, specifies that certain functions of the Secretary of State are to be regarded as exercisable in or as regards Scotland so that they are transferable under section 63 of the 1998 Act.

These are the Secretary of State’s power to make regulations under section 2(2) of the European Communities Act 1972 (c.68) as designated by the European Communities (Designation) Order 2008 (S.I. 2008/301). This designates the Secretary of State in respect of the environment to implement Directive 2014/52/EU (OJ L 124, 25.4.2014, p.1) of the European Parliament and of the Council of 16 April 2014 (as it amends Directive 2011/92/EU (OJ L 26, 18.1.2012, p.1)), on the assessment of the effects of certain public and private projects on the environment, as regards the construction etc. of generating stations consented under section 36 of the 1989 Act in respect of the Scottish part of the REZ. The “Scottish part” of the REZ was designated by the Renewable Energy Zone (Designation of Area) (Scottish Ministers) Order 2005 (S.I. 2005/3153).

Article 3, made under section 63(1)(b) of the 1998 Act, confirms that the functions defined in article 2 are to be exercisable by the Scottish Ministers concurrently with the Secretary of State.

Article 4, made under section 124(2) of the 1998 Act, provides for the general modification of enactments in connection with provision made by this Order.

An impact assessment has not been produced for this instrument as no, or no significant, additional impact on the private, voluntary or public sectors is foreseen.