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STATUTORY INSTRUMENTS

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**1999 No. 1096**

**CONSTITUTIONAL LAW  
DEVOLUTION, SCOTLAND**

**The Scotland Act 1998 (Transitory and Transitional  
Provisions) (Statutory Instruments) Order 1999**

*Made - - - - 8th April 1999*

*Laid before Parliament 12th April 1999*

*Coming into force in accordance with article 1*

The Secretary of State, in exercise of the powers conferred on him by sections 112(1), 113, 114(1), 124(2) and 129(1) of the Scotland Act 1998(1) and of all other powers enabling him in that behalf, hereby makes the following Order:

**Citation and commencement**

1. This Order may be cited as the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 and shall come into force—

- (a) for the purposes of article 4(4) on 6th May 1999, and
- (b) for all other purposes on the principal appointed day(2).

**Interpretation**

2.—(1) In this Order, unless otherwise expressly provided—

“the Act” means the Scotland Act 1998;

“the 1946 Act” means the Statutory Instruments Act 1946(3);

“enactment” shall be construed in accordance with section 126(1) of the Act and includes any enactment comprised in this Order;

“Queen’s Printer” means the Queen’s Printer for Scotland;

“relevant Scottish public authority” means a Scottish public authority with mixed functions or no reserved functions;

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(1) 1998 c. 46.

(2) The principal appointed day is 1st July 1999 by virtue of the Scotland Act 1998 (Commencement) Order 1998 (S.I. 1998/3178).

(3) 1946 c. 36.

“responsible authority”, in relation to a Scottish statutory instrument, means—

- (a) where the instrument is made, confirmed or approved by a member of the Scottish Executive, that member; and
- (b) in any other case, the person or the relevant Scottish public authority who made, confirmed or approved that instrument as mentioned in article 4(1)(b) or (c), except that, where the instrument is an Order in Council or an order made by the Privy Council, the responsible authority means the member of the Scottish Executive responsible for the preparation of the draft of the Order submitted to Her Majesty in Council or, as the case may be, to the Privy Council;

“Scottish statutory instrument” shall be construed in accordance with article 4(2); and

“special parliamentary procedure” means such special procedure as may be provided by or under an Act of the Scottish Parliament for the purposes of section 94(2)(b) of the Act for any provision made for the same purpose in subordinate legislation under section 129(1) of that Act.

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

### **Modification of enactments**

3.—(1) Any reference in section 1 of the 1946 Act—

- (a) to an Act passed after the commencement of the 1946 Act shall be construed as including a reference to an Act of the Scottish Parliament; and
- (b) to a Minister of the Crown shall be construed as including a reference to the Scottish Ministers and to a relevant Scottish public authority.

(2) In relation to a Scottish statutory instrument, the following articles of this Order shall apply (in spite of anything in the 1946 Act) in place of sections 2 to 8 of that Act.

(3) In relation to such an instrument—

- (a) paragraph (2) does not disapply sections 4(3), 5(2) and 6(2) of the 1946 Act, but
- (b) the reference in each of those subsections to the foregoing provisions of the section in question shall be read as a reference to article 10, 11 or 12 (respectively).

(4) So far as a power to make, confirm or approve subordinate legislation is conferred on the Scottish Ministers or a relevant Scottish public authority, any enactment which applies section 1 of the 1946 Act as if the power were conferred on any other person shall cease to have effect.

(5) So far as a power to make, confirm or approve subordinate legislation is exercisable within devolved competence and conferred on a person other than a Minister of the Crown, the Scottish Ministers or a relevant Scottish public authority, section 1 of the 1946 Act shall have effect as if the power were conferred on the Scottish Ministers.

(6) Where paragraph (4) or (5) applies, section 118(5) of the Act shall not apply.

(7) References in this article to the Scottish Ministers include the First Minister and the Lord Advocate.

(8) In any enactment passed or made before the principal appointed day, any reference to section 5(1) or 7 of the 1946 Act shall, in relation to a Scottish statutory instrument, be construed as a reference to article 11 or, as the case may be, article 13(1).

### **Application**

4.—(1) This Order shall apply in relation to—

- (a) the exercise by a member of the Scottish Executive of a function to make, confirm or approve subordinate legislation conferred by an enactment;
- (b) the exercise by a relevant Scottish public authority of a function to make, confirm or approve subordinate legislation conferred by an enactment; or
- (c) the exercise, within devolved competence, by a person other than a Minister of the Crown, a member of the Scottish Executive or a relevant Scottish public authority of a function to make, confirm or approve subordinate legislation conferred by an enactment,

where the document by which that function is exercised is (whether by virtue of this Order or otherwise) a statutory instrument and is not an excepted instrument.

(2) A statutory instrument by which such a function is so exercised and which is not an excepted instrument shall be known as a Scottish statutory instrument.

(3) An excepted instrument is one—

- (a) which is made by a Minister of the Crown with the agreement of a member of the Scottish Executive or of a relevant Scottish public authority;
- (b) which is made jointly by a Minister of the Crown and by a member of the Scottish Executive or by a relevant Scottish public authority; or
- (c) which is an Order in Council made by Her Majesty under section 1 of the United Nations Act 1946(4).

(4) Articles 10 to 15 as they apply (or will, as from the principal appointed day, apply) to a Scottish statutory instrument shall also apply where any enactment provides, or has the effect of providing, that any other statutory instrument is—

- (a) to be laid before the Scottish Parliament after being made; or
- (b) to be subject to annulment in pursuance of a resolution of the Scottish Parliament,

or that any draft of any other statutory instrument is to be laid before the Scottish Parliament.

(5) Article 14 as it applies to a Scottish statutory instrument shall also apply where any enactment provides, or has the effect of providing, that any other instrument or document is to be laid before the Scottish Parliament.

(6) This article (apart from this paragraph) and the following articles shall cease to have effect on the day appointed by or under an Act of the Scottish Parliament.

### **Numbering and citation**

5.—(1) Immediately after the making of any Scottish statutory instrument, the responsible authority shall send it to the Queen’s Printer who shall number it in accordance with the following provisions.

(2) All Scottish statutory instruments shall have the heading “SCOTTISH STATUTORY INSTRUMENTS” and shall be—

- (a) allocated to the series of the calendar year in which they are made; and
- (b) numbered in that series consecutively as nearly as possible in the order in which they are received by the Queen’s Printer,

except that, where any such instrument—

- (i) will not take effect unless it is approved by the Scottish Parliament; or
- (ii) is subject to special parliamentary procedure, or will become subject thereto in certain events,

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(4) 1946 c. 45. Section 1 is amended by the Scotland Act 1998, Schedule 8, paragraph 6 with effect from 1st July 1999.

the instrument may be allocated and numbered as if it had been made and received on the date on which the responsible authority notifies the Queen's Printer that the instrument has or will come into force.

(3) Any Scottish statutory instrument may, without prejudice to any other mode of citation, be cited by the letters "S.S.I." followed by the calendar year in which it was made and its number in accordance with the provisions of paragraph (2) (for example [S.S.I. 1999/1](#)).

### **Classification**

6.—(1) The responsible authority shall, on sending a Scottish statutory instrument to the Queen's Printer, certify it as local or general according to its subject matter and, unless the Presiding Officer otherwise directs, the instrument shall be classified accordingly.

(2) Unless there are special reasons to the contrary in any particular case, a Scottish statutory instrument which is in the nature of a local and personal or private Act shall be classified as local, and a Scottish statutory instrument which is in the nature of a public general Act shall be classified as general.

### **Printing and sale**

7.—(1) Subject to paragraph (2), as soon as possible after the Queen's Printer has allocated and numbered any Scottish statutory instrument in accordance with article 5(2), copies of it shall be printed and sold by, or under the authority of, the Queen's Printer.

(2) A Scottish statutory instrument which is classified as a local instrument in accordance with article 6 shall be exempt from the requirements in paragraph (1), unless—

- (a) the Presiding Officer otherwise directs in any particular case; or
- (b) the responsible authority requests the Queen's Printer, when sending her the instrument, to comply with those requirements.

### **Lists of Scottish statutory instruments**

8.—(1) The Queen's Printer shall from time to time cause to be published a list to be known as the "Scottish Statutory Instruments Issue List", showing—

- (a) the number and short title of each Scottish statutory instrument which has been issued for the first time by, or under the authority of, the Queen's Printer during the period to which that list relates; and
- (b) the date on which each such instrument was so issued.

(2) In any legal proceedings, a copy of any list so published shall be received in evidence as a true copy and an entry therein shall be conclusive evidence of the date on which any Scottish statutory instrument was first issued by, or under the authority of, the Queen's Printer.

(3) In any proceedings against any person for an offence consisting of a contravention of any Scottish statutory instrument, it shall be a defence to prove that the instrument had not been issued by, or under the authority of, the Queen's Printer at the date of the alleged contravention, unless it is proved that at that date reasonable steps had been taken for the purpose of bringing the purport of the instrument to the notice of the public, or of the persons likely to be affected by it, or of the person charged.

(4) Except as otherwise expressly provided in paragraph (3), nothing in that paragraph shall affect any enactment or rule of law relating to the time at which any Scottish statutory instrument comes into force.

## **Annual edition**

**9.—(1)** As soon as possible after the end of each calendar year, the Queen’s Printer shall cause to be prepared from the series of Scottish statutory instruments up to the end of that year an edition of Scottish statutory instruments (referred to in this article as “the annual edition”) including the following matters:—

- (a) a copy of so much of all Scottish statutory instruments as have, at the time of the completion of the annual edition, been printed in compliance with the requirements of article 7(1) and not been included in any previous annual edition, except that there may be omitted a copy of—
  - (i) instruments which have ceased to be in force at the time of the completion of the annual edition; and
  - (ii) local instruments;
- (b) an Annual Numerical and Issue List of Scottish Statutory Instruments showing, except for such local instruments as are exempt from the requirements of article 7(1), the numbers of all Scottish statutory instruments which during that year either were made or were issued for the first time by, or under the authority of, the Queen’s Printer and, in respect of the latter, the date of such issue;
- (c) a classified list of local instruments;
- (d) tables showing the effect on enactments and previous statutory rules or statutory instruments (whether Scottish or not) of the Scottish statutory instruments included in that edition; and
- (e) an index.

(2) The annual edition shall be printed and published by, or under the authority of, the Queen’s Printer.

(3) Article 8(2) shall apply to so much of the Annual Numerical and Issue List of Scottish Statutory Instruments in the annual edition as refers to the date upon which any Scottish statutory instrument was first issued by, or under the authority of, the Queen’s Printer as it applies to the list mentioned in that article.

## **Scottish statutory instruments which are required to be laid before the Scottish Parliament**

**10.—(1)** Where any enactment provides, or has the effect of providing, that any Scottish statutory instrument is to be laid before the Scottish Parliament after being made, a copy of the instrument shall, subject to the following provisions, be laid before the Scottish Parliament before the instrument is due to come into force.

(2) Where any enactment provides, or has the effect of providing, that any Scottish statutory instrument is to be subject to annulment in pursuance of a resolution of the Scottish Parliament, a copy of the instrument shall, subject to the following provisions, be laid before the Scottish Parliament not less than 21 days before the instrument is due to come into force.

(3) Where it is necessary that an instrument of a kind mentioned in paragraph (1) or (2) should come into force at any time before—

- (a) a copy of it has been laid before the Scottish Parliament; or
- (b) in the case of an instrument mentioned in paragraph (2), the expiry of the period of 21 days mentioned in that paragraph,

the instrument may be made so as to come into force at that time but the responsible authority shall explain to the Presiding Officer why paragraph (1) or, as the case may be, (2) was not complied with.

(4) Every copy of any such instrument as is mentioned in paragraph (1), (2) or (3) sold by, or under the authority of, the Queen's Printer shall bear on the face of it—

- (a) a statement showing the date on which it came or will come into force; and
- (b) either a statement showing the date on which such a copy of it was laid before the Scottish Parliament or a statement that such copy is to be laid before the Scottish Parliament.

### **Scottish statutory instruments which are subject to annulment by resolution of the Scottish Parliament**

**11.**—(1) Paragraphs (2) to (5) apply where any enactment provides, or has the effect of providing, that any Scottish statutory instrument is to be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(2) The instrument shall be laid before the Scottish Parliament in accordance with article 10(2) and (3).

(3) If, within the period of 40 days beginning with the date on which a copy of the instrument is laid before it, the Scottish Parliament so resolves, nothing further is to be done under the instrument after the date of the resolution.

(4) Where such a resolution is made with respect to—

- (a) an instrument which is an Order in Council or an order made by the Privy Council, Her Majesty may by Order in Council revoke that instrument; and
- (b) any other instrument, the Scottish Ministers shall by order made by statutory instrument revoke that instrument.

(5) Any such resolution or revocation is without prejudice to the validity of anything previously done under the instrument or to the making of a new Scottish statutory instrument.

### **Scottish statutory instruments of which drafts are to be laid before the Scottish Parliament**

**12.**—(1) Paragraphs (2) to (4) apply where any enactment—

- (a) provides, or has the effect of providing, that a draft of any Scottish statutory instrument is to be laid before the Scottish Parliament, but
- (b) does not prohibit the making of the instrument without the approval of the Scottish Parliament.

(2) The instrument shall not be made (or, in the case of a draft Order in Council, shall not be submitted to Her Majesty in Council) until after the end of the period of 40 days beginning with the day on which the draft is laid before the Scottish Parliament.

(3) No further proceedings shall be taken on the instrument if the Scottish Parliament resolves, within the period of 40 days, that the instrument be not made (or, as the case may be, be not submitted).

(4) Paragraph (3) is without prejudice to the laying of a new draft before the Scottish Parliament.

### **Supplementary provisions to articles 10 to 12**

**13.**—(1) In reckoning for the purposes of articles 10, 11 and 12 any period of 21 or 40 days, no account shall be taken of any time during which the Scottish Parliament is dissolved or is in recess for more than 4 days.

(2) The provisions of articles 10 and 11 shall not apply to—

- (a) any Scottish statutory instrument which is an order which is subject to special parliamentary procedure; or

- (b) any other Scottish statutory instrument which is required to be laid before the Scottish Parliament for any period before it comes into force.

#### **Laying of Scottish statutory instruments before the Scottish Parliament**

**14.** Any reference in any enactment to laying before the Scottish Parliament any Scottish statutory instrument is, unless the contrary intention appears, to be construed as a reference to the taking, during any time when the Scottish Parliament is not dissolved, of such action as is specified in the standing orders of the Scottish Parliament as constituting the laying of any document before the Parliament, even if the action so specified consists, in whole or in part, of action which is capable of being taken when the Parliament is in recess.

#### **Publication in the Gazettes**

**15.** Where any enactment requires, or has the effect of requiring, any Scottish statutory instrument to be published or notified in the London, Edinburgh or Belfast Gazette, the publication in that Gazette of a notice stating that the instrument has been made and specifying the place where copies may be purchased shall be sufficient compliance with that enactment.

St Andrew's House Edinburgh  
8th April 1999

*Henry McLeish*  
Minister of State, Scottish Office

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## EXPLANATORY NOTE

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

This Order makes transitory and transitional provisions in relation to Scottish statutory instruments (as construed in accordance with article 4(2)) and other statutory instruments or documents which are required by any enactment to be laid before the Scottish Parliament.

The Order has the effect of disapplying sections 2 to 8 of the Statutory Instruments Act 1946 (c. 36) (“the 1946 Act”) in relation to Scottish statutory instruments.

The Order makes provision corresponding to that made by or under the 1946 Act relating to—

- (a) the numbering, printing and publishing of Scottish statutory instruments (articles 5 to 9); and
- (b) any requirement in any enactment that a Scottish statutory instrument is to be laid before the Scottish Parliament, either in draft or after being made, or is to be subject to annulment in pursuance of a resolution of the Scottish Parliament (articles 10 to 15).

Articles 10 to 15 are also applied by article 4(4) in any case where any enactment provides, or has the effect of providing, that any other statutory instrument is to be laid before the Scottish Parliament, whether in draft or after being made, or is to be subject to annulment in pursuance of a resolution of the Scottish Parliament. Article 14 is also applied by article 4(5) in any case where any other document is required to be laid before the Scottish Parliament.

The Order has effect for the purposes of article 4(4) as from 6th May 1999 (the date of the first elections to the Scottish Parliament) and, in relation to Scottish statutory instruments, as from the principal appointed day, which is 1st July 1999 by virtue of the Scotland Act 1998 (Commencement) Order 1998 (S.I.1998/3178). Articles 4 to 15 will cease to have effect on the day appointed by or under any Act of the Scottish Parliament.