
STATUTORY INSTRUMENTS

1999 No. 1104

**CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND**

The Transfer of Property etc. (Scottish Ministers) Order 1999

Made - - - - 10th April 1999
Laid before Parliament 13th April 1999
Coming into force in accordance with article 1

The Secretary of State, in exercise of the powers conferred on him by sections 60, 112(1), 113 and 116 of the Scotland Act 1998(1) and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Transfer of Property etc. (Scottish Ministers) Order 1999 and shall come into force on the principal appointed day(2).

(2) In this Order—

“the Act” means the Scotland Act 1998;

“transferred function” means any function of a Minister of the Crown which is transferred to the Scottish Ministers by virtue of section 53 (general transfer of functions), 63 (power to transfer functions) or 89 (power to adapt etc. cross-border public authorities) of the Act so as to be exercisable by the Scottish Ministers instead of by a Minister of the Crown; and

“non-ministerial functions” means the functions of the holders of offices in the Scottish Administration which are not ministerial offices.

(3) In this Order, any reference to excepted property or excepted liabilities shall be construed in accordance with articles 4(2) and 7 to 11 of this Order.

Transfer of land and corporeal moveable property

2.—(1) Whenever a function of a Minister of the Crown becomes a transferred function, there shall transfer to and vest in the Scottish Ministers all rights and interests belonging to a Minister

(1) 1998 c. 46.

(2) Article 3 of the Scotland Act 1998 (Commencement) Order 1998 (S.I.1998/3178) specifies 1st July 1999 as the principal appointed day for the purposes of the 1998 Act.

of the Crown or government department in any land and corporeal moveable property (other than excepted property) which—

- (a) is used wholly or mainly for or in connection with that transferred function; or
- (b) is not used for or in connection with any function of a Minister of the Crown but which was acquired in the exercise of that transferred function or, when last used for or in connection with any function of a Minister of the Crown, was so used wholly or mainly for or in connection with that transferred function.

(2) There are hereby transferred to and vested in the Scottish Ministers all rights and interests belonging to a Minister of the Crown or government department in any land and corporeal moveable property (other than excepted property) which is used, immediately before the principal appointed day, wholly or mainly for or in connection with functions which will on that day be non-ministerial functions.

(3) Paragraph (1) does not apply to any rights and interests of a Minister of the Crown or government department in any land or corporeal moveable property which—

- (a) was acquired under section 39 of the Forestry Act 1967⁽³⁾ (power of Minister to acquire and dispose of land) or that section as extended by section 40 of that Act (compulsory purchase of land); or
- (b) is used for or in connection with the exercise of the functions of the Forestry Commissioners⁽⁴⁾.

Bute House

3. There are hereby transferred to and vested in the Scottish Ministers—

- (a) all rights and interests belonging to a Minister of the Crown in the premises known as Bute House, 6 Charlotte Square, and the contents of those premises; and
- (b) any other rights and interests belonging to a Minister of the Crown, and any liabilities to which a Minister of the Crown is subject, so far as those rights or interests or liabilities relate to any rights and interests transferred by paragraph (a).

Forestry land etc.

4.—(1) There are hereby transferred to and vested in the Scottish Ministers—

- (a) all rights and interests belonging to a Minister of the Crown in any land in Scotland (other than excepted property) which was acquired by a Minister of the Crown under section 39 of the Forestry Act 1967 or that section as extended by section 40 of that Act;
- (b) all rights and interests belonging to a Minister of the Crown in any other land or corporeal moveable property (other than excepted property) which is used, immediately before the coming into force of this Order, wholly or mainly for or in connection with the exercise as regards Scotland of the functions of the Forestry Commissioners; and
- (c) any other rights and interests belonging to a Minister of the Crown, and any liabilities to which a Minister of the Crown is subject, immediately before the coming into force of this Order, so far as those rights or interests or liabilities relate to any rights or interests transferred by paragraph (1)(a) or (b) or to the exercise as regards Scotland of the functions of the Forestry Commissioners.

(2) The following premises and their contents are excepted property for the purposes of this Order—

(3) 1967 c. 10.

(4) The Forestry Commissioners were constituted under the Forestry Acts 1919 to 1945 and are continued in existence by section 1 of the Forestry Act 1967 (c. 10).

- (a) Forestry Commission Head Office, 231 Corstorphine Road, Edinburgh;
- (b) Forest Research Surveys Office, Perth Aerodrome, Scone, Perthshire;
- (c) Forest Research Northern Research Station, Bush Estate, Roslin, Midlothian;
- (d) Forest Research Office, Newton Nursery, Elgin, Morayshire;
- (e) Forest Research Office, Mabie, Troqueer, Dumfries; and
- (f) Forest Research Office, Ae Village, Dumfries.

Transfer of other rights and interests and liabilities

5.—(1) This article applies to—

- (a) any rights and interests belonging to a Minister of the Crown or government department (other than a right or interest in land or corporeal moveable property); and
- (b) any liability to which a Minister of the Crown or government department is subject.

(2) Whenever a function of a Minister of the Crown becomes a transferred function, there shall transfer to and vest in the Scottish Ministers all rights and interests and all liabilities to which this article applies (other than excepted property and excepted liabilities) so far as those rights or interests or liabilities relate to any rights or interests transferred by article 2(1) or to any transferred function.

(3) There are hereby transferred to and vested in the Scottish Ministers all rights and interests and all liabilities to which this article applies (other than excepted property and excepted liabilities) so far as those rights and interests or liabilities relate to any rights or interests transferred by article 2(2) or to any non-Ministerial functions.

(4) In the case of any rights, interests or liabilities to which this article applies which relate to other functions as well as transferred functions or non-Ministerial functions, the Secretary of State may determine to what extent those rights, interests or liabilities transfer to the Scottish Ministers.

Property with mixed use

6.—(1) This article applies where—

- (a) any property consisting of land or corporeal moveable property is used by more than one government department and is used for other functions as well as transferred functions or non-ministerial functions; and
- (b) the use of that property by those departments is regulated by a written agreement between or amongst them (referred to in this article as “a multiple use agreement”).

(2) Where such property is used mainly for or in connection with the exercise of a transferred function or non-ministerial functions, then the transfer of any right or interest in that property to the Scottish Ministers by article 2 of this Order shall have effect subject to the rights under a multiple use agreement relating to that property of any government department using the property for or in connection with other functions.

(3) Where such property is not used mainly for or in connection with the exercise of a transferred function or non-ministerial functions, then the rights and liabilities under any multiple use agreement relating to that property of any government department using the property for or in connection with the exercise of such functions shall transfer to and vest in the Scottish Ministers.

Dover House

7.—(1) The premises known as Dover House, Whitehall, London, the contents of those premises and all rights, interests and liabilities so far as relating to those premises and contents, are excepted property, or as the case may be, excepted liabilities for the purposes of this Order.

(2) The Scottish Ministers shall have such rights to use any excepted property falling within paragraph (1), and on such terms and conditions, as the Secretary of State may from time to time determine.

St James' House

8. The premises known as St James' House (formerly known as New St Andrew's House), St James Centre, Edinburgh, the contents of those premises and all rights, interests and liabilities so far as relating to those premises and contents, are excepted property or, as the case may be, excepted liabilities for the purposes of this Order.

The Seal of the Secretary of State for Scotland

9. The Seal of the Secretary of State for Scotland is excepted property for the purposes of this Order.

Departmental records

10.—(1) Administrative and departmental records belonging to any Minister of the Crown or government department are excepted property for the purposes of this Order.

(2) Subject to paragraphs (3) and (4), the Scottish Ministers shall have—

- (a) the right of possession of; and
- (b) a right to have access to, and to use and deal with,

any excepted property falling within paragraph (1) which was held or used, immediately before the coming into force of this Order, wholly or mainly for or in connection with the exercise of transferred functions.

(3) Paragraph (2)(a) is subject to the right of any Minister of the Crown to have access to, and to use and deal with, any administrative and departmental records which are held by Scottish Ministers by virtue of that paragraph.

(4) Paragraph (2)(b) is subject to section 92(3)(c) of the Act and the rights of any other person in connection with copyright in any work.

Radioactive Incident Monitoring and Tide Gauge Networks

11. Any land and corporeal moveable property which is held or used by a Minister of the Crown or government department wholly or mainly for the purposes of—

- (a) the Radioactive Incident Monitoring Network; or
- (b) the Tide Gauge Network,

and any rights, interests and liabilities so far as relating thereto are excepted property or, as the case may be, excepted liabilities for the purposes of this Order.

Determination of disputes

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

(2) Any dispute as to—

- (a) whether any and, if so, how much, compensation is payable by virtue of section 116(7) of the Act as a result of any transfer of property by this Order; and
- (b) the person to whom or by whom such compensation shall be paid,

shall be referred to and determined by an arbiter appointed by the Lord President of the Court of Session.

Consequential and supplementary provision

13.—(1) So far as may be necessary in consequence of the transfer of any property or liability to the Scottish Ministers by this Order, references to a Minister of the Crown or government department in any enactment or prerogative instrument, and in any other instrument or document, 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 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 Ministers by virtue of this Order as if at the date on which the transfer of the property by this Order takes effect the Scottish Ministers had taken delivery or possession of the property or had made intimation of its assignation to them, as the case may be.

Transitional and saving provision

14.—(1) The transfer by this Order of any property or liability of a Minister of the Crown or government department shall not affect the validity of anything done (or having effect as if done) by or in relation to a Minister of the Crown or government department 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 a Minister of the Crown or government department may, so far as it relates to any property or liability transferred by this Order, 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 or government department in connection with any property or liability transferred to the Scottish Ministers 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 Ministers in so far as that is required for continuing its effect after that time.

St Andrew's House Edinburgh
10th April 1999

Henry McLeish
Minister of State, Scottish Office

EXPLANATORY NOTE

(This note does not form part of the Order)

This Order provides for the transfer of certain property and liabilities of Ministers of the Crown and government departments to the Scottish Ministers in connection with the transfer to them of functions (referred to as “transferred functions”) under sections 53 (general transfer of functions), 63 (power to transfer functions) and 89 (power to adapt etc. cross-border public authorities) of the Scotland Act 1998 (c. 46) and also in connection with the functions (referred to as “non-ministerial functions”) of certain other office-holders who will form part of the Scottish Administration.

Article 2 transfers to the Scottish Ministers all rights and interests of a Minister of the Crown or government department in any land and corporeal moveable property which—

- (a) is used wholly or mainly for or in connection with transferred functions;
- (b) is not used for or in connection with any function of a Minister of the Crown but which was acquired in the exercise of a transferred function or, when last used for any function of a Minister of the Crown, was so used wholly or mainly for or in connection with a transferred function; or
- (c) is used wholly or mainly for or in connection with non-ministerial functions.

Articles 3 and 4 provide for the transfer of rights and interests in additional property and article 5 provides for the transfer of other rights and interests, and of liabilities, of Ministers of the Crown and government departments, so far as relating to rights and interests transferred by article 2 or so far as relating to transferred functions or non-ministerial functions.

Article 6 makes provision in relation to rights to use land and corporeal moveable property with mixed use i.e. which is used for other functions as well as transferred functions or non-ministerial functions.

Articles 7 to 11 provide for certain exceptions from the transfer of property and liabilities by the Order.

Article 12 makes provision as to the determination of questions as to whether and what extent properties and liabilities are transferred by the Order and of disputes concerning compensation which may be payable under section 116(7) of the 1998 Act by virtue of transfers of property under this Order.

Articles 13 and 14 make consequential, transitional and saving provision.