

2004 No. 2030 (S. 8)

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2004

Made

27th July 2004

Coming into force in accordance with article 1

At the Court at Buckingham Palace, the 27th day of July 2004

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been—

- (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;

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by sections 30(3), 63(1), 113 and 124(2) of the Scotland Act 1998(a) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2004 and, except as provided in paragraph (2) below, shall come into force on the second day after the day on which it is made.

(2) This article and article 2 of this Order shall come into force on the day after the day on which it is made.

(3) In this Order—

“the 1988 Act” means the Income and Corporation Taxes Act 1988(b);

“the 1998 Act” means the Scotland Act 1998; and

“fireworks regulations” has the same meaning as in section 2(1) of the Fireworks Act 2003(c).

(a) 1998 c.46.

(b) 1988 c.1.

(c) 2003 c.22.

Functions to be treated as exercisable in or as regards Scotland

2.—(1) Subject to paragraph (2) below the functions which are conferred on a Minister of the Crown by section 488(6) and (7) of the 1988 Act (approval of a co-operative housing association in connection with a claim for tax purposes) are to be treated as exercisable in or as regards Scotland for the purposes of section 63 of the 1998 Act but only so far as relating to an association which is, or is deemed to be, duly registered under the Industrial and Provident Societies Act 1965(a) whose registered office is situated in Scotland.

(2) The function of prescribing requirements which is conferred on a Minister of the Crown by section 488(6)(iii) of the 1988 Act is to be treated as not being exercisable in or as regards Scotland for the purposes of section 63 of the Scotland Act 1998.

Transfer of functions to the Scottish Ministers

3. The functions which are conferred on a Minister of the Crown by section 488(6) and (7) of the 1988 Act shall so far as they are exercisable by that Minister in or as regards Scotland be exercisable by the Scottish Ministers instead of by the Minister of the Crown.

Functions shared by the Scottish Ministers and a Minister of the Crown

4. The functions which are conferred on a Minister of the Crown by the enactments specified in column 1 of the Schedule to this Order shall—

- (a) so far as they are exercisable by that Minister in or as regards Scotland; and
- (b) subject to any restrictions in the corresponding entry in column 2 of the Schedule,

be exercisable by the Scottish Ministers concurrently with the Minister of the Crown.

Modification of the 1988 Act

5. In section 488(6)(iii) of the 1988 Act for “the approving authority” substitute “the Secretary of State as respects Great Britain, or the Head of the Department for Social Development for Northern Ireland as respects Northern Ireland”.

General modifications of enactments etc.

6.—(1) Sections 117 and 118 of the 1998 Act shall apply in relation to the exercise of functions by the Scottish Ministers by virtue of article 3 or 4 of this Order as they apply in relation to the exercise of functions by the Scottish Ministers within devolved competence.

(2) Section 119 of the 1998 Act shall apply in relation to the functions exercisable by the Scottish Ministers by virtue of those articles as it applies in relation to functions of the Scottish Ministers exercisable within devolved competence.

(3) In the application of those sections by virtue of this article, any reference in them to a pre-commencement enactment is to be read as if it were a reference to any enactment.

Transitional and saving provision

7.—(1) The transfer, by virtue of this Order, of any function exercisable by a Minister of the Crown to the Scottish Ministers shall not affect the validity of anything done (or having effect as if done) by or in relation to a Minister of the Crown before the date on which the transfer takes effect.

(2) Anything (including legal proceedings) which, at the time when that transfer takes effect, is in the process of being done by or in relation to a Minister of the Crown may, so far as it relates to any function transferred, be continued by or in relation to the Scottish Ministers.

(a) 1965 c.12.

(3) Anything done (or having effect as if done) by or in relation to a Minister of the Crown for the purposes of or in connection with any function transferred to the Scottish Ministers by virtue of this Order shall, if in force at the time when that 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.

(4) Despite the transfer to the Scottish Ministers of functions by virtue of this Order, any function of a Minister of the Crown in relation to any matter shall continue to be exercisable by him as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972^(a).

A. K. Galloway
Clerk of the Privy Council

^(a) 1972 c.68.

SCHEDULE

Article 4

ENACTMENTS CONFERRING FUNCTIONS EXERCISABLE
CONCURRENTLY BY THE SCOTTISH MINISTERS AND A
MINISTER OF THE CROWN

<i>Column 1</i> <i>Enactment</i>	<i>Column 2</i> <i>Restrictions</i>
<p>The Consumer Protection Act 1987 (c.43), sections 11(3)(f), 18(1) and (2) and 27(2) and (3).</p> <p>The Fireworks Act 2003 (c.22)–</p> <p>(a) sections 2(1), (3), (4), (5), (6) and (7), 11(6) and 12(1); and</p> <p>(b) sections 4 and 6.</p>	<p>Only so far as–</p> <p>(a) those provisions are applied in relation to fireworks regulations by section 2(7), 11(6) or 12(1) of the Fireworks Act 2003; and</p> <p>(b) the function of making fireworks regulations is exercisable by the Scottish Ministers by virtue of this Order.</p> <p>(a) only so far as the functions are exercisable in relation to provision or exceptions under section 4 or 6 of the Fireworks Act 2003.</p> <p>(b) –</p>

EXPLANATORY NOTE

(This note is not part of the Order)

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

Article 2 identifies the extent to which the functions conferred on a Minister of the Crown by section 488(6) and (7) of the Income and Corporation Taxes Act 1988 (c.1) are to be treated as exercisable in or as regards Scotland for the purposes of section 63 of the Scotland Act 1998 and so capable of being transferred under section 63 of the Scotland Act.

Article 3 provides that the functions conferred on a Minister of the Crown by section 488(6) and (7) of the Income and Corporation Taxes Act 1988, which relate to the approval of a housing association in connection with a claim for tax purposes, shall so far as exercisable in or as regards Scotland be exercisable by the Scottish Ministers instead of by a Minister of the Crown.

Article 4 of, and the Schedule to, the Order provide for the functions in the Fireworks Act 2003 (c.22), set out in column 1 of the Schedule (and the supplemental functions in the Consumer Protection Act 1987 (c.43), also set out in column 1 of the Schedule, which are applied by the Fireworks Act 2003), to be exercisable in or as regards Scotland by the Scottish Ministers concurrently with a Minister of the Crown. Section 2 of the Fireworks Act provides power to make fireworks regulations. Section 4 of that Act provides that the regulations may make provision for the prohibition of supply, purchase, possession or use of fireworks. Section 6 of that Act provides that the regulations may make provision in respect of public fireworks displays. The exercise of the functions by the Scottish Ministers is subject to the restrictions set out in column 2 of the Schedule.

Article 5 modifies the Income and Corporation Taxes Act 1988 in connection with provision made by the Order.

Article 6 provides for the general modification of enactments in connection with provision made by the Order.

Article 7 makes transitional and saving provision.

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