

2006 No. 304 (S. 3)

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2006

Made - - - - - *14th February 2006*

Coming into force in accordance with article 1(1)

At the Court at Buckingham Palace, the 14th day of February 2006

Present,

The Queen's Most Excellent Majesty in Council

In accordance with section 115 of, and paragraphs 1 and 2 of Schedule 7 to, the Scotland Act 1998(a) 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 resolution of the Scottish Parliament;

Accordingly, Her Majesty, in exercise of the powers conferred upon Her by sections 63, 113 and 124(2) of that Act, is pleased, by and with the advice of Her Privy Council, to order, 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 2006 and shall come into force on the day after the day on which it is made.

(2) In this Order—

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

“the Veterinary Medicines Regulations” means the Veterinary Medicines Regulations 2005(b).

(3) Any reference in this Order to a provision of the Veterinary Medicines Regulations is a reference to that provision as it had effect on the date that it came into force.

(a) 1998 c.46.
(b) S.I. 2005/2745.

Transfer of functions to the Scottish Ministers

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

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

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

3.—(1) Subject to the restriction specified in paragraph (2), the functions conferred on a Minister of the Crown by—

- (a) section 2(2) of the European Communities Act 1972(a);
- (b) the European Communities (Designation) Order 1972(b);
- (c) the European Communities (Designation) (No.2) Order 1991(c);
- (d) the European Communities (Designation) (No. 2) Order 1999(d); and
- (e) the European Communities (Designation) (No. 4) Order 2003(e),

shall, so far as they are exercisable by him in or as regards Scotland, be exercisable by the Scottish Ministers concurrently with the Minister of the Crown.

(2) The functions referred to in paragraph (1) are so exercisable only so far as they are exercisable in relation to—

- (a) animal feeding stuffs, intended to be used for oral feeding to animals, which are not veterinary medicinal products as defined in regulation 2(1) of the Veterinary Medicines Regulations; or
- (b) any feed additive to which Regulation (EC) No. 1831/2003(f) on additives for use in animal nutrition applies which is not a specified feed additive as defined by paragraph 1(1) of Schedule 5 to the Veterinary Medicines Regulations.

General modifications of enactments

4.—(1) Sections 117 and 118 (general modification of enactments) of the 1998 Act shall apply in relation to the exercise of functions by the Scottish Ministers by virtue of article 2 or 3 of this Order as they apply in relation to the exercise of functions by the Scottish Ministers within devolved competence.

(2) 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 provisions

5.—(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) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15.
(b) S.I. 1972/1811, amended by S.I. 2002/794; there are other amending instruments not relevant to this Order.
(c) S.I. 1991/755; there are amendments not relevant to this Order.
(d) S.I. 1999/2027.
(e) S.I. 2003/2901.
(f) OJ No L 268, 18.10.2003, p.29.

(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. K. Galloway
Clerk of the Privy Council

SCHEDULE

Article 2

ENACTMENTS CONFERRING FUNCTIONS TRANSFERRED TO THE SCOTTISH MINISTERS

<i>Column 1</i>	<i>Column 2</i>
<i>Enactment</i>	<i>Restrictions or requirements</i>
The Fire Services Act 1947 (c.41), section 26(a)	–
The Agriculture Act 1970 (c. 40), sections 66(1)(b), 67(5) and (8)(c), 68(1), (1A)(d), (2)(e), (3) and (5), 69(1), (3), (6) and (7), 70(1) and (3), 71(1), 72(2), 73(3), 74(1), 74A(1), (2) and (4)(f), 75(1), 76(1) and (5)(g), 77(1) and (4), 78(6) and (10), 79(1), (2) and (9) and 84(h).	<p>Only so far as the functions are exercisable in relation to–</p> <p style="margin-left: 40px;">(a) animal feeding stuffs, intended to be used for oral feeding to animals, which are not veterinary medicinal products as defined in regulation 2(1) of the Veterinary Medicines Regulations; or</p> <p style="margin-left: 40px;">(b) any feed additive to which Regulation (EC) No. 1831/2003 on additives for use in animal nutrition applies which is not a specified feed additive as defined by paragraph 1(1) of Schedule 5 to the Veterinary Medicines Regulations.</p>

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- (a) Section 26 was amended by the Fire Services Act 1951 (c.27), section 1, the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c.65), section 42, the Social Security Act 1973 (c.38), section 100 and Schedule 27, paragraph 6, S.I. 1976/551, the Police and Firemen’s Pensions Act 1997 (c.52), section 1 and the Civil Partnership Act 2004 (c.33) (“the 2004 Act”), Schedule 25, paragraph 1. Section 26 was repealed in part by the Theft Act 1968 (c.60), section 33 and Schedule 3, Part 1, the Superannuation Act 1972 (c.11), sections 16 and 29 and Schedule 8 and the Social Security (Consequential Provisions) Act 1975 (c.18), Schedule 1. Section 26 was repealed by the Fire and Rescue Services Act 2004 (c.21), section 52 and Schedule 2. However, by virtue of S.I. 2004/2306, section 26(1) to (5) continues to have effect for the purposes of the Firemen’s Pension Scheme established under that section by S.I. 1992/129 and re-named the Firefighters’ Pension Scheme by S.I. 2004/2306. Functions under section 26 were, prior to the amendment by the 2004 Act, transferred to the Scottish Ministers by S.I. 1999/1750.
- (b) Relevant amending instruments are S.I. 1982/980 and 1999/1663.
- (c) There are amendments not relevant to this Order.
- (d) Section 68(1A) was inserted by S.I. 1982/980; there are amending instruments not relevant to this Order.
- (e) Section 68(2) was amended by S.I. 1999/1663; there are other amending instruments not relevant to this Order.
- (f) Section 74A was inserted by the European Communities Act 1972 (c.68), section 4 and Schedule 4, paragraph 6. There are amending instruments which are not relevant to this Order.
- (g) Section 76(5) was amended by S.I. 1999/1663; there are other amending instruments not relevant to this Order.
- (h) Section 84 was amended by S.I. 2004/3254.

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 provides that the functions which are not already devolved to the Scottish Ministers and which are conferred on a Minister of the Crown by the enactments which are specified in the Schedule to this Order shall, so far as exercisable in or as regards Scotland be exercisable by the Scottish Ministers instead of by a Minister of the Crown. The transfer of functions to the Scottish Ministers is subject to the restrictions specified in the Schedule.

Article 3 provides that those functions which are not already devolved to the Scottish Ministers and which are conferred on a Minister of the Crown by section 2(2) of the European Communities Act 1972 in relation to the animal feeding stuffs and feed additives as referred to in article 3(2) shall, so far as exercisable in or as regards Scotland, be exercisable by the Scottish Ministers concurrently with the Minister of the Crown.

Article 4 provides for the general modification of enactments in connection with provision made by the Order.

Article 5 makes transitional and saving provision for the effect of the Order.

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