

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

2020 No.

**CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
EMPLOYMENT AND TRAINING**

The Scotland Act 1998 (Transfer of Functions
to the Scottish Ministers etc.) Order 2020

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 63(1)(b), 113(3)(b), (4)(a) and (5)(a) and 124(2) of the Scotland Act 1998(1).

In accordance with paragraphs 1 and 2 of Schedule 7 to that Act(2), 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.

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 2020.

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

(1) 1998 c.46.

(2) Paragraphs 1 and 2 of Schedule 7 are relevantly modified by paragraph 3(2) of schedule 4 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

Functions exercisable concurrently by the Secretary of State and the Scottish Ministers

2.—(1) The functions of the Secretary of State under section 2 of the Employment and Training Act 1973(3) are exercisable by the Scottish Ministers concurrently with the Secretary of State insofar as they—

- (a) are exercisable in or as regards Scotland; and
- (b) are not exercisable by the Scottish Ministers by virtue of section 53 of the Scotland Act 1998(4).

(2) But the Scottish Ministers may only exercise those functions, by virtue of paragraph (1), to make an arrangement under which a person in the circumstances described by paragraph (3) or (4) may be given assistance to retain employment.

(3) The circumstances are—

- (a) an offer of employment was made to the person when the person was—
 - (i) 16 years of age or over; but
 - (ii) under 25 years of age;
- (b) the person was not in employment at any point in the 6 months before the offer was made; and
- (c) the person applied to the Scottish Ministers for assistance under the arrangements made by virtue of paragraph (1) within the period of one year beginning with the day that the offer was made.

(4) The circumstances are—

- (a) an offer of employment was made to the person when the person was—
 - (i) 16 years of age or over; but
 - (ii) under 26 years of age;
- (b) the person—
 - (i) was looked after by a local authority on or after the person's 16th birthday; and
 - (ii) is no longer looked after by a local authority; and
- (c) the person applied to the Scottish Ministers for assistance under the arrangements made by virtue of paragraph (1) within the period of one year beginning with the day that the offer was made.

(5) For the purposes of paragraph (4)(b), a person is looked after by a local authority if—

- (a) the person is looked after, within the meaning of section 17(6) of the Children (Scotland) Act 1995(5), by a local authority in Scotland;
- (b) the person is looked after, within the meaning of section 105(4) of the Children Act 1989(6), by a local authority in England or Wales; or
- (c) the person is looked after, within the meaning of article 25 of the Children (Northern Ireland) Order 1995(7), by an authority in Northern Ireland.

(6) For the avoidance of doubt, nothing in this article requires the Scottish Ministers to make an arrangement to assist every person in the circumstances described by paragraphs (3) and (4).

(3) 1973 c.50; section 2 was substituted by the Employment Act 1988 (c.19), section 25(1); the section has subsequently been amended by the Employment Act 1989 (c.38), section 29(4) and Schedule 7, Part 1, and by the Trade Union Reform and Employment Rights Act 1993 (c.19), section 47(1).

(4) 1998 c.46; section 53 is amended by the Scotland Act 2016 (c.11), section 32(3).

(5) 1995 c.36; section 17(6) is amended by the Children's Hearings (Scotland) Act 2011 (asp 1), schedule 5, paragraph 2, by the Adoption and Children (Scotland) Act 2007 (asp 4), schedule 2, paragraph 9(4)(b), and by S.S.I. 2013/211.

(6) 1989 c.41; section 105(4) is substituted by S.I. 2016/413.

(7) S.I. 1995/755 (N.I. 2); article 25 is amended by the Children (Leaving Care) Act (Northern Ireland) 2002 (c.11), section 2(1).

Information sharing: HMRC information

3. In section 127 of the Welfare Reform Act 2012⁽⁸⁾ (information-sharing between Secretary of State and HMRC)—

(a) after subsection (2) insert—

“(2A) Information to which subsection (1) applies may be supplied to the Scottish Ministers for use in connection with any arrangements made by them under section 2 of the Employment and Training Act 1973 by virtue of article 2(1) of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2020.”;

(b) in subsection (5)(a), after “(2)” insert “or (2A)”.

Information sharing: social security information, etc.

4.—(1) In section 72 of the Welfare Reform and Pensions Act 1999⁽⁹⁾ (supply of information for certain purposes), in subsection (4), after paragraph (b) insert—

“(c) any arrangements made by the Scottish Ministers under section 2 of the Employment and Training Act 1973 by virtue of article 2(1) of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2020.”.

(2) In regulation 13 of the Social Security (Claims and Information) Regulations 1999⁽¹⁰⁾ (information), in paragraph (1), after sub-paragraph (b)(v) insert—

“(vi) to the Scottish Ministers in connection with arrangements made under section 2 of the Employment and Training Act 1973 by virtue of article 2(1) of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2020.”.

General modification of enactments

5. Section 117 of the Scotland Act 1998 (general modification of enactments: Ministers of the Crown)⁽¹¹⁾ applies in relation to the exercise of functions by the Scottish Ministers by virtue of article 2(1) as it applies in relation to the exercise of functions by the Scottish Ministers within devolved competence.

Clerk of the Privy Council

(8) 2012 c.5; section 127 is amended by the Childcare Payments Act 2014 (c.28), section 27(6)(b); there are other amendments that are not relevant to this Order.

(9) 1999 c.30; there are amendments to section 72 that are not relevant to this Order.

(10) S.I. 1999/3108; sub-paragraph (b)(v) is inserted by S.I. 2010/508. There are other amendments to regulation 13 that are not relevant to this Order.

(11) Section 117 is amended by the Scotland Act 2012 (c.11), section 12(2).

EXPLANATORY NOTE

(This note is not part of the Order)

The Order, made under the Scotland Act 1998 (“the Scotland Act”), provides for certain functions conferred on the Secretary of State by section 2 of the Employment and Training Act 1973 (“the 1973 Act”) to make arrangements to help young people retain employment, so far as they are exercisable in or as regards Scotland, to be exercisable concurrently by the Scottish Ministers.

It also provides that these functions are exercisable concurrently to the extent that they are not otherwise exercisable by Scottish Ministers. The Section H3 Job search and support reservation, in Schedule 5 to the Scotland Act, reserves the subject matter of the 1973 Act except insofar as relating to training for employment, and the matters listed in Exceptions 1 and 2 to Section H3. These excepted functions are exercisable by the Scottish Ministers by virtue of section 53 of the Scotland Act.

When the functions are exercised by the Scottish Ministers, the requirement for Treasury consent under section 2(5) of the Employment and Training Act 1973 does not apply (see section 63(2) of the Scotland Act).

Articles 3 and 4 modify three enactments, in connection with the provisions made by this Order. This will enable the sharing of Revenue and Customs information and social security information with the Scottish Ministers in connection with any arrangements they make by virtue of this Order to help young people retain employment.

Section 117 of the Scotland Act allows statutory references to a Minister of the Crown to be read as (or as including) references to the Scottish Ministers in connection with the Scottish Ministers’ exercise of a devolved function nominally conferred on a Minister of the Crown. Article 5 applies section 117 to the Scottish Ministers’ exercise of the functions which they are concurrently empowered to exercise by virtue of this Order. This means that, in this context, the various references to the Secretary of State in section 2 of the 1973 Act can be read as including references to the Scottish Ministers.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.