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STATUTORY INSTRUMENTS

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**1999 No. 1105**

**CONSTITUTIONAL LAW  
DEVOLUTION, SCOTLAND**

**The Transfer of Property etc. (Lord Advocate) 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 62, 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. (Lord Advocate) Order 1999 and shall come into force when section 44(1)(c) of the Act comes into force(2).

(2) In this Order—

“the Act” means the Scotland Act 1998;

“relevant functions” means—

- (a) the retained functions of the Lord Advocate which fall within section 52(6)(a) of the Act; and
- (b) the functions of any procurator fiscal and procurator fiscal depute appointed under sections 1(2) and 2 respectively of the Sheriff Courts and Legal Officers (Scotland) Act 1927(3).

(3) In this Order, any reference to excepted property or excepted liabilities shall be construed in accordance with article 5 of this Order.

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(1) 1998 c. 46.

(2) In terms of article 2(2) of and Schedule 4 to the Scotland Act 1998 (Commencement) Order 1998 (S.I.1998/3178), section 44(1)(c) of the Act comes into force on 20th May 1999.

(3) 1927 c. 35. Section 2 of the Sheriff Courts and Legal Officers (Scotland) Act 1927 was amended by paragraph 1 of Schedule 1 to the Sheriff Courts (Scotland) Act 1971 (c. 58) and sections 1(2) and 2 are amended by paragraphs 3(2) and (3) of Schedule 8 to the Scotland Act 1998 with effect from 1st July 1999.

### **Transfer of land and corporeal moveable property**

2. There are hereby transferred to and vested in the Lord Advocate 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, immediately before the coming into force of this Order, is held or used wholly or mainly for or in connection with any relevant function.

### **Transfer of other rights and interests and liabilities**

3.—(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) There is hereby transferred to and vested in the Lord Advocate 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—

- (a) any rights or interests transferred by article 2; or
- (b) any relevant functions.

(3) In the case of any rights, interests or liabilities to which this article applies which relate to other functions as well as relevant functions, the Secretary of State may determine to what extent those rights, interests or liabilities transfer to the Lord Advocate.

### **Property with mixed use**

4.—(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 relevant functions; and
- (b) the use of that land or corporeal moveable 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 land or corporeal moveable property is used mainly for or in connection with the exercise of relevant functions, then the transfer of rights and interests in that land or property to the Lord Advocate 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 relevant 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 Lord Advocate.

### **Carlton Gardens**

5. The premises known as 2 Carlton Gardens, London, the contents of those premises and any rights, interests and liabilities so far as relating thereto, is excepted property or, as the case may be, excepted liabilities for the purposes of this Order.

### **Determination of disputes**

6.—(1) Any question as to whether or to what extent any property or liability transfers to the Lord Advocate 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**

7.—(1) So far as may be necessary in consequence of the transfer of any property or liability to the Lord Advocate 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 Lord Advocate.

(2) Nothing in this Order shall have the effect of completing the title of the Lord Advocate 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 Lord Advocate by virtue of this Order as if at the date on which the transfer of the property by this Order takes effect the Lord Advocate had taken delivery or possession of the property or had made intimation of its assignation to him, as the case may be.

### **Transitional and saving provision**

8.—(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 Lord Advocate.

(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 Lord Advocate 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 Lord Advocate 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

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## 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 Lord Advocate in connection with his retained functions under sections 52(6)(a) of the Scotland Act 1998 (c. 46) and also in connection with the functions of procurators fiscal and procurators fiscal depute 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 is used wholly or mainly for or in connection with such functions.

Articles 3 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 the functions mentioned above.

Article 4 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.

Article 5 provides for certain exceptions from the transfer of property and liabilities by the Order.

Article 6 makes provision as to the determination of questions as to whether and to what extent any properties or 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 7 and 8 make consequential, transitional and saving provision.