

2001 No. 3504 (S. 18)

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2001

Made

31st October 2001

Coming into force in accordance with article 1(1) and (2)

At the Court at Buckingham Palace, the 31st day of October 2001

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 63(1)(a), 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.) (No. 2) Order 2001 and, except as provided in paragraph (2) below, shall come into force on the day after the day on which it is made.

(2) In the Schedule to this Order, the entry relating to the Electricity Act 1989^(b) shall come into force—

- (a) so far as relating to section 32B of that Act on—
 - (i) the day after the day on which this Order is made; or if later
 - (ii) the day on which section 64 of the Utilities Act 2000^(c) comes into force; and
- (b) so far as relating to section 32C of that Act on—
 - (i) the day after the day on which this Order is made; or if later
 - (ii) the day on which section 65 of the Utilities Act 2000 comes into force.

(3) In this Order “the 1998 Act” means the Scotland Act 1998.

^(a) 1998 c.46.

^(b) 1989 c.29.

^(c) 2000 c.27

Transfer of functions to the Scottish Ministers

2. The functions which are conferred on a Minister of the Crown by the enactments specified in the Schedule to this Order 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.

General modifications of enactments etc.

3.—(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 2 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 functions exercisable by the Scottish Ministers by virtue of that article 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.

(4) Any reference in any enactment or prerogative instrument or in any other instrument or document—

(a) to government departments; or

(b) to, or any part or officer of, any government department, (however described) is to be read, so far as the effect of this Order makes it necessary or expedient to do so, as including or being a reference to, or to any corresponding part or member of the staff of, the Scottish Administration.

Transitional and saving provision

4.—(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.

(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 2

ENACTMENTS CONFERRING FUNCTIONS TRANSFERRED TO THE SCOTTISH MINISTERS

The Electricity Act 1989 (c.29), sections 32B and 32C(a).

The Utilities Act 2000 (c.27), section 67.

(a) Section 32B of the 1989 Act is inserted, prospectively, by section 64 of the Utilities Act 2000 and section 32C of the 1989 Act is inserted, prospectively, by section 65 of the Utilities Act 2000.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the Scotland Act 1998 (c.46), provides for certain specified 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 by the Minister of the Crown.

Article 2 of the Order provides that the functions conferred on a Minister of the Crown by the enactments specified in the Schedule to the Order shall be exercisable in or as regards Scotland by the Scottish Ministers instead of a Minister of the Crown.

The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2000 (S.I. 2000/3253) transferred to the Scottish Ministers powers under sections 32 and 32A of the Electricity Act 1989 (c.29), as inserted by the Utilities Act 2000 (c.27), to make orders specifying the amount of electricity to be supplied using renewable sources. This Order gives the Scottish Ministers power to make provision in an Order under section 32 allowing the Gas and Electricity Markets Authority (“the Authority”) to issue green certificates to the operator of a generating station or to an electricity supplier in order to certify that a certain amount of electricity from renewable sources has been generated and supplied to customers in Great Britain (or the part of Great Britain stated in the certificate). The Order also gives the Scottish Ministers power to make provision in an Order under section 32 for payment to be made to the Authority as an alternative to producing evidence of supplies of renewable sourced electricity.

In relation to the Utilities Act 2000, the Order transfers to the Scottish Ministers the powers contained in section 67, to make savings and transitional orders relating to the existing sections 32 and 33 of the Electricity Act 1989. It also allows Orders to be made requiring the continued payment of the Fossil Fuel Levy. Orders can be made to make any matter a relevant requirement for Part I of the Electricity Act 1989 and therefore bring enforcement within the control of the Authority.

Article 3 provides for certain general modifications of enactments in connection with provision made by the Order.

Article 4 makes transitional and saving provision.

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