

2006 No. 1040

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2006

Made - - - - - *11th April 2006*

Coming into force in accordance with article 1

At the Court at Windsor, the 11th day of April 2006

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 30(3), 63, 113 and 124(2) of the Scotland Act 1998 (a).

In accordance with section 115 of, and paragraphs 1 and 2 of Schedule 7 to, that Act 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 a resolution of the Scottish Parliament.

Accordingly, Her Majesty, by and with the advice of Her Privy Council, makes the following Order:

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 2006 and, except as provided in paragraph (2), shall come into force on the second day after the day on which it is made.

(2) This article and articles 2, 4, 6(4), 6(5) and 6(6) shall come into force on the day after the day on which this Order is made.

(3) In this Order—

“the 1989 Act” means the Electricity Act 1989(b)

“the 1998 Act” means the Scotland Act 1998.

(a) 1998 c.46.
(b) 1989 c.29.

Functions to be treated as exercisable in or as regards Scotland

2. The functions of the Secretary of State under section 36 (consent required for construction etc. of generating stations)(a) of, and paragraph 7A of Schedule 8 (generating stations not within areas of relevant planning authorities)(b) to, the 1989 Act in relation to a generating station or proposed generating station are, for the purposes of section 63 of the 1998 Act, to be treated—

- (a) as being exercisable in or as regards Scotland if they are exercisable in Scotland or in that area designated in the Renewable Energy Zone (Designation of Area) (Scottish Ministers) Order 2005(c) as the area in relation to which the Scottish Ministers are to have functions; but
- (b) as otherwise not being exercisable in or as regards Scotland.

Transfer of functions to the Scottish Ministers

3. The functions which are conferred on a Minister of the Crown by section 36 of, paragraph 5A of Schedule 5 (water rights for hydro-electric generating stations in Scotland)(d) to, and paragraph 7A of Schedule 8 to, the 1989 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.

Modification of enactments

4. In Schedule 1 to the Scotland Act (Transfer of Functions to the Scottish Ministers etc.) Order 1999(e), in column 1 of the entry relating to the 1989 Act, in paragraph (c), “, 36” is omitted.

General modification of enactments

5.—(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 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

6.—(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, for the purposes of or in connection with any such function, 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.

(a) Section 36 was amended by section 93(1) of the Energy Act 2004 (2004 c.20) (“the 2004 Act”) and the Water Environment and Water Services (Scotland) Act 2003 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/1054 (S. 10)). The functions of the Secretary of State under section 36 were (by virtue of article 2 of S.I. 1999/1750) transferred so as to be exercisable by the Scottish Ministers. The application of section 36 in Scotland was also subsequently modified by virtue of the Electricity Act 1989 (Requirements of Consent for Offshore Generating Stations) (Scotland) Order 2002 (S.S.I. 2002/407) which substituted a 1 megawatt permitted capacity for generating stations, driven wholly or mainly by water or wind and situated in the territorial sea, for the 50 megawatt permitted capacity that had previously applied.

(b) Paragraph 7A was inserted by the 2004 Act, section 93(1).

(c) S.I. 2005/3153.

(d) Paragraph 5A was inserted by S.I. 2006/1054 (S. 10).

(e) S.I. 1999/1750.

(4) The revocation, by virtue of article 4, of the transfer to the Scottish Ministers of the functions conferred by section 36 of the 1989 Act shall not affect the validity of anything done (or having effect as if done) by or in relation to the Scottish Ministers, for the purposes of or in connection with any such function, at any time before the date on which the revocation takes effect.

(5) Anything (including legal proceedings) which, at the time when that revocation takes effect, is in the process of being done by or in relation to the Scottish Ministers may, so far as it relates to any function the transfer of which is revoked by article 4, be continued —

- (a) on the date of the revocation and before the date of the transfer by virtue of article 3, by or in relation to a Minister of the Crown; and
- (b) on and after the date of the transfer by virtue of article 3, by or in relation to the Scottish Ministers.

(6) Anything done (or having effect as if done) by or in relation to the Scottish Ministers for the purposes of or in connection with any function the transfer of which is revoked by article 4 shall, if in force at the time when the revocation takes effect, have effect as if done by or in relation to—

- (a) a Minister of the Crown in so far as that is required for continuing its effect on the date of revocation and before the date of the transfer by virtue of article 3; and
- (b) the Scottish Ministers in so far as that is required for continuing its effect on and after the date of the transfer by virtue of article 3.

11th April 2006

A.K. Galloway
Clerk of the Privy Council

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 under the Electricity Act 1989 (c. 29) (“the Electricity Act”), 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 concerned. This Order consolidates in one instrument the devolution of functions under section 36 of the Electricity Act (consents to construct, extend or operate electricity generating stations) by revoking the devolution of those functions effected in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (SI 1999/1750) and by then, on the following day, re-devolving those functions to the Scottish Ministers. The other functions transferred by this Order relate to the consideration of applications under section 36 of the Electricity Act where the proposed generating station is not within the area of a planning authority, and consultation with the Scottish Environment Protection Agency (“SEPA”) in relation to generating stations powered by water.

Article 2 sets out the extent to which the functions of the Secretary of State under section 36 of, and Schedule 8 to, the Electricity Act are to be regarded as exercisable in or as regards Scotland for the purposes of section 63 of the Scotland Act 1998, and thus transferable under that section. This paving measure makes it clear that the functions exercisable in that part of the UK Renewable Energy Zone located beyond Scottish territorial waters which was designated in the Renewable Energy Zone (Designation of Area)(Scottish Ministers) Order 2005 (SI 2005/3153) are treated as being exercisable in or as regards Scotland.

Article 3 provides that the functions conferred on a Minister of the Crown by section 36 of, paragraph 5A of Schedule 5 to, and paragraph 7A of Schedule 8 to, the Electricity 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 a Minister of the Crown.

Article 4 modifies the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 by revoking the devolution of the functions of the Secretary of State under section 36 of the Electricity Act to the Scottish Ministers.

Article 5 provides for the general modification of enactments in connection with provision made by the Order.

Article 6 makes transitional and saving provision both as regards the previous exercise of functions by a Minister of the Crown prior to their devolution to the Scottish Ministers and as regards previous exercise of functions by the Scottish Ministers. In the latter case, saving is made to cover the process of return, by revocation of the previous devolution, of functions to a Minister of the Crown, prior to such functions being re-devolved to the Scottish Ministers one day later.

A Regulatory Impact Assessment (“RIA”) has been completed in relation to the transfer to the Scottish Ministers of functions under section 36 of the Electricity Act 1989 by this instrument. This RIA is published at <http://www.dti.gov.uk/energy/publications/policy/index/shtml>. No RIA was considered necessary in respect of the obligations to consult SEPA.

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