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STATUTORY INSTRUMENTS

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**2019 No. 183**

**The Scotland Act 1998 (Specification of Functions and Transfer of Property etc.) Order 2019**

**Citation and commencement**

1.—(1) This Order may be cited as the Scotland Act 1998 (Specification of Functions and Transfer of Property etc.) Order 2019.

(2) This Order comes into force on the day on which section 81 of the Forestry and Land Management (Scotland) Act 2018 comes into force.

**Interpretation**

2. In this Order—

“the 1967 Act” means the Forestry Act 1967<sup>(1)</sup>;

“the 2018 Act” means the Forestry and Land Management (Scotland) Act 2018;

“the Forestry Commissioners” means the Forestry Commissioners referred to in section 1(1) of the 1967 Act;

“the transfer date” means the date specified in article 1(2);

“enactment” includes an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;

“excepted property” means the property, rights and liabilities specified in the Schedule;

“instrument” includes Royal Charters, Royal Warrants, Orders in Council, Letters Patent, judgements, decrees, orders, rules, regulations, schemes, byelaws, awards, licences, authorisations, consents, approvals, contracts and other agreements, memoranda and articles of association, certificates, deeds and other documents.

**Specification of functions**

3.—(1) The functions listed in paragraph (2) are specified for the purposes of section 93(1) of the Scotland Act 1998.

(2) The functions are—

(a) the Scottish Ministers’ functions under the 2018 Act;

(b) the Scottish Ministers’ functions exercisable by or under any order made under the Plant Health Act 1967<sup>(2)</sup>;

(c) the Scottish Ministers’ functions under section 44 of the Climate Change (Scotland) Act 2009<sup>(3)</sup> (duties of public bodies relating to climate change);

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<sup>(1)</sup> 1967 c.10.

<sup>(2)</sup> 1967 c.8.

<sup>(3)</sup> 2009 asp 12.

- (d) the Scottish Ministers' functions under the Forest Reproductive Material (Great Britain) Regulations 2002<sup>(4)</sup>; and
- (e) the Scottish Ministers' functions under the Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015<sup>(5)</sup>.

### **Transfer of property and liabilities**

- 4.—(1) On the transfer date there shall transfer to and vest in the Scottish Ministers—
- (a) all rights and interests held by the Forestry Commissioners in—
    - (i) any land in Scotland;
    - (ii) any relevant timber;
    - (iii) any relevant corporeal moveable property;
    - (iv) any other property which is held, immediately before the transfer date, wholly or mainly for or in connection with the exercise of the functions of the Forestry Commissioners in or as regards Scotland;
  - (b) any liability of the Forestry Commissioners arising wholly or mainly in connection with the exercise, immediately before the transfer date, of their functions in or as regards Scotland.
- (2) Paragraph (1) does not apply to any right, interest or liability held by the Forestry Commissioners in respect of the excepted property.
- (3) In this article—
- (a) a reference to a right or liability is a reference to a right or liability—
    - (i) which has arisen or otherwise exists immediately before the transfer date; or
    - (ii) which arises or otherwise comes into existence on or after the transfer date but does so in respect of any act or omission of, or in relation to, the Forestry Commissioners in connection with the exercise of their functions immediately before the transfer date in or as regards Scotland,
 but does not include any right or liability in connection with any contract of employment of any employee of the Forestry Commissioners;
  - (b) “relevant timber” means timber—
    - (i) of the type mentioned in section 3(1)(b) and (3) of the 1967 Act; and
    - (ii) which is held, immediately before the transfer date, wholly or mainly for or in connection with the exercise of the functions of the Forestry Commissioners in or as regards Scotland;
  - (c) “relevant corporeal moveable property” means any corporeal moveable property—
    - (i) other than relevant timber; and
    - (ii) which is held, immediately before the transfer date, wholly or mainly for or in connection with the exercise of the functions of the Forestry Commissioners in or as regards Scotland.

### **Consequential and supplementary provision**

- 5.—(1) So far as may be necessary in consequence of the transfer of any property, right or liability under this Order, references to the Forestry Commissioners in any enactment or prerogative

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(4) S.I. 2002/3026.

(5) S.I. 2015/350.

instrument, or in any other instrument, shall be read as if they were or included references to the Scottish Ministers.

(2) Nothing in this Order shall have the effect of completing the title of the Scottish Ministers to any right or interest in land transferred by this Order, or to any other right or interest transferred by this Order, title to which requires to be completed by recording or registration for the purpose of making it a real right.

(3) Any property to which this Order applies and which would, but for this Order, require—

- (a) delivery or possession; or
- (b) intimation of its assignation,

in order to complete title to it, shall transfer to and vest in the Scottish Ministers by virtue of this Order as if on the transfer date the Scottish Ministers had taken delivery or possession of the property, or had intimated its assignation (as the case may be).

### **Transitional and saving provision**

6.—(1) In so far as it relates to, or is connected with, any property, right or liability transferred by this Order—

- (a) anything (including legal proceedings) which on the transfer date is in the process of being done by or in relation to the Forestry Commissioners may be continued by the Scottish Ministers;
- (b) any right that was, immediately before the transfer date, enforceable by or against the Forestry Commissioners is, on and after the transfer date, to be enforceable by or against the Scottish Ministers; and
- (c) anything done (or having effect as if done) by or in relation to the Forestry Commissioners has effect on and after the transfer date as if done by or in relation to the Scottish Ministers.

(2) Despite any provision to the contrary in any instrument—

- (a) no additional formalities are required in order for paragraph (1) or article 4 to have full effect;
- (b) no consent, permission or authorisation is required in order for paragraph (1) or article 4 to have full effect;
- (c) nothing in paragraph (1) or article 4 triggers any option, right of variation, right of forfeiture, right of termination, right to payment, right to demand payment or any other benefit.

(3) This Order does not affect the validity of anything done (or having effect as if done) by or in relation to the Forestry Commissioners before the transfer date.

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