
EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for transitory and transitional purposes in connection with the coming into force of various provisions of the Scotland Act 1998 (c. 46) (“the Act”).

Article 3 makes general savings provisions in connection with the transfer, by virtue of section 53 of the Act, of any function exercisable by a Minister of the Crown to Scottish Ministers. Section 53 of the Act is due to come into force on the principal appointed day which is 1st July 1999 by virtue of the Scotland Act 1998 (Commencement) Order 1998 (S.I. 1998/3178) (“the Commencement Order”).

Article 4 makes general savings provisions in connection with the functions of the Lord Advocate when the office of Lord Advocate is transferred to the Scottish Executive by virtue of section 44(1)(c) of the Act. Section 44(1)(c) of the Act is due to come into force on 20th May 1999 by virtue of the Commencement Order (“the LO-date”).

Articles 5 to 12 (other than Article 10) make certain provisions relating to the functions of the Lord Advocate for the transitional period beginning with the LO-date and ending with the principal appointed day (ie between 20th May and 1st July 1999). Article 5 provides that, during this period, the functions of the Lord Advocate under the enactment specified in the Schedule will be exercisable by the Advocate General for Scotland (“the Advocate General”) and any connected rights and liabilities will be treated as those of the Advocate General. At the end of that period, those functions, rights and liabilities will revert to the Lord Advocate. This is to ensure that, during the transitional period, those functions continue to be exercisable by the Scottish Law Officer to the United Kingdom Government which will then be the Advocate General.

Articles 6 and 7 provide, in effect that any function of the Lord Advocate in certain civil proceedings should transfer to become exercisable by the Advocate General during the transitional period. This will ensure that any interest in those proceedings which is transferred to the Advocate General will continue during that period to be dealt with by the Scottish Law Officer to the United Kingdom Government.

Article 7 provides for the transfer to the Lord Advocate on the principal appointed day of any interest of the Advocate General in those civil proceedings then pending before any court or tribunal which pertain to matters for which the Scottish Administration will then be responsible or which pertain to a matter of public interest for which the Lord Advocate will then become responsible as the principal Law Officer of the Crown in right of the Scottish Administration. This will ensure that the Lord Advocate will then represent the interests of the Scottish Administration while the Advocate General will continue to represent the interests of United Kingdom Government in civil proceedings.

Articles 8 and 9 contain ancillary provisions to articles 5 to 7.

Articles 10 to 12 contain provisions modifying certain enactments. Article 10 removes any risk that the Advocate General may be paid as a Minister in the UK Government before 20th May 1999 when he is appointed immediately before that date for the purpose of receiving functions which are transferred to him from the Lord Advocate.

Article 11 modifies the effect during the transitional period of the references to the Scottish Administration in the Crown Suits (Scotland) Act 1857 (c. 44) and the Crown Proceedings Act 1947 (c. 44), as amended by the Scotland Act, so that they do not include the offices specified in section 126(8)(a) of that Act, namely the Registrar General of Births, Deaths and Marriages for Scotland, the Keeper of the Registers of Scotland the Keeper of the Records of Scotland. This is because until the principal appointed day those offices will continue to be departments in the United

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Kingdom Government and should be represented in any court proceedings by the Scottish Law Officer to the United Kingdom Government ie the Advocate.

Article 12 modifies the references in any enactment to a government department during the transitional period so that they include any part of the Scottish Administration, other than the offices specified in section 126(8)(a) of the Act