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STATUTORY INSTRUMENTS

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**2000 No. 746**

**CONSTITUTIONAL LAW  
DEVOLUTION, SCOTLAND**

**The Scotland Act 1998 (Cross-Border Public  
Authorities) (Forestry Commissioners) Order 2000**

*Made - - - - 15th March 2000  
Coming into force in  
accordance with article 1*

At the Court at Buckingham Palace, the 15th day of March 2000

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been laid before and approved by a resolution of each House of Parliament and of the Scottish Parliament;

And whereas the Forestry Commissioners were specified as a cross-border public authority by the Scotland Act 1998 (Cross-Border Public Authorities) (Specification) Order 1999(1) and provision was made for the adaptation of functions relating to forestry by the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc.) Order 1999(2);

And whereas it has been recommended to Her Majesty in Council to make this Order following consultation with the Forestry Commissioners;

Now, therefore, Her Majesty, in exercise of the powers conferred on Her by sections 89, 113 and 114 of the Scotland Act 1998(3), 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 and commencement**

**1.** This Order may be cited as the Scotland Act 1998 (Cross-Border Public Authorities) (Forestry Commissioners) Order 2000 and shall come into force on the day after the day on which it is made.

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(1) S.I. 1999/1319.  
(2) S.I. 1999/1747.  
(3) 1998 c. 46.

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**Adaptation of functions etc.**

2. The modifications specified in the Schedule to this Order shall have effect.

**Transitory provision**

3. In respect of any time after the coming into force of this Order and before 1st April 2000, section 41(10) of the Forestry Act 1967<sup>(4)</sup> shall be read as if the reference therein to “an Act of the Scottish Parliament” were a reference to the Scotland Act 1998 (Transitory and Transitional Provisions) (Finance) Order 1999<sup>(5)</sup>.

*A. K. Galloway*  
Clerk of the Privy Council

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(4) 1967 c. 10; section 41(10) is inserted by Article 2 of, and paragraph 5(5) of the Schedule to, the present Order.  
(5) S.I. 1999/441.

## SCHEDULE

### MODIFICATION OF PROVISIONS RELATING TO THE FORESTRY COMMISSIONERS

#### *New Forest Act 1949 (c. 69)*

1. Section 20 of the New Forest Act 1949 is amended—
  - (a) by substituting in subsection (1), in place of the words “paid into the Forestry Fund”, the words “treated in the manner specified in section 41 of the Forestry Act 1967”; and
  - (b) by substituting in subsection (2), in place of the words “out of the Forestry Fund”, the words “in accordance with section 41 of the Forestry Act 1967”.

#### *Plant Varieties and Seeds Act 1964 (c. 14)*

2. Section 29(2) of the Plant Varieties and Seeds Act 1964(6) is amended by substituting for the words from “Any expenses incurred” to the end—

“Any expenses incurred or fees received by the Commissioners by virtue of this subsection shall be defrayed, or as the case may be treated, in accordance with section 41 of the Forestry Act 1967.”.

#### *New Forest Act 1964 (c. 83)*

3. Section 14(2) of the New Forest Act 1964 is amended by substituting for “out of the Forestry Fund” the words “in accordance with section 41 of the Forestry Act 1967”.

#### *Superannuation Act 1965 (c. 74)*

4. In section 39(1) of the Superannuation Act 1965, item 7 of the subsection is amended by omitting the words “The Forestry Fund.” and by inserting in the appropriate place the words “The Forestry Commissioners.”.

#### *Forestry Act 1967 (c. 10)*

- 5.—(1) The Forestry Act 1967 is amended as follows.
  - (2) In section 41(7), for subsections (2) and (3) there are substituted the following subsections—
    - “(2) This subsection applies to the following expenses—
      - (a) the salaries of the Forestry Commissioners and the salaries or remuneration of the officers and servants of the Commissioners;
      - (b) all expenses incurred by the Commissioners (including the cost of any grant or loan made by them) in the exercise of their functions under or by virtue of—
        - (i) this Act (including the payment of allowances to the members of any committee maintained by them under this Act), or
        - (ii) any other enactment;
      - (c) any superannuation benefits paid under paragraph 9 of Schedule 1 to this Act or under a scheme made by virtue of paragraph 10 of that Schedule;

(6) Section 29(2) was inserted by the European Communities Act 1972 (c. 68), section 4 and Schedule 4, paragraph 5, and amended by S.I. 1999/1747, Article 3 and Schedule 12, paragraph 2.

(7) Subsections (1) to (4A) were substituted by S.I. 1999/1747, Article 3 and Schedule 12, paragraph 4(33).

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- (d) any administrative expenses of the Minister under Part II of this Act (including sums required for the payment of remuneration to the members of any committee appointed by him under section 27);
- (e) all capital payments made by the Minister in acquiring land under section 39 above and any expenses incurred by him in managing such land and any rent or other outgoings payable in respect of such land,

but this subsection does not apply to any expenses to which subsection (4) below applies.

(3) The expenses to which subsection (2) above applies shall be payable out of money provided by Parliament, except in so far as they are met out of money held by the Commissioners in accordance with subsection (6) or (7) below.

(3A) Where, by virtue of subsection (3) above, any expenses incurred by the Minister falling within subsection (2) above are to be met out of money held by the Commissioners, they shall make payments to him for that purpose.”.

(3) In section 41(4), the word “and” is omitted from the end of paragraph (a) and the following is inserted at the end of the subsection—

“(c) all grants and loans made by the Commissioners under section 1 of the Forestry Act 1979<sup>(8)</sup> in relation to land in Scotland; and

(d) all expenditure incurred by the Commissioners in the exercise of their functions under the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999<sup>(9)</sup>.”.

(4) Section 41(4A) is repealed.

(5) In section 41, the following subsections are inserted after subsection (5)<sup>(10)</sup>—

“(6) Subject to subsections (8) and (10) below, all sums received by the Commissioners in respect of—

- (a) the sale of timber or any other transactions carried out by them in the exercise of their functions under this Act, or
- (b) any other exercise of their functions under or by virtue of this Act or any other enactment,

shall be held by the Commissioners for the purpose of meeting the expenses to which subsection (2) above applies.

(7) Subject to subsection (8) below, the following sums received by the Minister shall be paid by him to the Commissioners and held by them for the purpose of meeting the expenses to which subsection (2) above applies—

- (a) any capital sum received from the sale, lease or exchange of land acquired by him under section 39 above and all sums received by him from the letting or use of such land, and
- (b) all sums received under sections 16 to 18 of the New Forest Act 1949.

(8) The Minister may, with the approval of the Treasury, direct—

- (a) that sums received by the Commissioners falling within subsection (6) above, or by the Minister falling within subsection (7) above, or both, which are specified or of a description specified in the direction, or

<sup>(8)</sup> 1979 c. 21; see also paragraph 8 of the present Schedule.

<sup>(9)</sup> S.S.I. 1999/43.

<sup>(10)</sup> Subsections (6) and (7) of section 41 were repealed respectively by Article 3 of, and paragraph 4(33)(b) of Schedule 12 to, S.I. 1999/1747 and by section 6(2) of, and the Schedule to, the Forestry Act 1981 (c. 39).

- (b) that all sums received by the Commissioners falling within subsection (6) above, or by the Minister falling within subsection (7) above, or both, as specified in the direction,

shall not be subject to subsection (6) or, as the case may be, (7) but shall instead be paid into the Consolidated Fund.

(9) The power to give a direction under subsection (8) above includes power to vary or revoke a previous direction under that power.

(10) Subject to any provision made by or under an Act of the Scottish Parliament for the disposal of or accounting for sums received, there shall be paid into the Scottish Consolidated Fund—

- (a) all sums received by the Commissioners of a description specified in subsection (6)(a) above as regards Scotland;
- (b) all sums received by the Commissioners in the exercise of their functions under the Countryside (Scotland) Act 1967(11).

(11) Any question as to whether, for the purposes of this section—

- (a) any expenditure incurred by the Commissioners is incurred, or to be treated as incurred, as regards Scotland, or
- (b) any sum received by them is received, or to be treated as received, in respect of the exercise of their functions as regards Scotland,

may be determined by agreement between the Minister (acting with the agreement of the Treasury) and the Scottish Ministers.”.

(6) In section 45(3)(12), the words “and accounts”, in both places where they occur, are omitted.

(7) In Schedule 1—

- (a) in paragraph 7(2)(13), the words “out of money provided by Parliament” are omitted, and
- (b) paragraphs 9(3) and 10(2) are repealed.

#### *Countryside Act 1968 (c. 41)*

6. Section 23(6)(14) of the Countryside Act 1968 is amended by substituting the following—

“(6) All expenses incurred, and all sums received, by the Commissioners in the exercise of their powers under this section shall be defrayed, or as the case may be treated, in accordance with section 41 of the Forestry Act 1967.”.

#### *New Forest Act 1970 (c. 21)*

7. Section 5(2) of the New Forest Act 1970 is amended by substituting, in place of the words “out of the Forestry Fund”, the words “in accordance with section 41 of the Forestry Act 1967”.

#### *Forestry Act 1979 (c. 21)*

8. Section 1(2) of the Forestry Act 1979(15) is amended by substituting the following—

“(2) Any such grant or loan shall be payable in accordance with section 41 of the Forestry Act 1967.”.

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(11) 1967 c. 86.

(12) Section 45 was substituted by S.I. 1999/1747, Article 3 and Schedule 12, paragraph 4(36).

(13) Paragraph 7(2) was amended by S.I. 1999/1747, Article 3 and Schedule 12, paragraph 4(39).

(14) Section 23(6) was amended by S.I. 1999/1747, Article 3 and Schedule 12, paragraph 5.

(15) Section 1(2) was substituted by S.I. 1999/1747, Article 3 and Schedule 12, paragraph 6(b).

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*Agriculture and Forestry (Financial Provisions) Act 1991 (c. 33)*

9. Section 4(2) of the Agriculture and Forestry (Financial Provisions) Act 1991(16) is amended by substituting, in place of the words “payable out of money provided by Parliament”, the words “defrayed in accordance with section 41 of the Forestry Act 1967”.

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**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order, which is made under section 89 of the Scotland Act 1998 (“the 1998 Act”), amends statutory provisions relating to the Forestry Commissioners, who are a cross-border public authority for the purposes of that Act. The Order makes further amendments to provisions which govern the funding of forestry functions, following the abolition of the Forestry Fund on the coming into force of the 1998 Act in July 1999. It supersedes certain amendments made by the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc.) Order 1999 (S.I. 1999/1747) (“the 1999 Order”). This Order comes into force on the day after the day on which it is made.

Article 2 of the Order gives effect to the amendments contained in the Schedule. The principal provision is paragraph 5, which amends the Forestry Act 1967. Paragraphs 5(2) to (5) amend section 41 of the Forestry Act 1967, the provisions on funding, which was amended by the 1999 Order. Except in relation to Scotland, the expenses of the Commissioners, and forestry expenses of the Minister (the Minister of Agriculture, Fisheries and Food or the Secretary of State), are to be met out of money provided by Parliament only if they cannot be met out of receipts held by the Commissioners. The Commissioners are empowered to hold sums received to meet such expenditure, unless the Minister (with the consent of the Treasury) directs that the receipts should be paid into the Consolidated Fund. As regards Scotland, the provisions made by the 1999 Order are preserved (with minor drafting amendments), under which the expenses of the Commissioners as regards Scotland, and the Scottish Ministers' forestry expenses, are met out of the Scottish Consolidated Fund, and their respective receipts paid into that Fund, subject to any Act of the Scottish Parliament. The Minister and the Scottish Ministers are also given power to determine by agreement questions relating to whether or not particular expenses or receipts fall within the provisions of section 41 relating to Scotland.

Paragraph 5(6) amends the duty under the Forestry Act 1967 (amended by the 1999 Order) on the Commissioners to lay an annual report before Parliament by removing redundant references to laying accounts (for which provision is already made under section 5 of the Exchequer and Audit Departments Act 1921).

The amended provisions of the Forestry Act 1967 also have effect in relation to the Commissioners' functions under other legislation. The other provisions of the Schedule make consequential amendments to these other statutes for this purpose.

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(16) Section 4(2) was amended by S.I. 1999/1747, Article 3 and Schedule 12, paragraph 7.