

2003 No. 415 (S. 5)

**CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND**

**The Scotland Act 1998 (Transfer of Functions to the Scottish
Ministers etc.) Order 2003**

Made

27th February 2003

Coming into force in accordance with article 1

At the Court at Buckingham Palace, the 27th day of February 2003

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), 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.) Order 2003 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 Taxes Management Act 1970^(b) shall come into force—

- (a) so far as relating to section 2A of that Act, when section 102 of the Access to Justice Act 1999^(c) comes into force in Scotland; and
- (b) so far as relating to section 3A of the Taxes Management Act 1970, when section 103 of the Access to Justice Act 1999 comes into force in Scotland.

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

^(a) 1998 c.46.

^(b) 1970 c.9.

^(c) 1999 c.22.

Transfer of functions to the Scottish Ministers

2. The functions which are conferred on a Minister of the Crown by the enactments specified in column 1 of the Schedule to this Order shall—

- (a) so far as they are exercisable by that Minister in or as regards Scotland; and
- (b) subject to any restriction in the corresponding entry in column 2 of the Schedule, be exercisable by the Scottish Ministers instead of by the Minister of the Crown.

Function shared by the Scottish Ministers and a Minister of the Crown

3. The function which is conferred on a Minister of the Crown by section 272 of the Transport Act 2000^(a) shall so far as it is exercisable by that Minister in or as regards Scotland be exercisable by the Scottish Ministers concurrently with the Minister of the Crown.

General modifications of enactments etc.

4.—(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 or 3 of this Order as they apply in relation to the exercise of functions by the Scottish Ministers within devolved competence.

(2) Sections 119 and 120 of the 1998 Act shall apply in relation to the functions exercisable by the Scottish Ministers by virtue of those articles as they apply 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.

Transitional and saving provision

5.—(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^(b).

A. K. Galloway
Clerk of the Privy Council

^(a) 2000 c.38.
^(b) 1972 c.68.

SCHEDULE

ENACTMENTS CONFERRING FUNCTIONS TRANSFERRED TO THE SCOTTISH
MINISTERS

<i>Column 1</i> <i>Enactment</i>	<i>Column 2</i> <i>Restriction</i>
The Taxes Management Act 1970 (c.9), sections 2A and 3A(a).	
The Rehabilitation of Offenders Act 1974 (c.53), sections 4(4) and 7(4).	
The Access to Justice Act 1999 (c.22), section 108(1) and Schedule 14, paragraph 1(1).	Only so far as the functions are exercisable in relation to the coming into force of sections 101, 102 and 103 of the Access to Justice Act 1999.

(a) Section 2A is inserted, prospectively in Scotland, by the Access to Justice Act 1999, section 102 and section 3A is inserted, prospectively in Scotland, by the Access to Justice Act 1999, section 103.

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, or concurrently with, the Minister concerned.

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

Article 3 provides that the functions of a Minister of the Crown in terms of section 272 of the Transport Act 2000, to provide freight facilities grant for water borne freight, shall be exercisable in or as regards Scotland by the Scottish Ministers concurrently with a Minister of the Crown. By virtue of section 272(5) of that Act the power conferred by section 272 may only be exercised in or as regards Scotland if its exercise relates to reserved matters within the meaning of the Scotland Act 1998.

Article 4 provides for certain general modifications of enactments in connection with provision made by the Order.

Article 5 makes transitional and saving provision.

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