

2005 No. 849 (S. 2)

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

**The Scotland Act 1998 (Transfer of Functions to the Scottish
Ministers etc.) Order 2005**

Made - - - - - *22nd March 2005*

Coming into force - - - - - *23rd March 2005*

At the Court at Buckingham Palace, the 22nd day of March 2005

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, 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 and commencement

1. This Order may be cited as the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 and shall come into force on the day after the day on which it is made.

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 or requirement in the corresponding entry in column 2 of that Schedule,

be exercisable by the Scottish Ministers instead of by the Minister of the Crown.

^(a) 1998 c.46.

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

3.—(1) Subject to the restriction specified in paragraph (2) below, the functions conferred on a Minister of the Crown by section 2(2) of the European Communities Act 1972(a) and the European Communities (Designation) (No. 4) Order 2003(b) shall, so far as they are exercisable by him in or as regards Scotland, be exercisable by the Scottish Ministers concurrently with the Minister of the Crown.

(2) The functions referred to in paragraph (1) above are so exercisable only so far as they are exercisable in relation to food (including drink) including the primary production of food.

Modifications of enactments

4.—(1) In section 22C of the Road Traffic Regulation Act 1984 (terrorism)(c), subsection (7) is repealed.

(2) In section 39BA of the Roads (Scotland) Act 1984 (prescribing of works for anti-terrorism purposes)(d)—

(a) subsections (1) and (2) are repealed; and

(b) in subsection (3), for “by virtue of subsection (2) above,” substitute “for the purpose of, or in connection with, avoiding or reducing, or reducing the likelihood of, danger connected with terrorism within the meaning of section 1 of the Terrorism Act 2000(e).”

General modifications of enactments

5.—(1) Sections 117 and 118 of the Scotland Act 1998 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) 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 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) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), section 125 and Schedule 8, paragraph 15(2) and (3).

(b) S.I. 2003/2901.

(c) 1984 c.27. Section 22C was inserted by the Civil Contingencies Act 2004 (c.36), section 32 and Schedule 2, paragraph 16(2).

(d) 1984 c.54. Section 39BA was inserted by the Civil Contingencies Act 2004 (c.36), section 32 and Schedule 2, paragraph 17(1).

(e) 2000 c.11.

(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.

A. K. Galloway
Clerk of the Privy Council

SCHEDULE

Article 2

ENACTMENTS CONFERRING FUNCTIONS TRANSFERRED TO THE SCOTTISH MINISTERS

<i>Column 1</i> <i>Enactments</i>	<i>Column 2</i> <i>Restrictions or requirements</i>
<p>The Fire and Rescue Services Act 2004 (c.21)–</p> <p style="padding-left: 40px;">(a) sections 34(1) to (5) and (8), 35(1), (4) and (6) and 36(1) to (3); and</p> <p style="padding-left: 40px;">(b) section 60(2).</p>	<p style="text-align: center;">–</p> <p>Only so far as the functions are exercisable in relation to regulations or orders made by the Scottish Ministers.</p>
<p>The Electricity Act 1989 (c.29)–</p> <p style="padding-left: 40px;">(a) section 3A(a);</p> <p style="padding-left: 40px;">(b) section 32BA(b); and</p> <p style="padding-left: 40px;">(c) section 32(7)(c).</p>	<p>Only so far as the functions are exercisable in relation to functions exercisable by the Scottish Ministers.</p> <p style="text-align: center;">–</p> <p style="text-align: center;">–</p>
<p>The Energy Act 2004 (c.20), sections 115(6), 116(8), 117(2), 118(2) and 119(7).</p>	–
<p>The Food and Environment Protection Act 1985 (c.48), sections 16(d) and 24(3).</p>	–

(a) Section 3A was inserted by the Utilities Act 2000 (c.27), section 13 and was amended by the Communications Act 2003 (c.21), section 406(1) and Schedule 17, paragraph 98 and the Energy Act 2004 (c.20) (“the 2004 Act”), sections 83, 143, 147, 178, 190, and Schedule 19, paragraphs 3 and 4, and prospectively amended by section 179 of the 2004 Act.

(b) Section 32BA was inserted by the 2004 Act, section 117(1).

(c) Section 32(7)(d) was amended by the 2004 Act, section 119(2). Functions under section 32 were, prior to the amendment of section 32(7)(d) by the 2004 Act, transferred to the Scottish Ministers by S.I. 2000/3253.

(d) Section 16 was amended by the Pesticides (Fees and Enforcement) Act 1989 (c.27), section 1(2), the Pesticides Act 1998 (c.26), section 1(1) to (4), the Food Standards Act 1999 (c.28) (“the 1999 Act”), section 18 and Schedule 3, Part 3, paragraph 16(5) and S.I. 1999/1747.

<i>Column 1 Enactments</i>	<i>Column 2 Restrictions or requirements</i>
The Food Safety Act 1990 (c.16), sections 2(1)(b)(a), 5(6)(b), 6(3), (4) and (6)(c), 13(d), 16(e), 17(f), 18(g), 19(h), 26(i), 27(j), 30(9)(k), 31(l), 40(m), 41(n), 42(o), 45(p), 47(q), 48(r), 49(s) and Schedule 1(t).	—
The Food Standards Act 1999 (c.28), section 24.	—
The Road Traffic Regulation Act 1984 (c.27)— (a) sections 1 and 14(u); (b) sections 22C(1), (2), (4) and (5) and 22D(3) to (5)(w);	Only so far as the functions are exercisable by virtue of section 22C(v) of the Road Traffic Regulation Act 1984. The functions shall be exercisable only with the agreement of the Secretary of State. The functions shall be exercisable only with the agreement of the Secretary of State.

- (a) Section 2(1)(b) was amended by the 1999 Act, section 40(1) and Schedule 5, paragraph 8.
- (b) Section 5(6) was amended by the 1999 Act, section 40(1) and Schedule 5, paragraph 8.
- (c) Section 6(3) was amended by the 1999 Act, section 40(1) and Schedule 5, paragraph 10(1) and (2). Section 6(4) was amended by the Deregulation and Contracting Out Act 1994 (c.40) (“the 1994 Act”), sections 31 and 82(2)(d) and Schedule 9, paragraph 6 and the 1999 Act, section 40(1) and (4), Schedule 5, paragraph 10(1) and (3) and Schedule 6. Section 6(6) was amended by the 1994 Act, sections 76 and 82(2)(d) and Schedule 16, paragraph 16 and the 1999 Act, section 40(1) and Schedule 5, paragraph 8.
- (d) Section 13 was amended by the 1999 Act, section 40(1) and Schedule 5, paragraphs 8 and 11.
- (e) Section 16 was amended by the 1999 Act, section 40(1) and Schedule 5, paragraph 8.
- (f) Section 17 was amended by the 1999 Act, section 40(1) and Schedule 5, paragraphs 8 and 12.
- (g) Section 18 was amended by the 1999 Act, section 40(1) and Schedule 5, paragraphs 8 and 13.
- (h) Section 19 was amended by the 1999 Act, section 40(1) and Schedule 5, paragraphs 8 and 14.
- (i) Section 26 was amended by the 1999 Act, section 40(4) and Schedule 6.
- (j) Section 27 was amended by the Local Government etc. (Scotland) Act 1994 (c.39), section 180(1), Schedule 13, paragraph 163(3) and the 1999 Act, section 40(1) and Schedule 5, paragraph 8. There are other amendments to section 27 which are not relevant to this Order.
- (k) Section 30(9) was amended by the 1999 Act, section 40(1) and Schedule 5, paragraph 8.
- (l) Section 31 was amended by the 1999 Act, section 40(1) and Schedule 5, paragraph 8.
- (m) Section 40 was amended by the 1999 Act, section 40(1) and (4), Schedule 5, paragraphs 8 and 17 and Schedule 6; S.I. 1999/1820 and S.I. 2004/2990.
- (n) Section 41 was amended by the 1999 Act, section 40(1) and Schedule 5, paragraphs 8 and 18.
- (o) Section 42 was amended by the 1994 Act, sections 76, 82(2)(f) and Schedule 16, paragraph 17 and the 1999 Act, section 40(1) and Schedule 5, paragraphs 8 and 19.
- (p) Section 45 was amended by the 1999 Act, section 40(1) and Schedule 5, paragraphs 8 and 20.
- (q) Section 47 was amended by the 1999 Act, section 40(1) and Schedule 5, paragraph 8.
- (r) Section 48 was amended by the 1999 Act, section 40(1) and Schedule 5, paragraphs 8 and 21 and S.I. 2004/2990.
- (s) Section 49 was amended by the 1999 Act, section 40(1) and Schedule 5, paragraph 8.
- (t) Paragraph 6A of Schedule 1 was inserted by the 1999 Act, section 40(1) and Schedule 5, paragraph 23. Paragraph 7(2) of Schedule 1 was amended by the 1999 Act, section 40(1) and Schedule 5, paragraph 24.
- (u) There have been amendments to sections 1 and 14 which are not relevant to this Order.
- (v) Section 22C was inserted by the Civil Contingencies Act 2004 (c.36), section 32 and Schedule 2, paragraph 16(2).
- (w) Section 22D was inserted by the Civil Contingencies Act 2004 (c.36), section 32 and Schedule 2, paragraph 16(2).

<i>Column 1 Enactments</i>	<i>Column 2 Restrictions or requirements</i>
<p>(c) section 92(a); and</p> <p>(d) Schedule 9(b).</p>	<p>Only so far as that provision is applied by section 22D(3) of the Road Traffic Regulation Act 1984.</p> <p>The functions shall be exercisable only with the agreement of the Secretary of State.</p> <p>Only so far as the functions relate to the exercise of powers, by virtue of section 22C of the Road Traffic Regulation Act 1984.</p> <p>The functions shall be exercisable only with the agreement of the Secretary of State.</p>
<p>The Roads (Scotland) Act 1984 (c.54), sections 39A(c), 39B(d) and 39BA(e).</p>	<p>–</p>

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- (a) Section 92 was amended by the New Roads and Street Works Act 1991 (c.22), section 168(1) and Schedule 8, paragraph 65.
- (b) Paragraph 12A of Schedule 9 was inserted by the Civil Contingencies Act 2004 (c.36), section 32 and Schedule 2, paragraph 16(4). Functions in relation to Schedule 9, with the exception of functions under paragraph 12A, were transferred to the Scottish Ministers by S.I. 1999/1750.
- (c) Section 39A was inserted by the Traffic Calming Act 1992 (c.30) (“the 1992 Act”), section 2(1) and Schedule 2.
- (d) Section 39B was inserted by the 1992 Act, section 2(1) and Schedule 2.
- (e) Section 39BA was inserted by the Civil Contingencies Act 2004 (c.36), section 32 and Schedule 2, paragraph 17(1).

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, 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 to this Order shall, so far as exercisable in or as regards Scotland, be exercisable by the Scottish Ministers instead of by a Minister of the Crown.

In relation to the Fire and Rescue Services Act 2004, this Order transfers to the Scottish Ministers functions in respect of Fire Authority pensions.

In relation to the Electricity Act 1989, this Order transfers to the Scottish Ministers functions specified in section 3A, 32BA and 32(7) of that Act which relate to the principal objective and general duties of the Secretary of State in relation to consumers, the use of green certificates issued in Northern Ireland and consultation requirements.

In relation to the Energy Act 2004, this Order transfers to the Scottish Ministers functions relating to consultation requirements in relation to functions exercisable under the Electricity Act 1989.

In relation to the Food and Environment Protection Act 1985, the Food Safety Act 1990 and the Food Standards Act 1999, this Order transfers to the Scottish Ministers those functions, other than functions already devolved to the Scottish Ministers, relating to food safety and standards in respect of all substances considered food under Regulation (EC) 178/2002 (O.J. No. L 31, 1.2.2002, p.1).

In relation to the Road Traffic Regulation Act 1984, this Order transfers to the Scottish Ministers, subject to a requirement for the agreement of the Secretary of State, functions exercisable for purposes related to avoiding or reducing, or reducing the likelihood of, danger connected with terrorism. In relation to the Roads (Scotland) Act 1984, the Order transfers to the Scottish Ministers functions exercisable for purposes in connection with traffic calming which relate to avoiding or reducing, or reducing the likelihood of, danger connected with terrorism.

Article 3 provides that those functions which are not already devolved to the Scottish Ministers and which are conferred on a Minister of the Crown by section 2(2) of the European Communities Act 1972 shall, so far as exercisable in or as regards Scotland, and in relation to food (including drink) including the primary production of food, be exercisable by the Scottish Ministers concurrently with a Minister of the Crown.

Article 4 provides for the modification of the Road Traffic Regulation Act 1984 and the Roads (Scotland) Act 1984 to repeal provisions in respect of the allocation of functions to the Secretary of State which will be spent as a result of the transfer of functions under this Order, and to modify a provision as a consequence of the transfer of functions.

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

Article 6 makes transitional and saving provision for the effect of this Order.

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