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STATUTORY INSTRUMENTS

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**2008 No. 1776**

**CONSTITUTIONAL LAW  
DEVOLUTION, SCOTLAND  
ENVIRONMENTAL PROTECTION**

**The Scotland Act 1998 (Transfer of Functions  
to the Scottish Ministers etc.) Order 2008**

*Made - - - - 9th July 2008*

*Coming into force in accordance with article 1*

At the Court at Buckingham Palace, the 9th day of July 2008

Present,

The Queen's Most Excellent Majesty in Council

This Order is made by Her Majesty in Council in exercise of the powers conferred upon Her by sections 63(1)(b), 113(3) and (4), and 124(2) of the Scotland Act 1998<sup>(1)</sup>.

In accordance with section 115 of, and paragraphs 1 and 2 of Schedule 7 to, that Act a draft of this Order was—

- (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.

Accordingly, Her Majesty, by and with the advice of Her Privy Council, makes the following Order.

**Citation, commencement, interpretation and extent**

**1.**—(1) This Order may be cited as the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2008 and comes into force on the day after the day on which it is made.

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

(3) This Order does not extend to Northern Ireland.

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(1) 1998 c. 46.

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

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 by virtue of the reservation at Section D5 of Schedule 5 to the 1998 Act; and
- (b) subject to any restriction in the corresponding entry in column 2 of the Schedule to this Order,

be exercisable by the Scottish Ministers concurrently with the Minister of the Crown.

### **General modifications of enactments**

3.—(1) Sections 117 and 118 (general modification of enactments) of the 1998 Act shall apply in relation to the exercise of functions by the Scottish Ministers by virtue of article 2 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.

*Judith Simpson*  
Clerk of the Privy Council

## SCHEDULE

Article 2

ENACTMENTS CONFERRING FUNCTIONS EXERCISABLE CONCURRENTLY  
BY THE SCOTTISH MINISTERS AND A MINISTER OF THE CROWN

<i>Column 1</i> <i>Enactment</i>	<i>Column 2</i> <i>Restrictions or requirement</i>
The Environment Act 1995 (c. 25), sections 31(guidance on sustainable development)(2), 40 (Ministerial directions)(3), 41(10) (charging schemes)(4) and 42 (approval of charging schemes)(5).	Only so far as the functions are exercisable in relation to the implementation of any Community obligation concerning energy efficiency.
The Pollution Prevention and Control Act 1999 (c. 24), section 2 (regulation of polluting activities) and paragraph 20(2)(c) of Schedule 1 (designation of directives).	Only so far as the functions are exercisable in relation to the implementation of any Community obligation concerning energy efficiency.

## EXPLANATORY NOTE

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

This Order, made under the Scotland Act 1998 provides for certain functions of a Minister of the Crown, so far as they are exercisable in or as regards Scotland, to be exercisable by the Scottish Ministers concurrently with the Minister concerned.

Article 2 provides that the functions which are conferred on a Minister of the Crown by the enactments which are specified in the Schedule to this Order shall, so far as exercisable in or as regards Scotland by virtue of the reservation at Section D5 of Schedule 5 to the Scotland Act 1998, be exercisable by the Scottish Ministers concurrently with a Minister of the Crown. The transfer of functions to the Scottish Ministers is subject to the restrictions specified in the Schedule.

Article 3 provides for the general modification of enactments in connection with provision made by this Order.

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- (2) Section 31 was amended by S.I. 1999/1820, article 4 and Schedule 2, paragraph 120(2).  
(3) There are amendments to section 40 in S.I. 1999/1746, article 5(2) which are not relevant to this Order. See section 37(1) for the meaning of “a new Agency”. In Scotland, the new Agency is the Scottish Environment Protection Agency. See section 56 for the definition of “the appropriate Minister”. In the case of the Scottish Environment Protection Agency, the appropriate Minister is the Secretary of State.  
(4) Section 41 was amended by S.I. 2007/1711, regulation 46(1); by S.I. 2007/3106, regulation 9; and by S.S.I. 2003/235, regulation 21 and Schedule 6, paragraph 1.  
(5) Section 42 was amended by the Food Standards Act 1999 (c. 28), section 40 and Schedule 5, paragraph 44; and by S.I. 1999/1820, article 4 and Schedule 2, paragraph 120(3).