Draft Order laid before Parliament under paragraphs 1 and 2 of Schedule 7 to the Scotland Act 1998, for approval by resolution of each House of Parliament and of the Scottish Parliament.

DRAFT STATUTORY INSTRUMENTS

2025 No.

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

ENVIRONMENTAL PROTECTION

ELECTRICITY

The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2025

Made - - - - ***

Coming into force in accordance with article 1(1)

At the Court at Buckingham Palace, the *** day of ***

Present,

The King's Most Excellent Majesty in Council

This Order is made by His Majesty in Council in exercise of the powers conferred upon Him by sections 30(3), 63(1)(b) and (3), and 113(4) and (5) of the Scotland Act 1998(**a**).

In accordance with paragraphs 1 and 2 of Schedule 7 to that Act, 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.

Accordingly, His Majesty, by and with the advice of His Privy Council, makes the following Order:

Citation, commencement, extent and interpretation

1.—(1) This Order may be cited as the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2025 and comes into force on the day after the day on which it is made.

(**a**) 1998 c. 46.

(2) This Order extends to England and Wales, Scotland and Northern Ireland.

(3) In this Order—

"the 1989 Act" means the Electricity Act 1989(**a**);

"the 2023 Act" means the Levelling-up and Regeneration Act 2023(**b**);

"the Scottish REZ area" means the area designated by the Renewable Energy Zone (Designation of Area) (Scottish Ministers) Order 2005(**c**) as the area in relation to which the Scottish Ministers are to have functions.

Functions to be treated as being exercisable in or as regards Scotland

2.—(1) The functions to which paragraph (2) applies are, for the purposes of section 63 of the Scotland Act 1998 (power to transfer functions)(**d**), to be treated as being functions which are exercisable in or as regards Scotland.

(2) This paragraph applies to the functions of making regulations that are conferred on the Secretary of State by Part 6 of the 2023 Act (environmental outcomes reports), so far as they are exercisable by the Secretary of State in relation to the assessment of the effects on the environment in connection with—

(a) applications for consent under section 36 of the 1989 Act(**e**) for the construction, extension or operation of a generating station in the Scottish REZ area (including any application for approval, consent or agreement required by virtue of a condition included in the grant of such a consent), or

(b) applications for the variation, under section 36C of the 1989 Act(**f**), of a consent described in sub-paragraph (a).

(3) But paragraph (2) does not apply to the making of provision within section 159(2) of the 2023 Act (power to provide exemptions for national defence and civil emergency etc).

Functions to be exercisable concurrently by the Secretary of State and the Scottish Ministers

3.—(1) Subject to paragraph (2), the functions mentioned in paragraph (3) are, so far as they are exercisable by the Secretary of State in or as regards Scotland, to be exercisable by the Scottish Ministers concurrently with the Secretary of State.

(2) The Scottish Ministers may exercise a function by virtue of this article only after consulting the Secretary of State.

(3) The functions are—

(a) the functions of making regulations that are conferred by—

(i) Chapter 1 of Part 3 of the 2023 Act (planning data); and

(ii) Part 6 of the 2023 Act, except so far as relating to the making of provision within section 159(2) of that Act;

(b) the function conferred by section 84(3) of the 2023 Act (publication of approved data standards),

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(**a**) 1989 c. 29.
(**b**) 2023 c. 55.
(**c**) S.I. 2005/3153.
(**d**) 1998 c. 46.
(**e**) Section 36 was amended by the Energy Act 2004 (c. 20) section 93(1) and (3), the Planning Act 2008 (c. 29) section 36 and Schedule 2, paragraphs 31 and 32, the Marine and Coastal Access Act 2009 (c. 23) section 12(7)(a) and (8), the Energy Act 2016 (c. 20) section 78, the Wales Act 2017 (c. 4) section 39 and Schedule 6, paragraph 47, and S.I. 2006/1054. The functions conferred by section 36 of the Electricity Act 1989 are exercisable in or as regards Scotland by the Scottish Ministers by virtue of S.I. 2006/1040.
(**f**) Section 36C was inserted by the Growth and Infrastructure Act 2013 (c. 27) section 20(1) and (2) and was amended by the Wales Act 2017 (c. 4) sections 39(12), 69(1) and Schedule 6, paragraph 48.

so far as the functions are exercisable by the Secretary of State in relation to the assessment of the effects on the environment in connection with applications to which paragraph (4) applies.

(4) This paragraph applies to—

(a) applications for consent under section 36 of the 1989 Act for the construction, extension or operation of generating stations (whether in Scotland or in the Scottish REZ area) (including any application for approval, consent or agreement required by virtue of a condition included in the grant of such a consent);

(b) applications for the variation, under section 36C of the 1989 Act, of a consent described in sub-paragraph (a);

(c) applications for consent under section 37 of the 1989 Act (consent required for overhead lines)(**a**) for the installation, or the keeping installed, of an electric line in Scotland (including any application for approval, consent or agreement required by virtue of a condition included in the grant of such a consent).

(5) Paragraph 1 of Schedule 13 to the 2023 Act (restriction on making provision outside devolved competence) does not apply in relation to regulations made by the Scottish Ministers by virtue of this article under—

(a) Chapter 1 of Part 3 of the 2023 Act; or

(b) Part 6 of that Act.

Modifications of the 2023 Act

4.—(1) For the purposes of any function that is exercisable by the Scottish Ministers by virtue of article 3 of this Order—

(a) any reference to an appropriate authority in Chapter 1 of Part 3 or Part 6 of the 2023 Act is to be read as if it were a reference to the Scottish Ministers;

(b) any reference in Chapter 1 of Part 3 or Part 6 of, or Schedule 24 to, the 2023 Act to regulations made by the Scottish Ministers acting alone (including in their capacity as a devolved authority) is to be read as if it included a reference to regulations made by the Scottish Ministers by virtue of article 3;

(c) section 166(2)(c) of the 2023 Act (EOR regulations: further provision) has effect as if for "any legislation" there were substituted "any provision made by or under an Act of the Scottish Parliament".

(2) For the purposes of any function carried out by a public authority (within the meaning of section 167 of the 2023 Act (interpretation of Part 6)) under or by virtue of Part 6 of the 2023 Act, references in section 163(1) and (5) of the 2023 Act (guidance) to regulations made by a devolved authority acting alone are to be read as if they included references to regulations made by the Scottish Ministers by virtue of article 3.

Name
Clerk of the Privy Council

(**a**) Section 37 was amended by the Planning Act 2008 (c. 29) section 36 and Schedule 2, paragraphs 31 and 33, and the Wales Act 2017 (c. 4) section 42. The functions conferred by section 37 of the Electricity Act 1989 are exercisable in or as regards Scotland by the Scottish Ministers by virtue of S.I. 1999/1750.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for certain functions of the Secretary of State conferred by the Levelling-up and Regeneration Act 2023 (c. 55) ("the 2023 Act"), so far as exercisable by the Secretary of State in or as regards Scotland, to be exercisable concurrently with the Scottish Ministers.

These are the Secretary of State's functions of making regulations under Chapter 1 of Part 3 (planning data) or Part 6 (environmental outcomes reports) of the 2023 Act and the function conferred by section 84(3) (publication of approved data standards) of that Act, which are exercisable by Scottish Ministers only in relation to the assessment of the effects on the environment in connection with applications to the Scottish Ministers for consent under sections 36 or 37, or for variation of consent under section 36C, of the Electricity Act 1989 (c. 29) ("the 1989 Act").

Article 2 specifies that certain functions of the Secretary of State are to be treated as exercisable in or as regards Scotland so that they are then capable of being transferred under section 63 of the Scotland Act 1998. These are the Secretary of State's functions of making regulations under Part 6 of the 2023 Act (other than under section 159 (exemptions for national defence and civil emergency)) in respect of the assessment of the effects of certain public and private projects on the environment, as regards the construction, extension or operation of generating stations for which consent or variation of consent is applied for under section 36 and 36C of the 1989 Act in respect of the Scottish Renewable Energy Zone ("REZ") area. Applications for consent include applications for any approval, consent or agreement required by virtue of a condition included in the grant of consent under section 36 of the 1989 Act. The "Scottish REZ area" was designated by the Renewable Energy Zone (Designation of Area) (Scottish Ministers) Order 2005 (S.I. 2005/3153).

Article 3 provides that certain functions under Chapter 1 of Part 3 and Part 6 (other than under section 159 (exemptions for national defence and civil emergency)) of the 2023 Act are to be exercisable by the Scottish Ministers concurrently with the Secretary of State. These functions are: the assessment of the effects of certain projects on the environment as regards applications for consent under section 36 of the 1989 Act for construction, extension or operation of generating stations whether in Scotland or the Scottish REZ area; the variation of such a consent under section 36C of that Act; and applications for consent under section 37 of that Act for installing, or keeping installed, overhead lines in Scotland. For the purposes of article 3(3), applications for consent include applications for any approval, consent or agreement required by virtue of a condition included in the grant of consent under sections 36 or 37 of the 1989 Act.

Article 3(2) provides that Scottish Ministers may exercise a function by virtue of that article only after consulting the Secretary of State. Article 3(5) provides that restrictions in paragraph 1 of Schedule 13 to the 2023 Act, in respect of regulations made under Chapter 1 of Part 3 and Part 6 of that Act on Scottish Ministers acting alone, do not prevent the Scottish Ministers exercising functions by virtue of that article.

Article 4 modifies the 2023 Act in consequence of this Order so that relevant provisions of the 2023 Act, which would otherwise apply to Scottish Ministers when acting as a devolved authority under that Act, similarly apply to the exercise of functions by the Scottish Ministers by virtue of article 3.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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£5.78

http://www.legislation.gov.uk/id/ukdsi/2025/9780348264791

ISBN 978-0-34-826479-1

