STATUTORY INSTRUMENTS

2006 No. 3258

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 3) Order 2006

Made - - - - 14th December 2006

Coming into force in accordance with article 1

At the Court at Buckingham Palace, the 14th day of December 2006

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, 113(2), (3) and (4) and 124(2) of the Scotland Act 1998(**a**).

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 resolution of the Scottish Parliament.

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

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 3) Order 2006 and, except as provided in paragraphs (2) and (3), shall come into force on the second day after the day on which it is made.

(2) This article and articles 3(1), (3), (4) and (5) and 5(4), (5) and (6) shall come into force on the day after the day on which this Order is made.

(3) Article 2, so far as it relates to functions under the 1988 Act and the Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005(**b**), and article 3(2) shall come into force twenty one days after the Scotland Act 1998 (Agency Arrangements) (Specification) (No. 2) Order 2006(**c**) is laid before Parliament.

(**a**) 1998 c.46.
(**b**) S.I. 2005/3262, amended by S.I. 2006/589 and S.I. 2006/2818.
(**c**) S.I. 2006/3248.

(4) In this Order–

"the 1988 Act" means the Social Security Act 1988(**a**);

"the 1989 Act" means the Electricity Act 1989(**b**); and

"the 1998 Act" means the Scotland Act 1998.

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.

Modifications of enactments

3.—(1) In Schedule 1 to the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999(**c**), in column 1 of the entry relating to the 1989 Act, omit "32(1) and (9),".

(2) In paragraph 3 (functions in relation to welfare foods) of Schedule 4 (non-statutory functions transferred to the Scottish Ministers) to the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999–

(a) in sub-paragraph (1)(a) omit the words "an NHS Trust or" and "and for dried milk sold to family credit beneficiaries at a reduced price";

(b) in sub-paragraph (1)(b) omit the words "such" and "Trust or"; and

(c) in sub-paragraph (2) omit the words "NHS Trust" and "family credit".

(3) In the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2000(**d**)–

(a) in article 1(1), for "paragraphs (2) and (3)" substitute "paragraph (2)";

(b) omit paragraph (3) of article 1; and

(c) in column 1 of Schedule 2, omit the entry "The Electricity Act 1989 (c.29), sections 32 and 32A.".

(4) In the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2001(**e**)–

(a) omit paragraph (2)(a) of article 1; and

(b) in the Schedule, for "sections 32B and" substitute "section".

(5) In the Schedule to the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005(**f**), in column 1 of the entry relating to the 1989 Act–

(a) at the end of paragraph (a) add "and";

(b) in paragraph (b) omit "; and"; and

(c) omit paragraph (c).

(**a**) 1988 c.7.
(**b**) 1989 c.29.
(**c**) S.I. 1999/1750. There are amendments to Schedule 1 to S.I. 1999/1750 which are not relevant to this Order. Section 32 of the 1989 Act as originally enacted was saved for certain purposes by S.I. 2001/3269, article 7. The saving provisions were revoked by S.S.I. 2005/549, article 11.
(**d**) S.I. 2000/3253.
(**e**) S.I. 2001/3504.
(**f**) S.I. 2005/849.

General modifications of enactments

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 of this Order as they apply in relation to the exercise of functions by the Scottish Ministers within devolved competence.

(2) Section 119 of the 1998 Act shall apply in relation to the functions exercisable by the Scottish Ministers by virtue of article 2 of this Order as it applies in relation to functions of the Scottish Ministers which are 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 provisions

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, for the purposes of or in connection with any such function, 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) The revocation, by virtue of article 3(1), (3), (4) and (5) of the transfer to the Scottish Ministers of the functions conferred by sections 32, 32A and 32B of the 1989 Act shall not affect the validity of anything done (or having effect as if done) by or in relation to the Scottish Ministers, for the purposes of or in connection with any such function, at any time before the date on which the revocation takes effect.

(5) Anything (including legal proceedings) which, at the time that revocation takes effect, is in the process of being done by or in relation to the Scottish Ministers may, so far as it relates to any function the transfer of which is revoked by article 3(1), (3), (4) and (5), be continued–

(a) on the date of the revocation and before the date of the transfer by virtue of article 2, by or in relation to a Minister of the Crown; and

(b) on and after the date of the transfer by virtue of article 2, by or in relation to the Scottish Ministers.

(6) Anything done (or having effect as if done) by or in relation to the Scottish Ministers for the purposes of or in connection with any function the transfer of which is revoked by article 3(1), (3), (4) and (5) shall, if in force at the time when the revocation takes effect, have effect as if done by or in relation to–

(a) a Minister of the Crown in so far as that is required for continuing its effect on the date of revocation and before the date of the transfer by virtue of article 2; and

(b) the Scottish Ministers in so far as that is required for continuing its effect on and after the date of the transfer by virtue of article 2.

Meriel McCullagh
Deputy Clerk of the Privy Council

SCHEDULE

Article 2

ENACTMENTS CONFERRING FUNCTIONS TRANSFERRED TO THE SCOTTISH MINISTERS

Column 1	*Column 2*
The 1988 Act, (a) section 13(1)(**a**)	The function of prescribing descriptions of food only.
(b) section 13(7)	The function shall be exercisable only with the agreement of the Secretary of State.
The 1989 Act, sections 32(**b**) (obligation in connection with electricity from renewable sources), 32A(**c**) (orders under section 32: supplementary) and 32B(**d**) (green certificates)	
The Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005(**e**), regulations 5(2), 5A(2), 8A(7), 10(4) and 14(2)	

(**a**) Section 13 was amended by section 21(1) and (2) of, and Schedule 6, paragraph 8(11)(a) and Schedule 7 to, the Social Security Act 1990 (c.27) and section 4 of, and Schedule 2, paragraph 94 to, the Social Security (Consequential Provisions) Act 1992 (c.6). Section 185(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c.43) substituted new provisions for the existing provisions of section 13. Savings were made by S.I. 2005/2279 but those are not relevant to this Order.

(**b**) Section 32 of the 1989 Act was amended by the Environment Act 1995 (c. 25), section 120 and Schedule 22, paragraph 39. These amendments were repealed by the Utilities Act 2000 (c. 27) ("the 2000 Act"), Schedule 8. A new section 32 was substituted by section 62 of the 2000 Act and has subsequently been amended by the Energy Act 2004 (c.20) ("the 2004 Act"), sections 115 and 119, and by the Climate Change and Sustainable Energy Act 2006 (c.19) ("the 2006 Act"), section 24.

(**c**) Section 63 of the 2000 Act inserted section 32A into the 1989 Act. Section 32A has subsequently been amended by section 119 of the 2004 Act and section 24 of the 2006 Act.

(**d**) Section 64 of the 2000 Act inserted section 32B into the 1989 Act. Section 32B has subsequently been amended by section 116 of the 2004 Act and section 23 of the 2006 Act.

(**e**) S.I. 2005/3262, amended by S.I. 2006/589 and S.I. 2006/2818.

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 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, subject, in certain cases, to specified restrictions and requirements.

In relation to the Social Security Act 1988 (c.7) this Order transfers to the Scottish Ministers regulation making functions for the prescribing of the descriptions of food in relation to the operation of a scheme to provide benefits, and the function of giving directions (with the agreement of the Secretary of State) to a body administering a scheme (or part of a scheme) in relation to matters relating to the operation of that scheme (or that part of that scheme).

In relation to the Healthy Start and Welfare Food (Amendment) Regulations 2005, this Order transfers payment functions of the Secretary of State under regulations 5(2) (Healthy Start food and payments in lieu), 5A(2) (Healthy Start vitamins and payments in lieu), 8A(7) (provision of Healthy Start vitamins), 10(4) (failure to receive benefit represented by the voucher) and 14(2) (payment of food outlet) of the Healthy Start scheme to the Scottish Ministers.

In relation to the Electricity Act 1989 ("the 1989 Act"), this Order consolidates in one instrument the devolution of functions under sections 32 (obligation in connection with electricity from renewable sources), 32A (orders under section 32: supplementary) and 32B (green certificates) of the 1989 Act by revoking the devolution of those functions effected by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2000 (S.I. 2000/3253), the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2001 (S.I. 2001/3504) and the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849) ("the previous Orders"), and re-devolving those functions (as amended by sections 23 and 24 of the Climate Change and Sustainable Energy Act 2006 (c.19) ("the 2006 Act")) to the Scottish Ministers.

This Order also revokes the devolution, by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750), of functions under section 32 of the 1989 Act as originally enacted, the saving of which has been revoked.

Article 3 modifies the functions in relation to the welfare food scheme which were transferred to the Scottish Ministers under the Scotland Act (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750). The changes reflect the abolition of NHS Trusts in Scotland and the revocation of the regulations in relation to provision of dried milk at a reduced price in the Welfare Food Regulations 1996. It also modifies the previous Transfer of Functions Orders in relation to the 1989 Act by revoking the devolution of the functions of the Secretary of State under sections 32, 32A and 32B of the 1989 Act.

Article 4 ensures that any references to the Secretary of State and powers to make legislation are glossed appropriately to reflect the transfer of functions to the Scottish Ministers.

Article 5 makes transitional and saving provision both as regards the previous exercise of functions by a Minister of the Crown prior to their devolution to the Scottish Ministers and as regards the previous exercise of functions by the Scottish Ministers. In the case of functions under the 1989 Act, saving is made to cover the process of return, by revocation of the previous devolution, of functions to a Minister of the Crown, prior to such functions being re-devolved to the Scottish Ministers one day later.

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