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STATUTORY INSTRUMENTS

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**1999 No. 901**

**CONSTITUTIONAL LAW  
DEVOLUTION, SCOTLAND**

**The Scotland Act 1998 (General Transitory,  
Transitional and Savings Provisions) Order 1999**

<i>Made</i>	- - - -	<i>19th March 1999</i>
<i>Laid before Parliament</i>		<i>22nd March 1999</i>
<i>Coming into force</i>	- -	<i>6th May 1999</i>

The Secretary of State, in exercise of the powers conferred upon him by sections 112(1), 113, 114(1) and 129(1) of the Scotland Act 1998(1) and of all other powers enabling him in that behalf, hereby makes the following Order:

**Citation and commencement**

1. This Order may be cited as the Scotland Act 1998 (General Transitory, Transitional and Savings Provisions) Order 1999 and shall come into force on 6th May 1999.

**Interpretation**

2.—(1) In this Order—

“the Act” means the Scotland Act 1998;

“Advocate General” means the Advocate General for Scotland;

“LO-date” means the date when section 44(1)(c) of the Act comes into force(2); and

“transitional period” means the period beginning with the LO-date and ending with the principal appointed day(3).

(2) Unless otherwise expressly provided, any reference in this Order to a numbered article is a reference to an article bearing that number in this order and any reference in an article to a numbered paragraph is to a paragraph bearing that number in that Article.

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(1) 1998 c. 46.

(2) In terms of the Scotland Act 1998 (Commencement) Order 1998 (S.I. 1998/3179), section 44(1)(c) comes into force on 20th May 1999. It is the date when the Lord Advocate ceases to be a Minister of the Crown and becomes a member of the Scottish Executive.

(3) Article 3 by virtue of the Scotland Act 1998 (Commencement) Order 1998 specifies 1st July 1999 as the principal appointed day for the purposes of the Act.

### **Transfer of Functions to the Scottish Ministers**

3.—(1) The transfer, by virtue of section 53 of the Act, 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 section 53 of the Act 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.

### **Functions of the Lord Advocate**

4.—(1) The transfer of the office of Lord Advocate to the Scottish Executive on the LO-date shall not affect the validity of anything done (or having effect as if done) by or in relation to the Lord Advocate before he ceased to be a Minister of the Crown.

(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 the Lord Advocate in connection with any of his retained functions may, so far as it relates to that function, be continued by or in relation to the Lord Advocate as a member of the Scottish Executive.

(3) Anything done (or having effect as if done) by or in relation to the Lord Advocate for the purposes of or in connection with any of his retained functions before that time shall, if in force at that time, have effect as if done by or in relation to the Lord Advocate as a member of the Scottish Executive in so far as that is required for continuing its effect after that time.

(4) Paragraphs (2) and (3) have effect subject to articles 5, 6 and 8.

### **Functions of the Lord Advocate: Transitional Period**

5.—(1) For the transitional period the functions of the Lord Advocate under the enactments specified in the Schedule to this Order shall be exercisable by the Advocate General instead of by the Lord Advocate.

(2) During that period all rights and liabilities to which the Lord Advocate is entitled or subject on the LO-date in connection with those functions shall be treated as rights and liabilities of the Advocate General.

(3) At the end of that period, those functions shall become exercisable by the Lord Advocate and any rights and liabilities which were treated as rights and liabilities of the Advocate General during that period or to which the Advocate General became entitled or subject in connection with the exercise of those functions shall become rights and liabilities of the Lord Advocate.

### **Civil proceedings**

6.—(1) On the LO-date, any interest of the Lord Advocate to which this paragraph applies in civil proceedings pending before any court or tribunal immediately before that date shall transfer to, and become exercisable by, the Advocate General.

(2) Paragraph (1) applies to any interest of the Lord Advocate in civil proceedings, whether as a party or otherwise and whether in pursuance of the Crown Suits (Scotland) Act 1857(4) or otherwise, other than any interest of his derived from his position as head of the systems of criminal prosecution and investigation of deaths in Scotland.

7.—(1) On the principal appointed day, any interest of the Advocate General to which this paragraph applies in civil proceedings pending before any court or tribunal immediately before that date shall transfer to, and become exercisable by, the Lord Advocate.

(2) Paragraph (1) applies to any interest of the Advocate General in civil proceedings whether as a party or otherwise—

- (a) where the proceedings, if they had been commenced on that date, would have been on behalf of or against any part of what will then be the Scottish Administration; or
- (b) where the interest is a matter of public interest for which the Lord Advocate will then be responsible as the principal Law Officer of the Crown in right of the Scottish Administration.

### **Supplementary and consequential**

8.—(1) Articles 5 and 6 shall not affect the validity of anything done (or having effect as if done) by or in relation to the Lord Advocate before the LO-date.

(2) Anything which, on that date, is in the process of being done by or in relation to the Lord Advocate may, so far as it relates to any function exercisable by, or anything transferred to, the Advocate General by or by virtue of article 5 or 6, be continued by or in relation to the Advocate General.

(3) Anything done (or having effect as if done) by or in relation to the Lord Advocate for the purposes of or in connection with any function exercisable by, or anything transferred to, the Advocate General by or by virtue of article 5 or 6 shall, if in force on the LO-date, have effect as if done by or in relation to the Advocate General in so far as that is required for continuing its effect on and after the LO-date.

(4) Any document made before that date shall have effect, so far as may be necessary for the purposes of or in consequence of article 5 or 6, as if for any reference to the Lord Advocate, there were substituted a reference to the Advocate General.

9.—(1) Articles 5 and 7 shall not affect the validity of anything done (or having effect as if done) by or in relation to the Advocate General before the principal appointed day.

(2) Anything which, on that date, is in the process of being done by or in relation to the Advocate General may, so far as it relates to any function exercisable by or anything transferred to the Lord Advocate or by virtue of Article 5 or 7, be continued by or in relation to the Lord Advocate.

(3) Anything done (or having effect as if done) by or in relation to the Advocate General for the purposes of or in connection with or any function exercisable by or anything transferred to, the Lord Advocate by or by virtue of Article 5 or 7 shall, if in force on the LO-date, have effect as if done by or in relation to the Lord Advocate in so far as that is required for continuing its effect on and after the LO-date.

(4) Any document made before that date shall have effect, so far as may be necessary for the purposes of or in consequence of article 5 or 7, as if for any reference to the Advocate General, there were substituted a reference to the Lord Advocate.

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(4) 1857 c. 44. Relevant amendments are made to the 1857 Act by the Scotland Act 1993, Schedule 8, paragraph 2.

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### **Modification of Enactments**

**10.** For any period beginning with the appointment of the Advocate General and ending with the beginning of the transitional period, the Advocate General shall be taken not to fall within head 2 of Part 11 of Schedule 1 to the Ministerial and other Salaries Act 1975<sup>(5)</sup>.

**11.** For the transitional period, references to the Scottish Administration in the Crown Suits (Scotland) Act 1857 or in the Crown Proceedings Act 1947<sup>(6)</sup> shall be taken not to include the offices specified in section 126(8)(a) of the Act.

**12.** For the transitional period, references in any enactment to a government department (however expressed) shall be taken to include any part of the Scottish Administration, other than the offices specified in section 126(8)(a) of the Act.

St Andrew's House,  
Edinburgh  
19th March 1999

*Henry B McLeish*  
Minister of State Scottish Office

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<sup>(5)</sup> 1975 c. 27.

<sup>(6)</sup> 1947 c. 44. Relevant amendments are made to the 1947 Act by the Scotland Act 1998, Schedule 8, paragraph 7.

## SCHEDULE

Article 5

### FUNCTIONS OF THE LORD ADVOCATE

Judicial Statistics (Scotland) Act 1869 (c. 33), section 4;  
Vexatious Actions (Scotland) Act 1898 (c. 35), section 1;  
Sheriff Courts (Scotland) Act 1907 (c. 51), section 38B (7), Schedule 1, Ordinary Cause Rules 28.2 and 33.62 (8);  
Trusts (Scotland) Act 1921 (c. 58), section 26;  
Local Government (Scotland) Act 1973 (c. 65), section 211(9);  
Reservoirs Act 1975 (c. 23), section 3;  
Water (Scotland) Act 1980 (c. 45), section 11(10);  
Education (Scotland) Act 1980 (c. 44), sections 70, 108A(11);  
Road Traffic Regulation Act 1984 (c. 27), sections 70 and 93(12);  
Court of Session Act 1988 (c. 36), section 19;  
Employment Tribunals Act 1996 (c. 17), section 33(13);  
Special Immigration Appeals Commission Act 1997 (c. 68), section 6;  
Employment Appeal Tribunal Rules 1993 (S.I. 1993/2854), Rules 14 and 16;  
Act of Sederunt (Rules of the Court of Session) 1994 (S.I. 1994/1443), rules 35.2, 49.60(14), 52.1;  
Trade Effluent (Asbestos) (Scotland) Regulations 1994 (S.I. 1993/1446);  
Urban Waste Water Treatment (Scotland) Regulations 1996 (S.I. 1994/2842), regulation 14.

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### EXPLANATORY NOTE

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

This Order makes provision for transitory and transitional purposes in connection with the coming into force of various provisions of the Scotland Act 1998 (c. 46) (“the Act”).

Article 3 makes general savings provisions in connection with the transfer, by virtue of section 53 of the Act, of any function exercisable by a Minister of the Crown to Scottish Ministers. Section 53 of the Act is due to come into force on the principal appointed day which is 1st July 1999 by virtue of the Scotland Act 1998 (Commencement) Order 1998 (S.I. 1998/3178) (“the Commencement Order”).

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- (7) Section 38B was inserted by the Court of Session Act 1988 (c. 36), section 52(1), Schedule 1 paragraph 2.  
(8) Schedule 1 was substituted by S.I. 1993/1956. Rule 28.2 was amended by S.I. 1996/2445. Rule 33.62 was substituted by S.I. 1996/2167 and amended by S.I. 1996/2445.  
(9) Section 211 was amended by the Local Government and Housing Act 1989 (c. 42), section 159; extended by Housing (Scotland) Act 1987 (c. 26), section 78(4).  
(10) Extended by the Natural Heritage (Scotland) Act 1991 (c. 28), section 20(6)(b).  
(11) Section 108A was renumbered and amended by the Education (Scotland) Act 1981 (c. 58), Schedule 6, paragraph 7.  
(12) Amended by New Roads and Street Works Act 1991 (c. 22), section 168, Schedule 8, paragraph 53.  
(13) The short title of this Act was changed by the Employment Rights (Dispute Resolution) Act 1998 (c. 8), section 1(2).  
(14) Rule 49.60 was amended by S.I. 1996/2587.

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Article 4 makes general savings provisions in connection with the functions of the Lord Advocate when the office of Lord Advocate is transferred to the Scottish Executive by virtue of section 44(1)(c) of the Act. Section 44(1)(c) of the Act is due to come into force on 20th May 1999 by virtue of the Commencement Order (“the LO-date”).

Articles 5 to 12 (other than Article 10) make certain provisions relating to the functions of the Lord Advocate for the transitional period beginning with the LO-date and ending with the principal appointed day (ie between 20th May and 1st July 1999). Article 5 provides that, during this period, the functions of the Lord Advocate under the enactment specified in the Schedule will be exercisable by the Advocate General for Scotland (“the Advocate General”) and any connected rights and liabilities will be treated as those of the Advocate General. At the end of that period, those functions, rights and liabilities will revert to the Lord Advocate. This is to ensure that, during the transitional period, those functions continue to be exercisable by the Scottish Law Officer to the United Kingdom Government which will then be the Advocate General.

Articles 6 and 7 provide, in effect that any function of the Lord Advocate in certain civil proceedings should transfer to become exercisable by the Advocate General during the transitional period. This will ensure that any interest in those proceedings which is transferred to the Advocate General will continue during that period to be dealt with by the Scottish Law Officer to the United Kingdom Government.

Article 7 provides for the transfer to the Lord Advocate on the principal appointed day of any interest of the Advocate General in those civil proceedings then pending before any court or tribunal which pertain to matters for which the Scottish Administration will then be responsible or which pertain to a matter of public interest for which the Lord Advocate will then become responsible as the principal Law Officer of the Crown in right of the Scottish Administration. This will ensure that the Lord Advocate will then represent the interests of the Scottish Administration while the Advocate General will continue to represent the interests of United Kingdom Government in civil proceedings.

Articles 8 and 9 contain ancillary provisions to articles 5 to 7.

Articles 10 to 12 contain provisions modifying certain enactments. Article 10 removes any risk that the Advocate General may be paid as a Minister in the UK Government before 20th May 1999 when he is appointed immediately before that date for the purpose of receiving functions which are transferred to him from the Lord Advocate.

Article 11 modifies the effect during the transitional period of the references to the Scottish Administration in the Crown Suits (Scotland) Act 1857 (c. 44) and the Crown Proceedings Act 1947 (c. 44), as amended by the Scotland Act, so that they do not include the offices specified in section 126(8)(a) of that Act, namely the Registrar General of Births, Deaths and Marriages for Scotland, the Keeper of the Registers of Scotland the Keeper of the Records of Scotland. This is because until the principal appointed day those offices will continue to be departments in the United Kingdom Government and should be represented in any court proceedings by the Scottish Law Officer to the United Kingdom Government ie the Advocate.

Article 12 modifies the references in any enactment to a government department during the transitional period so that they include any part of the Scottish Administration, other than the offices specified in section 126(8)(a) of the Act