

2017 No. 444

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

The Scotland Act 2016 (Transitional) Regulations 2017

<i>Made</i> - - - -	<i>20th March 2017</i>
<i>Laid before Parliament</i>	<i>22nd March 2017</i>
<i>Coming into force</i> - -	<i>1st May 2017</i>

The Secretary of State for Scotland makes the following Regulations in exercise of the powers conferred by section 71(1), (2) and (5) of the Scotland Act 2016(a).

Citation and commencement

1. These Regulations may be cited as the Scotland Act 2016 (Transitional) Regulations 2017 and come into force on 1st May 2017.

Interpretation

2. In these Regulations—

“functions” and “confer”, in relation to functions, have the same meaning as in section 126(1) of the Scotland Act 1998 (interpretation)(b);

“legislative competence” is to be read in accordance with section 29 of that Act (legislative competence);

“pre-commencement enactment” has the meaning given by section 53(3) and (3A) of that Act (general transfer of functions)(c);

“Section F1” means Section F1 in Part 2 of Schedule 5 to that Act (reservation of social security schemes)(d).

Modification of the Scotland Act 1998: benefits for disability and industrial injury; carer’s benefits

3.—(1) For the period determined in accordance with regulation 4, the following modifications of the Scotland Act 1998 apply in respect of functions conferred on a Minister of the Crown by a pre-commencement enactment that is within legislative competence by virtue of—

(a) 2016 c. 11.
(b) 1998 c. 46.
(c) Section 53(3A) was inserted by section 32(3) of the Scotland Act 2016 (c. 11) and the meaning of “pre-commencement enactment” is modified for purposes relevant to these Regulations by section 32(1) and (2) of that Act.
(d) Section F1 was amended by sections 22 to 28 of the Scotland Act 2016 (c. 11); of particular relevance to these Regulations, exceptions 1 and 2 of Section F1 were inserted by section 22(2) and exception 4 was inserted by section 23(2) of that Act.

- (a) exception 1 in Section F1 (benefits for disability and industrial injury);
 - (b) exception 2 in Section F1 (carer's benefits).
- (2) Section 23 (power to call for witnesses and documents) has effect as if—
- (a) in subsection (3), the words from “unless” to the end were omitted;
 - (b) subsections (4) and (5) were omitted.
- (3) Section 53 (general transfer of functions) has effect as if subsections (1) and (2) were omitted.

Duration of modification of the Scotland Act 1998: benefits for disability and industrial injury; carer's benefits

- 4.—(1) Regulation 3 has effect for the period—
- (a) beginning with the day on which section 22(2) of the Scotland Act 2016 (disability, industrial injuries and carer's benefits) comes into force, and
 - (b) ending with 31st March 2020.
- (2) If earlier, the period specified in paragraph (1) ends—
- (a) in respect of a pre-commencement enactment that is within legislative competence by virtue of exception 1 in Section F1 (disability and industrial injuries benefits), immediately before a provision that is contained in an Act of the Scottish Parliament and is within legislative competence by virtue of that exception comes into force;
 - (b) in respect of a pre-commencement enactment that is within legislative competence by virtue of exception 2 in Section F1 (carer's benefits), immediately before a provision that is contained in an Act of the Scottish Parliament and is within legislative competence by virtue of that exception comes into force.
- (3) For the purposes of this regulation—
- (a) reference to an exception includes a paragraph of that exception;
 - (b) reference to a provision coming into force includes the provision coming into force partially;
 - (c) a provision that is contained in an Act of the Scottish Parliament and is within legislative competence by virtue of more than one exception in Section F1, whether or not it is also within legislative competence for any other reason, which is stated in regulations to be brought into force for purposes which are wholly within one such exception, is not to be taken as having been brought into force for the purposes of any other exception.

Modification of the Transfer of Property etc. (Scottish Ministers) Order 1999: benefits for disability and industrial injury; carer's benefits

- 5.—(1) Article 5 of the Transfer of Property etc. (Scottish Ministers) Order 1999 (transfer of other rights and interests and liabilities)(a) applies to a function conferred on a Minister of the Crown that satisfies the conditions in paragraph (2) as it applies to a transferred function (within the meaning of article 1(2) of the Order).
- (2) The conditions are that the function—
- (a) would, but for regulation 3(3), transfer to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 when section 22(2) of the Scotland Act 2016 (disability, industrial injuries and carer's benefit) comes into force, and
 - (b) does not, by virtue of—
 - (i) provision contained in or made under an Act of the Scottish Parliament, or

(a) S.I. 1999/1104.

- (ii) provision made under section 104 of the Scotland Act 1998 (power to make provision consequential on legislation of, or scrutinised by, the Scottish Parliament), transfer to the Scottish Ministers when the period determined in accordance with regulation 4 comes to an end.
- (3) For the purposes of paragraph (1), a reference in article 5 of the Order to—
- (a) rights and interests belonging to a Minister of the Crown or government department, and liabilities to which a Minister of the Crown or government department is subject, is to those rights and interests, and those liabilities, immediately before the provision referred to in paragraph (2)(b) comes into force;
 - (b) when a function becomes a transferred function, is to when the period determined in accordance with regulation 4 comes to an end.

Modification of the Scotland Act 1998: benefits for maternity, funeral and heating expenses

6.—(1) For the period specified by regulation 7, the following modifications of the Scotland Act 1998 apply in respect of functions conferred on a Minister of the Crown by a pre-commencement enactment that is within legislative competence by virtue of exception 4 in Section F1 (benefits for maternity, funeral and heating expenses).

- (2) Section 23 (power to call for witnesses and documents) has effect as if—
- (a) in subsection (3), the words from “unless” to the end were omitted;
 - (b) subsections (4) and (5) were omitted.

Duration of modification of the Scotland Act 1998: benefits for maternity, funeral and heating expenses

7. Regulation 6 has effect for the period—

- (a) beginning with the day on which section 23(2) of the Scotland Act 2016 (benefits for maternity, funeral and heating expenses) comes into force, and
- (b) ending with 31st March 2020.

David Mundell
Secretary of State
Scotland Office

20th March 2017

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make transitional provision in connection with the coming into force of sections 22(2) (disability, industrial injuries and carer’s benefits) and 23(2) (benefits for maternity, funeral and heating expenses) of the Scotland Act 2016 (c. 11).

Regulation 3 modifies the Scotland Act 1998 (c. 46) in respect of functions conferred on a Minister of the Crown by an enactment—

- made or passed before the day on which section 22(2) of the Scotland Act 2016 (disability, industrial injuries and carer’s benefit) comes into force, and
- that is within legislative competence by virtue of exception 1 or 2 of Section F1 of Schedule 5 to the Scotland Act 1998.

In respect of such an enactment, for the period determined in accordance with regulation 4—

- the Scottish Parliament may not impose a requirement for the attendance of a witness or the production of a document on a Minister of the Crown, or a person in Crown employment;
- such a function is not exercisable by the Scottish Ministers.

Regulation 4 provides that regulation 3 has effect for the period beginning with the day on which section 22(2) of the Scotland Act 2016 comes into force and ending with 31st March 2020 or, if earlier—

- in respect of an enactment that is within legislative competence by virtue of exception 1 of Section F1 of Schedule 5 to the Scotland Act 1998 (or a paragraph of that exception), immediately before a provision that is contained in an Act of the Scottish Parliament and is within legislative competence by virtue of exception 1 (or that paragraph) comes into force;
- in respect of an enactment that is within legislative competence by virtue of exception 2 of Section F1 of Schedule 5 to the Scotland Act 1998, immediately before a provision that is contained in an Act of the Scottish Parliament and is within legislative competence by virtue of exception 2 comes into force.

Regulation 5 modifies article 5 of the Transfer of Property etc. (Scottish Ministers) Order 1999 (S.I. 1999/1104) in respect of the transfer of the rights, interests and liabilities attaching to a function that does not pass to the Scottish Ministers on the day on which section 22(2) of the Scotland Act 2016 comes into force by virtue of regulation 3(3), and by virtue of—

- the operation of a provision that is contained in or made under an Act of the Scottish Parliament, or
- an instrument made under section 104 of the Scotland Act 1998,

does not transfer to the Scottish Ministers when the transition period comes to an end in accordance with regulation 4.

In such a case, the modifications to article 5 ensure that the rights, interests and liabilities which attach to the function transfer when the transition period comes to an end.

Regulation 6 modifies the Scotland Act 1998 in respect of functions conferred on a Minister of the Crown by an enactment—

- made or passed before the day on which section 23(2) of the Scotland Act 2016 (benefits for maternity, funeral and heating expenses) comes into force, and
- that is within legislative competence by virtue of exception 4 of Section F1 of Schedule 5 to the Scotland Act 1998.

In respect of such an enactment, for the period determined in accordance with regulation 7, the Scottish Parliament may not impose a requirement for the attendance of a witness or the production of a document on a Minister of the Crown, or a person in Crown employment.

Regulation 7 provides that regulation 6 has effect for the period beginning with the day on which section 23(2) of the Scotland Act 2016 comes into force and ending with 31st March 2020.

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