

2004 No.

CONSTITUTIONAL LAW

DEVOLUTION, WALES

**The National Assembly for Wales (Transfer of Functions)
(No. 2) Order 2004**

Made - - - - - 2004

Coming into force in accordance with article 1(2)

At the Court at Buckingham Palace, the day of 2004

Present,

The Queen's Most Excellent Majesty in Council

Whereas the draft of this Order has been laid before, and approved by a resolution of, each House of Parliament and the National Assembly for Wales :

Now, therefore, Her Majesty, in pursuance of sections 22 and 24(1) of and paragraphs 1, 3 and 9 of Schedule 3 to, the Government of Wales Act 1998⁽¹⁾ is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows -

Citation, commencement and interpretation

1.—(1) This Order may be cited as the National Assembly for Wales (Transfer of Functions) (No. 2) Order 2004.

(2) This Order shall come into force on the day after the day on which it is made except that, in relation to article 2 and Schedule 1 to this Order, this Order shall come into force on 31st December 2004.

(3) In this Order —

“the 1999 transfer order” means the National Assembly for Wales (Transfer of Functions) Order 1999⁽²⁾;

“the Act” means the Government of Wales Act 1998;

“the Assembly” means the National Assembly for Wales.

Transfer of functions

2. Schedule 1 to this Order shall have effect as follows —

⁽¹⁾ 1998 c.38.

⁽²⁾ S.I. 1999/672 to which a relevant amendment has been made by S.I. 2000/253.

- (a) except as provided in sub-paragraph (b), all functions of a Minister of the Crown under the enactments specified in Schedule 1 are, to the extent there specified and so far as exercisable in relation to Wales, transferred to the Assembly;
- (b) where so directed in Schedule 1 functions exercisable by a Minister of the Crown shall, so far as exercisable in relation to Wales, be exercisable by the Assembly concurrently with the Minister;
- (c) all other provisions contained in Schedule 1 in relation to the enactments specified therein shall have effect.

3. Any reference in this Order to a function of a Minister of the Crown under an enactment includes a reference to any functions of that Minister which are included in any scheme, regulations, rules, order, bye-laws or other instrument having effect under or in relation to that enactment, and the power to confer functions on that Minister by any such scheme, regulations, rules, order, bye-laws or other instrument shall have effect as a power to confer such functions on the Assembly.

Variation of the 1999 Transfer Order

- 4. Schedule 2 to this Order shall have effect.

Transfer of Property

5. The provisions of section 23(1) of the Act shall not apply to any documentary or electronic records.

Clerk to the Privy Council

ENACTMENTS CONFERRING FUNCTIONS TRANSFERRED BY
ARTICLE 2

Public General Acts

Slaughterhouses Act 1974 (c.3) in respect of the functions of the Secretary of State under Part I(3).

Local Land Charges Act 1975 (c.76) in respect of the function of the Lord Chancellor under section 14(1) so far as it relates to the power to make rules for prescribing fees and the manner of payment of fees.

Bees Act 1980 (c.12) in respect of the functions of the Secretary of State(4).

Animal Health Act 1981 (c.22) in respect of the functions of the Secretary of State except Schedule 1(5).

Pig Industry Levy Act 1983 (c.4) in respect of the functions of the Secretary of State(6).

Road Traffic Regulation Act 1984 (c.27) sections 99 to 103, except in relation to:

- (a) that part of the M4 Motorway in Wales which comprises "the New Toll Plaza area" and "the New Bridge", as defined in section 39(1) of the Severn Bridges Act 1992 (c.3);
- (b) that part of the road constructed by the Minister of Transport along the line described in Schedule 1 to the North of Almondsbury-South of Haysgate Trunk Road Order 1947 and referred to in that Order as "the new road" which lies to the east of the most easterly point before reaching the River Wye at which eastbound traffic of Classes I and II (as specified in Schedule 4 to the Highways Act 1980 (c.66)) can leave that road by another special road.

Inheritance Tax Act 1984 (c.51) section 230 except that, where there is both a Welsh interest and another interest in the property to which the section applies, it is directed that the functions of the Secretary of State shall be exercisable by the Assembly concurrently with the Secretary of State.

For the purposes of this provision :-

a Welsh interest exists where —

- (a) the property is located in Wales, or
- (b) the person liable to pay tax has expressed a wish or imposed a condition on his offer of the property in satisfaction of tax that it be displayed in Wales or disposed of or transferred to a body or institution in Wales; and

another interest exists where —

- (a) the property is located outside Wales, or

(3) See Schedule 1 to the 1999 transfer order as to other provisions made in respect of Part I of this Act of 1974. The functions of the Minister of Agriculture, Fisheries and Food under the Act were transferred to the Secretary of State by S.I. 2002/794.

(4) See Schedule 1 to the 1999 transfer order and the Schedule to S.I. 1999/3141 as to other provisions made in respect of this Act of 1980. The functions of the Minister of Agriculture, Fisheries and Food under the Act were transferred to the Secretary of State by S.I. 2002/794.

(5) See Schedule 1 to the 1999 transfer order and the Schedule to S.I. 1999/3141 as to other provisions made in respect of this Act of 1981. The functions of the Minister of Agriculture, Fisheries and Food under the Act were transferred to the Secretary of State by S.I. 2002/794.

(6) See Schedule 1 to the 1999 transfer order and the Schedule to S.I. 1999/3141 as to other provisions made in respect of this Act of 1983. The functions of the Minister of Agriculture, Fisheries and Food under the Act were transferred to the Secretary of State by S.I. 2002/794.

- (b) the person liable to pay tax has expressed a wish or imposed a condition on his offer of the property in satisfaction of tax that it be displayed outside Wales or disposed of or transferred to a body or institution outside Wales.

Statutory Instruments

The Welfare of Animals (Slaughter or Killing) Regulations 1995 (S.I. 1995/731) in respect of the functions of the Secretary of State⁽⁷⁾.

The Products of Animal Origin (Import and Export) Regulations 1996 (S.I. 1996/3124) in respect of the functions of the Secretary of State except those of the Secretary of State for Health under regulations 3 and 4⁽⁸⁾.

The TSE (Wales) Regulations 2002 (S.I. 2002/1416) in respect of the functions of the Secretary of State⁽⁹⁾.

SCHEDULE 2

Article 4

VARIATION OF THE 1999 TRANSFER ORDER

In Schedule 1 to the 1999 transfer order, in the second paragraph of the entry for the Water Industry Act 1991 (c.56)⁽¹⁰⁾, after “156,” insert “158,”.

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- (7) S.I. 1995/731 amended by S.I. 1999/400, 1999/1820, 2000/656 and 2001/1303 (W.80). See Schedule 1 to the 1999 transfer order as to other provisions made in respect of these regulations. The functions of the Minister of Agriculture, Fisheries and Food and of a named Secretary of State (however described) under the regulations were transferred to the Secretary of State by S.I. 2002/794.
- (8) S.I. 1996/3124 amended by S.I. 1997/3023, 1998/994, 2000/656, 2000/1885 (W.131), 2000/2257 (W.150), 2001/1660 (W.119), 2001/2198 (W.158), 2001/2219 (W.159), 2002/1476 (W.148), 2003/3229 (W.309). See Schedule 1 to S.I. 2000/253 as to other provisions made in respect of these regulations. The functions of the Minister of Agriculture, Fisheries and Food under the regulations were transferred to the Secretary of State by S.I. 2002/794.
- (9) S.I. 2002/1416 (W.142) amended by S.I. 2003/2756 (W.267).
- (10) The entry was substituted by S.I. 2000/253.

EXPLANATORY NOTE

(This note is not part of the Order)

Article 2 of, and Schedule 1 to, the Order provide for the exercise by the National Assembly for Wales (“the Assembly”) of statutory functions currently vested in Ministers of the Crown. All functions are vested in the Assembly for exercise in relation to Wales.

The functions which become exercisable by the Assembly in pursuance of this Order are functions under the enactments listed in Schedule 1. Listing in this Order is as follows —

Public General Acts are listed first followed by a list of statutory instruments;
all enactments are listed in chronological order.

Article 3 provides that the vesting in the Assembly of functions exercisable under any enactment includes functions exercisable by virtue of subordinate legislation made thereunder or in relation thereto.

Article 4 of and Schedule 2 to the Order provide for variation of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) in relation to one of the entries specified in Schedule 1 to that Order.

Article 5 provides for the exclusion of documentary or electronic records from transfer to the Assembly which would otherwise take place by virtue of section 23 of the Government of Wales Act 1998.