Draft Order in Council laid before Parliament and the Scottish Parliament under section 115 of, and 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

2006 No.

CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND

The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2006

Made - - - -	*[xxxx]*
Coming into force in accordance with article 1	*[xxxx]*

At the Court at xxx, the xxx day of xxx

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 30(3), 63, 113 and 124(2) of the Scotland Act 1998 (**1**).

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 a 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. 2) Order 2006 and, except as provided in paragraph (2), shall come into force on the second day after the day on which it is made.

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

(**1**) 1998 c.46.

(3) In this Order—

"the 1989 Act" means the Electricity Act 1989(**2**)

"the 1999 Act" means the Scotland Act 1998.

Functions to be treated as exercisable in or as regards Scotland

2. The functions of the Secretary of State under section 36 (consent required for construction etc. of generating stations)(**3**) of, and paragraph 7A of Schedule 8 (generating stations not within areas of relevant planning authorities)(**4**) to, the 1989 Act in relation to a generating station or proposed generating station are, for the purposes of section 63 of the 1998 Act, to be treated—

(a) as being exercisable in or as regards Scotland if they are exercisable in Scotland or in that area designated in the Renewable Energy Zone (Designation of Area) (Scottish Ministers) Order 2005(**5**) as the area in relation to which the Scottish Ministers are to have functions; but

(b) as otherwise not being exercisable in or as regards Scotland.

Transfer of functions to the Scottish Ministers

3. The functions which are conferred on a Minister of the Crown by section 36 of, paragraph 5A of Schedule 5 (water rights for hydro-electric generating stations in Scotland)(**6**) to, and paragraph 7A of Schedule 8 to, the 1989 Act shall, so far as they are exercisable by that Minister in or as regards Scotland, be exercisable by the Scottish Ministers instead of by the Minister of the Crown.

Modification of enactments

4. In Schedule 1 to the Scotland Act (Transfer of Functions to the Scottish Ministers etc.) Order 1999(**7**), in column 1 of the entry relating to the 1989 Act, in paragraph (c), ", 36" is omitted.

General modification of enactments

5.—(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 3 of this Order as they apply in relation to the exercise of functions by the Scottish Ministers within devolved competence.

(2) 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

6.—(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**) 1989 c.29.

(**3**) Section 36 was amended by section 93(1) of the Energy Act 2004 (2004 c.20) ("the 2004 Act") [and the Water Environment and Water Services (Scotland) Act 2003 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/xxxx)]. The functions of the Secretary of State under section 36 were (by virtue of article 2 of S.I. 1999/1750) transferred so as to be exercisable by the Scottish Ministers. The application of section 36 in Scotland was also subsequently modified by virtue of the Electricity Act 1989 (Requirements of Consent for Offshore Generating Stations) (Scotland) Order 2002 (S.S.I. 2002/407) which substituted a 1 megawatt permitted capacity for generating stations, driven wholly or mainly by water or wind and situated in the territorial sea, for the 50 megawatt permitted capacity that had previously applied.

(**4**) Paragraph 7A was inserted by the 2004 Act, section 93(1).

(**5**) S.I. 2005/3153.

(**6**) Paragraph 5A was inserted by [S.I. 2006/xxxx].

(**7**) S.I. 1999/1750.