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STATUTORY INSTRUMENTS

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**2003 No. 2617 (S. 12)**

**CONSTITUTIONAL LAW  
DEVOLUTION, SCOTLAND**

The Scotland Act 1998 (Transfer of Functions to  
the Scottish Ministers etc.) (No. 2) Order 2003

Made - - - - 8th October 2003

*Coming into force in accordance with article 1*

At the Court at Buckingham Palace, the 8th day of October 2003

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been—

- (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;

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by sections 30(3), 63(1), 113 and 124(2) of the Scotland Act 1998<sup>(1)</sup> and of all other powers enabling Her in that behalf, 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 Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2003 and, except as provided in paragraph (2) below, shall come into force on the second day after the day on which it is made.

(2) Articles 2 and 4 of, and Schedule 1 to, this Order shall come into force on the day after the day on which it is made.

(3) In this Order—

“the 1998 Act” means the Scotland Act 1998;

“the 2000 Act” means the Regulation of Investigatory Powers Act 2000<sup>(2)</sup>; and

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(1) 1998 c. 46  
(2) 2000 c. 23.

“the 2000 Order” means the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2000<sup>(3)</sup>.

(4) Any word or expression used in this Order in referring to the 2000 Act and which is also used in the 2000 Act has the same meaning as it has in the 2000 Act.

### **Functions to be treated as being, or not being, exercisable in or as regards Scotland**

2.—(1) Schedule 1 to this Order (which makes provision for certain functions to be treated for the purposes of section 63 of the 1998 Act as being functions which are exercisable in or as regards Scotland) shall have effect.

(2) Except as provided in—

- (a) article 2 of, and Schedule 1 to, the 2000 Order; and
- (b) paragraph (1) above and Schedule 1 to this Order,

the functions of the Secretary of State under sections 5, 9(1)(b) and (3), 10(1)(a) and (2) and 15(1) of the 2000 Act<sup>(4)</sup> (interception with a warrant, duration, cancellation, modification and renewal of warrants etc. and general safeguards) are, for the purposes of section 63 of the 1998 Act, to be treated as otherwise not being exercisable in or as regards Scotland.

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

3.—(1) The functions which are conferred on a Minister of the Crown by the enactment specified in column 1 of Schedule 2 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 in the corresponding entry in column 2 of that Schedule,

be exercisable by the Scottish Ministers instead of by the Minister of the Crown.

(2) Paragraph (1) above, and Schedule 2 to this Order, are without prejudice to article 3 of, and Schedule 2 to, the 2000 Order.

### **Modifications of the 2000 Order**

4. Schedule 1 to the 2000 Order is amended as follows:—

- (a) in paragraph 2(1) the words—
  - “but
  - (b) as otherwise not being exercisable in or as regards Scotland”, are omitted; and
- (b) in paragraph 3(1) the words—
  - “but
  - (b) as otherwise not being exercisable in or as regards Scotland”, are omitted.

### **General modifications of enactments**

5.—(1) Section 117 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 it applies in relation to the exercise of functions by the Scottish Ministers within devolved competence.

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(3) S.I.2000/3253.

(4) Sections 9 and 10 were amended by S.I. 2000/3253.

(2) Section 119 of the 1998 Act shall apply in relation to functions exercisable by the Scottish Ministers by virtue of that article as it applies in relation to functions of the Scottish Ministers 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 provision**

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 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) Despite the transfer to the Scottish Ministers of functions by virtue of this Order, any function of a Minister of the Crown in relation to any matter shall continue to be exercisable by that Minister as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972<sup>(5)</sup>.

*A. K. Galloway*  
Clerk of the Privy Council

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(5) 1972 c. 68.

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## SCHEDULE 1

Article 2

FUNCTIONS TO BE TREATED AS BEING  
EXERCISABLE IN OR AS REGARDS SCOTLAND

**Functions under the 2000 Act**

**1.**—(1) Without prejudice to paragraph 2 of Schedule 1 to the 2000 Order the functions of the Secretary of State under section 5 of the 2000 Act (interception with a warrant) are, for the purposes of section 63 of the 1998 Act, to be treated as being exercisable in or as regards Scotland if they are exercisable in the class of case mentioned in sub-paragraph (2) or (3) below.

(2) The class of case mentioned in this sub-paragraph constitutes any case where the warrant under section 5 of the 2000 Act—

- (a) authorises or requires the person to whom it is addressed to secure the making of a request in accordance with paragraph (b) of section 5(1), or a request in accordance with that paragraph and disclosure in accordance with section 5(1)(d); and
- (b) the warrant is issued on an application made by or on behalf of—
  - (i) the chief constable of any police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967<sup>(6)</sup>; or
  - (ii) the Commissioners of Customs and Excise for the purpose of preventing or detecting serious crime in Scotland.

(3) The class of case mentioned in this sub-paragraph constitutes any case where the warrant under section 5 of the 2000 Act—

- (a) authorises or requires the person to whom it is addressed to secure the provision of assistance in accordance with paragraph (c) of section 5(1), or the provision of assistance in accordance with that paragraph and disclosure in accordance with section 5(1)(d); and
- (b) names or describes, in accordance with section 8(1), a person who is, or a set of premises which is (or, in either case, is reasonably believed by the Secretary of State to be) located in Scotland at the time when the warrant is issued.

**2.**—(1) Without prejudice to paragraph 3 of Schedule 1 to the 2000 Order the functions of the Secretary of State under sections 9(1)(b) and (3), 10(1)(a) and (2) and 15(1) of the 2000 Act (duration, cancellation, modification and renewal of warrants etc. and general safeguards) are, for the purposes of section 63 of the 1998 Act, to be treated as being exercisable in or as regards Scotland if they are exercisable in the class of case mentioned in sub-paragraph (2) below.

(2) The class of case mentioned in this sub-paragraph constitutes any case where—

- (a) the function is exercisable in relation to a warrant issued under section 5 of the 2000 Act; and
- (b) the function of issuing such a warrant is, under paragraph 1 above, to be treated for the purposes of section 63 of the 1998 Act as a case where the function is, for those purposes, treated as being exercisable in or as regards Scotland.

<sup>(6)</sup> 1967 c. 77. Section 1(1) was substituted by the Local Government (Scotland) Act 1973 (c. 65), section 146(2) and amended by the Local Government (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 71.

SCHEDULE 2

Article 3

ENACTMENT CONFERRING FUNCTIONS TRANSFERRED TO SCOTTISH MINISTERS

<i>Column 1 Enactment</i>	<i>Column 2 Restrictions</i>
The 2000 Act—	
(a) (a) section 5	Only so far as the functions are exercisable for the purpose— (a) of preventing or detecting serious crime; or (b) in circumstances appearing to the Scottish Ministers to be equivalent to those in which they would issue a warrant by virtue of section 5(3)(b) of the 2000 Act, of giving effect to the provisions of any international mutual assistance agreement.
(b) (b) sections 9(1)(b) and (3), 10(1)(a) and (2) and 15(1)(7)	Only so far as the functions are exercisable in relation to a warrant issued under section 5 by the Scottish Ministers by virtue of this Order.

**EXPLANATORY NOTE**

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

This Order, made under the Scotland Act 1998, provides for certain specified functions of a Minister of the Crown under the Regulation of Investigatory Powers Act 2000 (“the 2000 Act”) so far as they are exercisable by him in or as regards Scotland, to be exercisable by the Scottish Ministers instead of by the Minister of the Crown.

The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2000 (“the 2000 Order”) specified relevant functions as being, or not being, exercisable in or as regards Scotland and transferred to the Scottish Ministers functions so far as exercisable by the Secretary of State in or as regards Scotland in relation to the issue of warrants authorising the interception of communications under sections 5(1)(a) and (d) of the 2000 Act. These relate to the interception of communications for serious crime purposes by United Kingdom public authorities where the person or premises to be intercepted is located in Scotland.

Article 2 of, and Schedule 1 to, this Order now provide that further functions in relation to the issue of warrants under section 5 of the 2000 Act are to be treated, to the extent specified in that Schedule, as being exercisable in or as regards Scotland for the purposes of section 63 of the Scotland Act 1998. This is to facilitate the transfer of further functions under the 2000 Act by this Order. Article 3 of, and Schedule 2 to, this Order transfers to the Scottish Ministers the specified functions under

(7) Certain functions of the Secretary of State under sections 5, 9, 10 and 15 of the Regulation of Investigatory Powers Act 2000 have already been transferred to the Scottish Ministers by S.I. 2000/3253.

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the 2000 Act, so far as they are exercisable by the Secretary of State in or as regards Scotland, subject to the restrictions set out in column 2 of that Schedule. This Order will enable the Scottish Ministers to issue warrants authorising matters set out in section 5(1)(b) and (c) of the 2000 Act. Section 5(1)(b) is concerned with the making, in accordance with an international mutual assistance agreement, of a request for the provision of assistance with the interception of communications outside the United Kingdom. Section 5(1)(c) is concerned with the provision, in accordance with an international mutual assistance agreement, to foreign authorities of assistance with the interception of communications. The Scottish Ministers will only be able to exercise the functions so far as they are exercisable in or as regards Scotland. The functions are also only transferred for the purpose of preventing or detecting serious crime or, in circumstances equivalent to that, for the purpose of giving effect to the provisions of any international mutual assistance agreement.

Article 4 modifies the 2000 Order in consequence of this Order. Article 5 provides for certain general modifications of enactments in connection with provision made by the Order. Article 6 makes transitional and saving provision.