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STATUTORY INSTRUMENTS

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**2000 No. 3253**

**The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2000**

**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 2000 and, except as provided in paragraphs (2) and (3) below, shall come into force on the second day after the day on which it is made.

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

(3) In Schedule 2 to this Order, the entry relating to the Electricity Act 1989<sup>(1)</sup> shall come into force—

- (a) so far as relating to section 32 of that Act, when section 62 of the Utilities Act 2000<sup>(2)</sup> comes into force; and
- (b) so far as relating to section 32A of the Electricity Act 1989, when section 63 of the Utilities Act 2000 comes into force.

(4) In this Order “the 1998 Act” means the Scotland Act 1998.

(5) In this Order, any word or expression used in referring to any enactment and which is also used in the enactment has the same meaning as it has in the enactment.

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

2. 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, or as not being, functions which are exercisable in or as regards Scotland) shall have effect.

**Transfer of functions to the Scottish Ministers**

3. The functions which are conferred on a Minister of the Crown by the enactments specified in column 1 of Schedule 2 to this Order shall—

- (a) so far as they are exercisable by him in or as regards Scotland; and
- (b) subject to any restriction in the corresponding entry in column 2 of the Schedule,

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

**Modifications of particular enactments**

4.—(1) Schedule 3 to this Order (which makes modifications to the Wireless Telegraphy Act 1949<sup>(3)</sup> and the Regulation of Investigatory Powers Act 2000<sup>(4)</sup>) shall have effect.

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(1) 1989 c. 29.  
(2) 2000 c. 27.  
(3) 1949 c. 54.  
(4) 2000 c. 23.

(2) The Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999<sup>(5)</sup> is amended as follows:–

- (a) in article 2(1), the definition of “the 1985 Act” is omitted;
- (b) in paragraph 1 of Schedule 1–
  - (i) in sub-paragraph (1), for “section 5(b)” there is substituted “section 5(1)(b)”;
  - (ii) in sub-paragraph (2), for “section 5(b)” there is substituted “section 5(1)(b)”;
  - (iii) in sub-paragraph (2)(a), for “which neither the person using the apparatus nor any person on whose behalf he is acting is authorised by the Secretary of State to receive” there is substituted “of which neither the person using the apparatus nor a person on whose behalf he is acting is an intended recipient”; and
- (c) paragraph 6 of Schedule 1 is omitted.

(3) The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999<sup>(6)</sup> is amended as follows:–

- (a) in Schedule 1 (enactments conferring functions transferred to the Scottish Ministers)–
  - (i) for the entry relating to the Wireless Telegraphy Act 1949 there is substituted the following:–

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| <p>“The Wireless Telegraphy Act 1949 (c. 54), section 5(1)(b).</p> | <p>Only so far as the function is exercisable for the purpose of preventing or detecting crime (within the meaning of the Regulation of Investigatory Powers Act 2000) or of preventing disorder”; and</p> |
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- (ii) the entry relating to the Interception of Communications Act 1985 is omitted; and
- (b) in Schedule 5, paragraphs 6 and 14(3) and (4) are omitted.

#### **General modifications of enactments etc.**

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) Sections 119 to 121 of the 1998 Act shall apply in relation to functions exercisable by the Scottish Ministers by virtue of that article as they apply 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.

(4) Any reference in any enactment or prerogative instrument or in any other instrument or document–

- (a) to government departments; or
- (b) to, or to any part or officer of, any government department,

(however described) is to be read, so far as the effect of this Order makes it necessary or expedient to do so, as including or being a reference to, or to any corresponding part or member of the staff of, the Scottish Administration.

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(5) S.I.1999/1748.

(6) S.I. 1999/1750.

### **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 him as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972(7).

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