
STATUTORY INSTRUMENTS

2003 No. 2617

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

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⁽¹⁾; and

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

(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⁽³⁾ (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.

(1) [2000 c. 23](#).

(2) [S.I.2000/3253](#).

(3) Sections 9 and 10 were amended by [S.I. 2000/3253](#).

(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.

(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(4).

A. K. Galloway
Clerk of the Privy Council

(4) 1972 c. 68.