
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 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.