
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 and the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2003 (“the 2003 Order”) specified relevant functions under section 5(1) of the 2000 Act as being, or not being, exercisable in or as regards Scotland for the purposes of section 63 of the Scotland Act 1998 and transferred those functions to the Scottish Ministers in so far as they were exercisable by the Secretary of State in or as regards 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(1)(b) and (d) of the 2000 Act are to be treated, to the extent specified in Schedule 1, as being exercisable in or as regards Scotland for the purposes of section 63 of the Scotland Act. 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 transfer 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 certain warrants in response to requests under section 5(1)(b) of the 2000 Act and requests for warrants under that paragraph and for disclosure of the intercepted material in accordance with section 5(1)(d) 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 and section 5(1)(d) authorises disclosure of intercepted material obtained by any interception authorised or required by the warrant. The Scottish Ministers will only be able to exercise the functions so far as they are exercisable in or as regards Scotland. The 2003 Order provided for functions to be treated as exercisable in or as regards Scotland when requests for warrants were made under those paragraphs by chief constables of police forces in Scotland or by Commissioners of Customs and Excise for the purpose of preventing or detecting serious crime in Scotland. This Order adds to that by providing that functions under section 5(1)(b) and (d) are to be treated as exercisable in or as regards Scotland when requests are made under section 5(1)(b), or under section 5(1)(b) and (d), by the Director General of the Scottish Crime and Drugs Enforcement Agency or by the Director General of the Serious Organised Crime Agency for the purpose of the prevention or detection of serious crime in Scotland. Those functions are only transferred to Scottish Ministers 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 repeals part of the 2003 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.