

2008 No. 1788

CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
CRIMINAL LAW

The Scotland Act 1998 (Agency Arrangements) (Specification)
(No. 2) Order 2008

<i>Made</i> - - - - -	<i>9th July 2008</i>
<i>Laid before Parliament</i>	<i>16th July 2008</i>
<i>Laid before the Scottish Parliament</i>	<i>16th July 2008</i>
<i>Coming into force</i> - -	<i>3rd October 2008</i>

At the Court at Buckingham Palace, the 9th day of July 2008

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by sections 93(3) and 113(2) and (3) of the Scotland Act 1998(a) is pleased, by and with the advice of Her Privy Council, to order as follows:

Citation, commencement, interpretation and extent

1.—(1) This Order may be cited as the Scotland Act 1998 (Agency Arrangements) (Specification) (No. 2) Order 2008.

(2) This Order shall come into force on 3rd October 2008.

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

(4) This Order does not extend to Northern Ireland.

Specification of functions

2.—(1) The function of the Secretary of State described in column 1 of Schedule 1 to this Order (subject to the restrictions mentioned in column 2 of that Schedule) is hereby specified for the purposes of section 93(1) of the 1998 Act.

(a) 1998 c.46.

(2) The function exercisable by the Scottish Ministers under the enactment mentioned in column 1 of Schedule 2 to this Order (subject to the restrictions mentioned in column 2 of that Schedule) is hereby specified for the purposes of section 93(1) of the 1998 Act.

Judith Simpson
Clerk of the Privy Council

SCHEDULE 1

Article 2(1)

FUNCTION OF A MINISTER OF THE CROWN

<i>Column 1</i>	<i>Column 2</i>
<p>The function of the Secretary of State to make arrangements for monitoring compliance with a curfew condition included in a licence by virtue of section 37A(1) of the Criminal Justice Act 1991(a) or section 250(5) of the Criminal Justice Act 2003(b).</p>	<p>Only in so far as that function relates to the electronic monitoring of the compliance with a curfew condition by an offender transferred from England and Wales to Scotland in circumstances where paragraph 8 of Schedule 1 to the Crime (Sentences) Act 1997(c) applies and released on licence in accordance with section 34A of the Criminal Justice Act 1991(d) or section 246 of the Criminal Justice Act 2003(e).</p>

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- (a) 1991 c.53; section 37A was inserted by section 100(1) of the Crime and Disorder Act 1998 (c.37). Section 37A was repealed by sections 303(a) and 332 of, and Part 7 of Schedule 37 to, the Criminal Justice Act 2003 (c.44), but is subject to savings provisions in paragraphs 14 and 19 of Schedule 2 to the Criminal Justice Act 2003 (Commencement No. 8 and Transitional and Savings Provisions) Order 2005 (S.I. 2005/950).
- (b) 2003 c.44.
- (c) 1997 c.43; Schedule 1 has been amended by paragraph 135(5) of Schedule 8 to the Crime and Disorder Act 1998 (c.37), paragraph 186(3) of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c.6), paragraph 143 of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c.43), article 2 of the Management of Offenders (Scotland) Act 2005 (Consequential Modifications) Order (S.I. 2006/1055), paragraph 85 of Schedule 32 to the Criminal Justice Act 2003 (c.43), paragraph 46 of Schedule 10 to the Domestic Violence, Crime and Victims Act 2004 (c.28), and paragraph 12 of Schedule 1 and paragraph 15 of Schedule 3 to the Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912).
- (d) Section 34A was inserted by section 99 of the Crime and Disorder Act 1998. Section 37A was repealed by sections 303(a) and 332 of, and Part 7 of Schedule 37 to, the Criminal Justice Act 2003, but is subject to savings provisions in paragraphs 14 and 19 of Schedule 2 to the Criminal Justice Act 2003 (Commencement No. 8 and Transitional and Savings Provisions) Order 2005.
- (e) Section 246 has been amended by paragraph 3 of Schedule 6 to the Domestic Violence, Crime and Victims Act 2004 (c.28).

SCHEDULE 2

Article 2(2)

FUNCTION EXERCISABLE BY THE SCOTTISH MINISTERS

<i>Column 1</i>	<i>Column 2</i>
<p>1. Section 245C(1) of the Criminal Procedure (Scotland) Act 1995 (the function of making arrangements for the remote monitoring of offenders)(a).</p>	<p>Only insofar as that function relates to the remote monitoring of the compliance by an offender with a curfew condition as defined in section 12AB(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993(b) and only in cases where that offender has been transferred from Scotland to England and Wales in circumstances where paragraph 10 of Schedule 1 to the Crime (Sentences) Act 1997 applies(c) and released on licence in accordance with section 3AA of the 1993 Act.</p>

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- (a) 1995 c.46; section 245C(1) was inserted by section 5 of the Crime and Punishment (Scotland) Act 1997 (c.48). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.
- (b) 1993 c.9; section 12AB(1) was inserted by section 15(10) of the Management of Offenders etc. (Scotland) Act 2005 (asp 14). Section 12AB(3) applies section 245C of the Criminal Procedure (Scotland) Act 1995 in relation to the imposition of and compliance with a curfew condition specified by virtue of section 12AB(1).
- (c) Paragraph 10 has been amended by paragraph 135(5) of Schedule 8 to the Crime and Disorder Act 1998 and section 21(8)(a) of the Management of Offenders etc. (Scotland) Act 2005 (asp 14) (which was extended to England and Wales and Northern Ireland by article 3 of the Management of Offenders etc. (Scotland) Act 2005 (Consequential Modifications) Order 2006 (S.I. 2006/1055)). The references to the Secretary of State are to be construed in accordance with the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 130(8).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies, for the purposes of section 93(1) of the Scotland Act 1998, a function of the Secretary of State and also a function of the Scottish Ministers. Section 93(1) allows the Scottish Ministers to make arrangements for any of their specified functions to be exercised on their behalf by a Minister of the Crown, and for a Minister of the Crown to make arrangements for any of his specified functions to be exercised on his behalf by the Scottish Ministers.

The function of the Secretary of State which is specified in Schedule 1 to this Order is the non-statutory function of making arrangements for the electronic monitoring of compliance with curfew conditions in respect of certain offenders who have transferred from England and Wales to Scotland and are released on licence subject to a curfew condition under either the Criminal Justice Act 1991 or the Criminal Justice Act 2003.

The function exercisable by the Scottish Ministers which is specified in Schedule 2 is their function under section 245C of the Criminal Procedure (Scotland) Act 1995, read with section 12AB(3) of the Prisoners and Criminal Proceedings (Scotland) Act 1993. The function specified in Schedule 2 enables arrangements to be put in place for the remote monitoring of compliance with curfew conditions in respect of certain offenders who have transferred to England and Wales from Scotland and whose release on licence is subject to a curfew condition as defined in section 12AB of the 1993 Act.

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