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STATUTORY INSTRUMENTS

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**2005 No. 866 (S. 4)**

**CONSTITUTIONAL LAW  
DEVOLUTION, SCOTLAND**

The Scotland Act 1998 (Modifications  
of Schedule 5) (No. 2) Order 2005

*Made* - - - - 22nd March 2005

*Coming into force* - - 23rd March 2005

At the Court at Buckingham Palace, the 22nd day of March 2005

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been—

- (a) laid before and approved by a resolution of each House of Parliament; and
- (b) laid before and approved by a resolution of the Scottish Parliament;

Now, therefore, Her Majesty in exercise of the powers conferred upon Her by section 30(2) of the Scotland Act 1998<sup>(1)</sup>, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

**Citation and commencement**

**1.** This Order may be cited as the Scotland Act 1998 (Modifications of Schedule 5) (No. 2) Order 2005 and shall come into force on the day after the day on which it is made.

**Interception of communications**

**2.**—(1) Section B8 of Part 2 of Schedule 5 to the Scotland Act 1998 (which reserves, amongst other things, interception of communications)<sup>(2)</sup> is amended as follows.

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(1) 1998 c. 46.

(2) Section B8 was amended by S.I. 1999/1749.

(2) In the definition of “Place of detention”**(3)**, for “of the Mental Health (Scotland) Act 1984” there is substituted “given in section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003**(4)**”.

(3) In the definition of “person detained”**(5)**, for the words from “within” to the end there is substituted

“under–

- (a) section 24, 25 or 70 of the Mental Health (Scotland) Act 1984**(6)**;
- (b) Part 6 of the Criminal Procedure (Scotland) Act 1995**(7)**;
- (c) the Mental Health (Care and Treatment) (Scotland) Act 2003; or
- (d) regulations under–
  - (i) subsection (3) of section 116B of the Army Act 1955**(8)**;
  - (ii) subsection (3) of section 116B of the Air Force Act 1955**(9)**; or
  - (iii) section 63B of the Naval Discipline Act 1957**(10)**.”

(4) For the definition of “Private telecommunication system”**(11)** there is substituted–

““Private telecommunication system” has the meaning given in section 2(1) of the Regulation of Investigatory Powers Act 2000**(12)**.”.

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- (3) The definition of “Place of detention” was inserted by [S.I. 1999/1749](#).
  - (4) [2003 asp 13](#) (“the 2003 Act”).
  - (5) The definition of “person detained” was inserted by [S.I. 1999/1749](#).
  - (6) [1984 c. 36](#). Section 24 was amended by the [Adults with Incapacity \(Scotland\) Act 2000 \(asp 4\)](#) (“the 2000 Act”), section 88 and Schedule 5, paragraph 17 and prospectively repealed by the 2003 Act, section 331 and Schedule 5. Section 25 is prospectively repealed by the 2003 Act, section 331 and Schedule 5. Section 70 was repealed (in part) by the Crime and Punishment (Scotland) Act 1997 (c. 48) (“the 1997 Act”), sections 8 and 62 and Schedule 3 and amended by the [Mental Health \(Public Safety and Appeals\) \(Scotland\) Act 1999 \(asp 1\)](#) (“the 1999 Act”), section 3 and prospectively repealed by the 2003 Act, section 331 and Schedule 5.
  - (7) [1995 c. 46](#). Part 6 comprises sections 52 to 63 of the Criminal Procedure (Scotland) Act 1995. Section 52 was repealed (in part) by the 2003 Act, section 331 and Schedule 5. Sections 52A to 52U were inserted by the 2003 Act, section 130. Section 53 was substituted by the 2003 Act, section 131. Sections 53A to 53D were inserted by the 2003 Act, section 131. Section 54 was amended by the 2003 Act, section 331 and Schedule 4, paragraph 8 and the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#) (“the 2004 Act”), section 25 and Schedule 1, paragraph 13. Section 56 was amended and repealed (in part) by the 2004 Act, section 25 and Schedule 1, paragraph 14. Section 57 was extended (in part) by the 1997 Act, section 9(1) and amended by the 2000 Act, section 88(2) and Schedule 5, paragraph 26(1) and the 2003 Act, section 71 and Schedule 4, paragraph 8. Sections 57A to 57D were inserted by the 2003 Act, section 133. Section 58 was extended by the 1997 Act, section 9(1) and amended by the 1997 Act, section 62(1) and Schedule 1, paragraph 21(6), the 1999 Act, section 3(1), the 2000 Act, section 88(2) and Schedule 5, paragraph 26(2) and the 2003 Act, section 331 and Schedule 4, paragraph 8 and repealed (in part) by the 2003 Act, section 331 and Schedule 5. Section 58A was inserted by the 2000 Act, section 84(2). Section 59 was repealed (in part) by the 2000 Act, section 88(3) and Schedule 6 and the 2003 Act, section 331 and Schedule 5 and amended by the 2003 Act, section 331 and Schedule 4, paragraph 8. Section 59A was inserted by the 1997 Act, section 6(1), and substituted by the 2003 Act, section 331 and Schedule 4, paragraph 8. Section 60 was amended by the 1997 Act, section 6(2) and the 2003 Act, section 331 and Schedule 4, paragraph 8. Section 60A was inserted by the 1997 Act, section 22 and the 2000 Act, section 88(2) and Schedule 5, paragraph 26(3) and amended by the 2003 Act, section 331 and Schedule 4, paragraph 8. Section 60B was inserted and amended by the 2003 Act, section 331 and Schedule 4, paragraph 8. Sections 60C and 60D were inserted by the 2003 Act, section 134. Section 61 was amended by the 1997 Act, section 10(2), the 2000 Act, section 88(2) and Schedule 5, paragraph 26 and the 2003 Act, section 331 and Schedule 4, paragraph 8 and repealed (in part) by the 2000 Act, section 88(3) and Schedule 6. Section 62 was amended by the 1997 Act, section 62(1) and Schedule 1, paragraph 21(7). Section 63 was amended by the 1997 Act, section 62(1) and Schedule 1, paragraph 21(8) and repealed (in part) by the 1997 Act, section 62(1), Schedule 1, paragraph 21 and Schedule 3.
  - (8) [1955 c. 18](#). Section 116B was inserted prospectively by the Armed Forces Act 1996 (c. 46) (“the 1996 Act”), section 8 and Schedule 2, paragraph 1.
  - (9) [1955 c. 19](#). Section 116B was inserted prospectively by the 1996 Act, section 8 and Schedule 2, paragraph 1.
  - (10) [1957 c. 53](#). Section 63B was inserted prospectively by the 1996 Act, section 8 and Schedule 2, paragraph 4.
  - (11) The definition of “Private telecommunication system” was inserted by [S.I. 1999/1749](#).
  - (12) [2000 c. 23](#).

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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*A. K. Galloway*  
Clerk of the Privy Council

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes modifications to Schedule 5 to the Scotland Act 1998 (c. 46). That Schedule is concerned with matters which are outwith the legislative competence of the Scottish Parliament.

The Order amends the definitions of “Place of detention”, “person detained” and “Private telecommunication system” in the interpretation provisions forming part of the reservation at Section B8 of Part 2 of Schedule 5 (national security, interception of communications, official secrets and terrorism) in relation to the interception of communications.

In the definition of “Place of detention”, reference to the Mental Health (Scotland) Act 1984 (“the 1984 Act”) is substituted by reference to the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”). The relevant provisions of the 1984 Act are prospectively repealed and replaced by the 2003 Act.

In the definition of “person detained”, the relevant provision of the Sex Offenders Act 1997 (c. 51) was repealed by the Sexual Offences Act 2003 (c. 42). The reference to the Sex Offenders Act 1997 is substituted by reference to enactments applying to persons detained under the criminal and civil law; namely certain provisions of the 1984 Act, Part 6 of the Criminal Procedure (Scotland) Act 1995, the 2003 Act and regulations made under the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957.

In the definition of “Private telecommunication system”, reference to the Telecommunications Act 1984 (c. 12) is substituted by reference to the Regulation of Investigatory Powers Act 2000. The relevant provisions of the Telecommunications Act 1984 were repealed by the Communications Act 2003 (c. 21).