

EXPLANATORY MEMORANDUM TO
THE SCOTLAND ACT 1998 (AGENCY ARRANGEMENTS) (SPECIFICATION)
ORDER 2013

2013 No. 3157

1. This explanatory memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 The purpose of this instrument is to allow the Scottish Ministers to make arrangements for certain of their functions in relation to animal health and welfare to be exercised on their behalf by Ministers of the Crown. Those functions are specified in the Schedule to the instrument.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 The instrument is made under Section 93(3) of the Scotland Act 1998 and specifies functions of the Scottish Ministers and the circumstances when those functions may be exercised by a Minister of the Crown on behalf of the Scottish Ministers.

3.2 This Order will allow Scottish Ministers to make arrangements for certain of their functions in relation to animal health and welfare (and related cross-compliance functions under the Common Agricultural Policy (CAP)) to be exercised on their behalf by Ministers of the Crown.

3.3 This Order provides for a generic approach to the specification of functions. See paragraph 8 below.

4. **Legislative Context**

4.1 The Scotland Act 1998 (Agency Arrangements) (Specification) Order 2013 will be made in exercise of the powers conferred by section 93 of the Scotland Act 1998. The instrument is subject to annulment by either House and is also subject to the negative procedure in the Scottish Parliament.

4.2 Section 93(1) of the Scotland Act enables a Minister of the Crown to make arrangements for any of that Minister's specified functions to be exercised on that Minister's behalf by the Scottish Ministers; and the Scottish Ministers may make arrangements for any of their specified functions to be exercised on their behalf by a

Minister of the Crown. By section 93(3), functions to be subject to such arrangements must be specified in an Order in Council.

4.3 This Order also revokes the Scotland Act 1998 (Agency Arrangements) (Specification) Order 2008¹, which provides the current legal basis for the Animal Health and Veterinary Laboratory Agency (AHVLA), an Executive Agency of the Department for Environment, Food and Rural Affairs, to carry out certain animal health and welfare functions. However, since that Order was made, there have been additional functions for which the Scottish Ministers would like to enter into agency arrangements with Ministers of the Crown, some existing functions have been amended and some functions repealed. A new Order is therefore required.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The purpose of this instrument is to allow for specific functions of the Scottish Ministers, which are related to the administration of animal health and animal welfare inspection regimes and the prevention of the spread of animal diseases (including related functions under the CAP), to be exercised on their behalf by Ministers of the Crown. The instrument will allow Scottish Ministers to retain responsibility for the development of policy in this area, whilst making arrangements for functions to be exercised on their behalf by Ministers of the Crown who will act throughout Great Britain.

7.2 In particular it is envisaged that the instrument will allow the Scottish Ministers to formally make arrangements for the AHVLA, to exercise functions in relation to Scotland on behalf of the Scottish Ministers related to securing the welfare of animals and protecting them from unnecessary suffering; preventing, controlling and eradicating animal and zoonotic diseases and protecting public health; taking action to deal with any failure to comply in relation to those matters; collecting and recovering fees or expenses for any activities carried out in relation to those matters; and carrying out official controls for the purpose of ensuring compliance with rules on cross-compliance under the CAP.

7.3 These arrangements, once in place, will ensure a coherent approach throughout Great Britain in the delivery of these services, reflecting the fact that, for animal health purposes, Great Britain is generally treated as a single epidemiological unit. This is important so as to ensure a rapid and consistent response to disease outbreaks and the need for co-ordinated action between the UK, Welsh and Scottish Governments.

¹ S.I. 2008/1035

7.4 The instrument does not require the making of arrangements by either the Scottish Ministers or by Ministers of the Crown. What arrangements are put into place is a matter for agreement between the Scottish Ministers and Ministers of the Crown, as neither have the power to compel the other. Where an agency arrangement is established under the terms of this instrument, the functions of Scottish Ministers which will be exercised by AHVLA will be published on the AHVLA pages of the DEFRA website and Scottish Government website.

8. Approach

8.1 Section 93(3) of the Scotland Act 1998 provides that “specified” means specified in an Order in Council by Her Majesty. This Order specifies the various functions in the Schedule to the Order.

8.2 Whilst the approach taken in previous section 93 Orders has mainly been to list statutory functions by reference to legislation, the wording used in section 93 of the Scotland Act 1998 does not require this. The approach adopted in this Order is to describe all functions consistently, whether statutory or non-statutory, in a generic manner on the basis that the functions can be unambiguously ascertainable and determined. It is therefore considered that this approach is within the power under section 93(3) of the Scotland Act when specifying functions for the purposes of section 93(1) of that Act. Moreover, the purpose of the Order is to pave the way for the Scottish Ministers and Ministers of the Crown to enter into agency arrangements from time to time, by mutual consent, for any matters falling within the class of specified functions listed in the Order in Council. As indicated in paragraph 7.4 above, the functions subject to agency arrangements will be published.

9. Consultation outcome

9.1 No formal consultation has taken place on the Order but the terms of the Order have been agreed between the Department for Environment, Food and Rural Affairs, the Scotland Office and the Scottish Government.

10. Guidance

10.1 No formal guidance will be available on the use of these powers. However, any arrangements made between Scottish Ministers and Ministers of the Crown under the powers will be made by mutual agreement and will fall within the terms of those powers.

11. Impact

11.1 There will be no impact on business, charities or voluntary bodies.

11.2 There will be no direct impact on the public sector.

11.3 An Impact Assessment has not been prepared for this instrument as the changes made by this Order will have no impact on the private or voluntary sector.

12. Regulating small business

12.1 The legislation does not apply to small business.

13. Monitoring & review

13.1 There is no need for review or monitoring as any arrangements made as a consequence of this Order will be subject to individual agreements. It is possible a review may take place in the future if it is thought that the powers are not wide-ranging enough, which would lead to new Order being made in the future.

14. Contact

Kate Egner at the Scotland Office Tel: 020 7270 6811 or email:
kate.egner@scotlandoffice.gsi.gov.uk can answer any queries regarding the instrument.