

POLICY NOTE

THE SCOTLAND ACT 1998 (AGENCY ARRANGEMENTS) (SPECIFICATION) ORDER 2013

2013/xxx

Introduction

This policy note has been prepared by the Scottish Government and is laid before Parliament.

The Scotland Act 1998 (Agency Arrangements) (Specification) Order 2013 is made in exercise of the powers conferred by section 93(3) of the Scotland Act 1998. The instrument is subject to annulment by either House of the UK Parliament and is also subject to negative procedure in the Scottish Parliament.

Policy Objectives

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 (and related functions under the Common Agricultural Policy (CAP)) to be exercised on their behalf by Ministers of the Crown, whilst retaining legal responsibility for the development of policy in these areas.

In particular it is envisaged that the instrument will allow the Scottish Ministers to formally make arrangements for the Animal Health and Veterinary Laboratories Agency (AHVLA), an Executive Agency of the Department for Environment, Food and Rural Affairs (DEFRA) 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 in relation to animal health and welfare.

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.

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 Minister has the power to compel the other. Where an agency arrangement is established under the terms of this instrument, the terms under which the functions of Scottish Ministers will be exercised will be set out in detail and published on the DEFRA/AHVLA and Scottish Government websites,

and will refer (in the case of statutory functions) to the relevant legislative provisions from which those functions derive.

Legislative Context

Section 93(1) of the Scotland Act 1998 (“the 1998 Act”) enables a Minister of the Crown to make arrangements for any of that Minister’s functions, as specified in an Order in Council made by Her Majesty under section 93(3) of the 1998 Act, 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.

This Order revokes the Scotland Act 1998 (Agency Arrangements) (Specification) Order 2008¹, which provides the current legal basis for AHVLA to carry out certain animal health and welfare functions. However, since that Order was made, additional functions have been introduced through new legislation. Therefore, as agreed with the UK Government, the Scottish Ministers would like to make the necessary legal provisions through the proposed Order with Ministers of the Crown.

Approach

Section 93(3) of the 1998 Act provides that “specified” means specified in an Order in Council made by Her Majesty. Whilst the approach taken in previous section 93 Orders has mainly been to list statutory functions by reference to legislation, it is considered that the wording used in section 93 of the Scotland Act 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 are unambiguously ascertainable and can be determined. It is considered that this approach is within the power under section 93(3) of the Scotland Act 1998 when specifying functions for the purposes of section 93(1). 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 above, the terms of those arrangements will be published.

Consultation

No formal consultation has taken place on the Order but the terms of the Order have been agreed between DEFRA, the Scotland Office and the Scottish Government.

Impact Assessments

A Business and Regulatory Impact Assessment has not been prepared for this Order as it will have no impact on the private or voluntary sector

Monitoring and Review

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 might take place in the

¹ S.I. 2008/1035

future if it is thought that the powers aren't wide-ranging enough, which could lead to a new Order in the future being made.

Contact

Mary Bradley, Scottish Government, Agriculture, Food and Rural Communities Directorate
Animal Health and Welfare.

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