

**EXPLANATORY MEMORANDUM TO
THE SCOTLAND ACT 1998 (TRANSFER OF FUNCTIONS TO THE SCOTTISH
MINISTERS ETC.) ORDER 2014**

2014 No. 2918

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

2. Purpose of the instrument

The purpose of this Order is to transfer a function of the Secretary of State for Work and Pensions, as far as it is exercisable in or in regards to Scotland, to the Scottish Ministers instead. The specific function to be transferred concerns the setting of the limit on the total amount of expenditure that may be incurred by a local authority in Scotland in making discretionary housing payments in the financial years 2014/15 onwards.

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

None

4. Legislative Context

4.1 The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2014 will be made in exercise of the powers conferred by section 63 of the Scotland Act 1998. This instrument is subject to affirmative resolution procedure in the UK Parliament and the Scottish Parliament, and will be made by Her Majesty in Council.

4.2 Section 63(1)(a) of the Scotland Act 1998 enables an Order to provide for any functions, so far as they are exercisable by a Minister of the Crown in or as regards Scotland, to be exercisable by the Scottish Ministers instead of by the Minister of the Crown.

4.3 The function transferred by this Order will enable the Scottish Ministers, by order, to determine the limit on the total amount of expenditure that may be incurred by a Scottish local authority in making discretionary housing payments in the financial years 2014/15 onwards.

4.4 The power of the Secretary of State for Work and Pensions to set the cap on the amount local authorities may spend on Discretionary Housing Payments in a financial year is found in section 70(3)(a) of the Child Support, Pensions and Social Security Act 2000. Pursuant to this the cap is set out in the Discretionary Housing Payments (Grants) Order 2001.

5. Territorial Extent and Application

This instrument applies to the United Kingdom.

6. European Convention on Human Rights

The Parliamentary Under Secretary of State for Scotland, the Rt Hon David Mundell MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2014 are compatible with the Convention rights.”

7. Policy background

7.1 The UK Government has legislated to provide local authorities across Great Britain with the ability to grant Discretionary Housing Payments (DHPs) to claimants in their areas who are entitled to Housing Benefit or the housing element of Universal Credit, and who appear to need further financial assistance to meet housing costs not covered by Housing Benefit or Universal Credit. Local authorities are able to exercise broad discretion to determine how and when DHPs are awarded. Each financial year the UK Government makes a contribution to the cost of DHP awards, and local authorities are able to add to this contribution, subject to a formula-based cap.

7.2 The Scottish Ministers have requested that local authorities are permitted to spend additional funds on DHPs in Scotland and, therefore, desire the statutory cap on DHPs to be raised or removed.

7.3 This Order transfers, from the Secretary of State for Work and Pensions to the Scottish Ministers, the function which can be used to set the overall limit on the total amount of expenditure that may be incurred by a local authority in Scotland in awarding DHPs. The function transferred by this Order will enable the Scottish Ministers, by order, to determine the limit on the total amount of expenditure that may be incurred by a Scottish local authority in making DHPs in the financial years 2014/15 onwards.

8. Consultation outcome

Although there has been no general consultation specific to this Order, the UK and Scottish Government departments with responsibility for the legislation which this Order affects have been consulted during the drafting of this Order. All amendments contained in this Order have the approval of the Department for Work and Pensions and the Scottish Government.

9. Guidance

This Order stands alone, guidance is not necessary.

10. Impact

10.1 This instrument has no impact of a regulatory nature on the private sector or civil society organisations and will not impose or reduce costs.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

As the purpose of this Order is to transfer a function of the Secretary of State for Work and Pensions, so far as it is exercisable in or in regards to Scotland, to be exercisable by the Scottish Ministers instead, and provides a permanent transfer of this function, no monitoring or review of the effects of this Order are required by the UK Government.

13. Contact

Emma Lopinska at the Scotland Office (Tel: 0131 244 9016 or email: emma.lopinska@scotlandoffice.gsi.gov.uk) can answer any queries regarding the instrument.