

2020 No. 776

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

NATIONAL HEALTH SERVICE

**The Scotland Act 1998 (Agency Arrangements) (Specification)
(Coronavirus) Order 2020**

Made - - - - - *21st July 2020*

Laid before Parliament *22nd July 2020*

Laid before the Scottish Parliament *22nd July 2020*

Coming into force - - - *4th September 2020*

At the Court at Windsor Castle, the 21st day of July 2020

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(3)(b) of the Scotland Act 1998(a) is pleased, by and with the advice of Her Privy Council, to order as follows:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Scotland Act 1998 (Agency Arrangements) (Specification) (Coronavirus) Order 2020 and comes into force on 4th September 2020.

(2) In this Order “coronavirus” and “coronavirus disease” have the same meaning as in section 1(1) of the Coronavirus Act 2020(b).

Specification of functions

2.—(1) Subject to paragraph (3), the functions exercisable by the Scottish Ministers under the provisions mentioned in paragraph (2) are specified for the purposes of section 93(1) of the Scotland Act 1998.

(a) 1998 c.46; section 93 was amended by section 23 of the Scotland Act 2012 (c.11).

(b) 2020 c.7.

(2) The provisions are—

- (a) the following sections of the National Health Service (Scotland) Act 1978^(a)—
 - (i) section 1 (general duty of the Scottish Ministers),
 - (ii) section 1A (duty of the Scottish Ministers to promote health improvement),
 - (iii) section 37 (prevention of illness, care and after-care),
 - (iv) section 43 (control of spread of infectious disease), and
- (b) section 1 of the Public Health etc. (Scotland) Act 2008^(b) (duty of Scottish Ministers to protect public health).

(3) Paragraph (1) has effect only where a function specified by that paragraph is exercised in connection with application software which falls within paragraph (4) and is developed by, or on behalf of, the Secretary of State, for use by the general public on mobile devices such as, but not limited to, smartphones and tablets.

(4) Application software falls within this paragraph if it has functions aimed at supporting a reduction in the transmission of coronavirus, which may include—

- (a) enabling users to report that they appear to have developed symptoms of coronavirus disease,
- (b) enabling users to request a test for coronavirus,
- (c) notifying users that they may have been exposed to coronavirus, and
- (d) providing advice to users who have reported symptoms of coronavirus disease, or who may have been exposed to users with coronavirus or symptoms of coronavirus disease, on what to do next.

Richard Tilbrook
Clerk of the Privy Council

^(a) 1978 c.29; section 1A was inserted by the National Health Service Reform (Scotland) Act 2004 (asp 7), section 9(1). The functions of the Secretary of State in sections 1, 37 and 43 were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998. The references to the “Secretary of State” in those sections and the heading to section 1 of the National Health Service (Scotland) Act 1978 are to be read as references to “Scottish Ministers” by virtue of section 117 of the Scotland Act 1998. However section 117 does not amend those references. The functions exercisable under the provisions listed in article 2(2) were separately specified for the purposes of section 93(1) of that Act insofar as those functions may be exercised by the Scottish Ministers in relation to other matters for the health service in Scotland (as defined in section 108(1) of the National Health Service (Scotland) Act 1978) but these are not relevant for this Order.

^(b) 2008 asp 5.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies functions of the Scottish Ministers for the purposes of section 93(1) of the Scotland Act 1998. 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.

This Order, which extends to the whole of the United Kingdom, is concerned solely with enabling Ministers of the Crown and the Scottish Ministers to enter into agency arrangements in the particular circumstances detailed below.

Article 2 paragraph (1) specifies the functions mentioned in paragraph 2 (in the circumstances set out in paragraph (3)) of the Scottish Ministers under sections 1 (general duty of the Scottish Ministers), 1A (duty of the Scottish Ministers to promote health improvement), 37 (prevention of illness, care and after-care) and 43 (control of spread of infectious disease) of the National Health Service (Scotland) Act 1978 and section 1 (duty of Scottish Ministers to protect public health) of the Public Health etc. (Scotland) Act 2008.

The specification of the above functions in connection with application software (an “app”) developed by, or on behalf of, the Secretary of State, will allow the Scottish Ministers and Secretary of State to enter an agency arrangement so the Secretary of State can use those functions to operate that app in Scotland. The app has been designed with a number of functions in mind, including the notification of users where they may have been exposed to coronavirus and the provision of advice on what to do next. It will also enable users to report that they appear to have developed symptoms of coronavirus disease and to request a test for coronavirus.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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