

EXPLANATORY MEMORANDUM TO
THE SCOTLAND ACT 1998 (TRANSFER OF FUNCTIONS TO THE SCOTTISH
MINISTERS ETC.) ORDER 2006

2006 No. 304 (S.3)

1. This Explanatory Memorandum has been prepared by the Scotland Office and is laid before the UK Parliament by Command of Her Majesty. This Memorandum contains information for the Joint Committee on Statutory Instruments in respect of the draft Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2006.

2. Description

2.1 This Order allows for the transfer of certain functions of UK Ministers to the Scottish Ministers and the concurrent exercise of certain functions by the Scottish Ministers and UK Ministers. It does so by using the powers available at section 63 of the Scotland Act 1998 (the “1998 Act”). The powers transferred in this Order relate to the Firefighters’ Pension Scheme and the regulation of animal feeding stuffs and feed additives.

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

3.1 This Order is to be made in exercise of the powers conferred by sections 63, 113 and 124(2) of the 1998 Act. The Order is, by virtue of Schedule 7 to the 1998 Act, subject to affirmative resolution procedure in both Houses of the UK Parliament and in the Scottish Parliament. Section 63 of the 1998 Act provides *inter alia* that by Order in Council, any function of a UK Minister of the Crown, so far as it is exercisable in or as regards Scotland, can be exercisable by the Scottish Ministers instead of, or concurrently with the UK Minister of the Crown. This is commonly known as 'executive devolution'.

3.2 Any function, whether statutory or non statutory, of a UK Minister of the Crown, including a power to make subordinate legislation, so far as it is exercisable in or as regards Scotland, can be the subject of an order under section 63. The UK Minister of the Crown will continue to exercise these functions as regards the rest of the UK. This Order requires the approval of both Houses of the UK Parliament, and the approval of the Scottish Parliament.

3.3 Article 2 of the Order provides that the functions conferred on a UK Minister of the Crown by the provisions of the Fire Services Act 1947 (“the 1947 Act”) and the Agriculture Act 1970 (“the 1970 Act”) specified in the Schedule shall, so far as they are exercisable in or as regards Scotland, be exercisable by the Scottish Ministers *instead of* by a UK Minister of the Crown. In relation to the 1970 Act, the functions are transferred only in so far as exercisable in relation to the animal feeding stuffs and feed additives referred to in column 2 of the Schedule.

3.4 Article 3 of the Order provides for powers under section 2(2) of the European Communities Act 1972 to be exercisable by the Scottish Ministers concurrently with the UK Minister of the Crown. The functions are exercisable by the Scottish Ministers only in so far as they are exercisable in or as regards Scotland and in relation to the animal feeding stuffs and feed additives referred to in article 3(2).

4. Legislative Background

Firefighters' Pension Scheme

4.1 Article 2 transfers to the Scottish Ministers functions which are exercisable in or as regards Scotland under section 26 of the 1947 Act, as amended by the Civil Partnership Act 2004 ("the 2004 Act"), in relation to the Firefighters' Pension Scheme. Prior to amendment by the 2004 Act, functions under section 26 had been transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order (S.I. 1999/1750).

Animal feeding stuffs and feed additives

4.2 Section J4 of Schedule 5 to the 1998 Act reserves *inter alia* the subject-matter of the Medicines Act 1968 ("the 1968 Act"). The interpretation part of Section J4 attracts the definition of "medicinal product" in section 130(1) of the 1968 Act which includes substances fed to animals and, therefore, veterinary medicinal products.

4.3 Until now legislation regulating veterinary medicinal products has been made under the 1968 Act, or section 2(2) of the European Communities Act 1972 with reference to the 1968 Act. When the Veterinary Medicines Regulations 2005 (SI 2005/2745) ("the 2005 Regulations") come into force this will no longer be the case. Regulation 44(1) provides that the 1968 Act shall not apply to veterinary medicinal products. The definition of a 'veterinary medicine' in the 2005 Regulations is narrower in scope than the 1968 Act allows for. As a result, there will be animal feedstuffs which fall outwith the 2005 Regulations but within the 1968 Act, and the functions in respect of them will be reserved by Section J4 of the 1998 Act.

4.4 These reserved functions are to be transferred to the Scottish Ministers by this Order. This is achieved by providing that any feeding stuff used for oral feeding or feed additive which is not regulated by the VMD under the Veterinary Medicines Regulations 2005 (SI 2005/2745) will be regulated by the Scottish Ministers alongside their existing devolved functions in the area of animal feed. The relevant functions are those under the 1970 Act and section 2(2) of the European Communities Act 1972 ("the 1972 Act").

4.5 Article 2 transfers to the Scottish Ministers functions which arise under the provisions of the 1970 Act which are listed in the Schedule. The functions transferred include functions under section 78(6) to direct the manner in which the Government Chemist conducts analysis of samples of materials submitted to him under the 1970 Act or regulations made under it. The Government Chemist acts as an independent expert whose analysis can be obtained prior to or during court proceedings relating to an alleged contravention of the Act or regulations. Article 2 also transfers powers to set the fee for the service provided under section 78(10).

4.6 Paragraph (a) in column 2 of the Schedule restricts the transfer under article 2 to functions in respect of animal feeding stuffs intended for oral feeding which fall outwith the 2005 Regulations but within the 1968 Act. Paragraph (b) in column 2 of the Schedule limits the transfer to functions relating to three functional groups of zootechnical additives which are included within the scope of EC law on additives for animal nutrition (Regulation (EC) No. 1831/2003) but are excluded from the scope of the 2005 Regulations. The groups are (i) digestibility enhancers, (ii) gut flora stabilisers and (iii) substances incorporated with the intention of favourably affecting the environment.

4.7 Article 3 provides that the Scottish Ministers can exercise functions under section 2(2) of the 1972 Act concurrently with a UK Minister of the Crown. Article 3(2)(a) and (b) limit the transfer of functions to the same extent as described in paragraph 4.6 above.

5. Extent

5.1 This Order has UK extent.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for Scotland has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

“In my view the provisions of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2006 are compatible with the Convention rights.”

7. Policy background

Firefighters’ Pension Scheme

7.1 Section 26 of the 1947 Act made provision for the setting up of the Firefighters’ Pension Scheme (renamed from the Firemen’s Pension Scheme by S.I. 2004/2306) to confer benefits on widows, children and dependents of firefighters. Section 26 was amended by the 2004 Act to include reference to civil partners in the list of potential beneficiaries. Whilst the regulation of occupational pensions is a reserved matter, the functions under section 26, prior to amendment by the 2004 Act, were executively devolved to the Scottish Ministers. In order to allow the Scottish Ministers to have the power to amend the Firefighters’ Pension Scheme in relation to civil partners it is necessary to transfer to the Scottish Ministers the functions under section 26 as amended by the 2004 Act. The powers are required in order to make amendments to the Scheme in light of changes to the tax regime for pensions which will apply from April 2006.

Animal feeding stuffs and feed additives

7.2 The regulation of the safety and standards of animal feed is generally devolved. Legislation is made for Scotland by the Scottish Ministers on the advice of the Food Standards Agency (“FSA”). An exception to that is the regulation of veterinary medicines incorporated in animal feed, which is carried out by the Veterinary Medicines Directorate (“VMD”), an executive agency of DEFRA.

7.3 It is agreed between VMD and FSA that zootechnical additives which do not have a medicinal effect on the animals that consume them should be regulated within the framework of animal feed law rather than veterinary medicines legislation. This agreement is reflected in the terms of the 2005 Regulations. In practice, feeding stuffs and feed additives which have a medicinal effect on animals and veterinary medicinal products will continue to be regulated on a UK basis by the VMD. The policy objective of this Order is to ensure that the Scottish Ministers have the necessary powers to legislate for all non-medicinal animal feed in Scotland, in the light of the agreed allocation of responsibilities, alongside their existing devolved functions in this area. .

7.4 Zootechnical additives include gut flora stabilisers, digestibility enhancers and substances which favourably affect the environment. These additives have no medicinal effect on the animal yet may fall within the broad definition of a medicine for the purposes of the 1968 Act. They enable the animal to digest its food more efficiently, and lower the environmental impact of farm animals (for example, by reducing the production of methane by cows). There is no impact upon the health of the animal itself.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this Order, as it has no impact on business, charities, or voluntary bodies. This is a constitutional measure that concerns the appropriate authority for exercising a function in or as regards Scotland.

8.2 There is no impact on the public sector or public spending.

9. Contact

9.1 Alasdair Smith at the Scotland Office, Department for Constitutional Affairs (Tel: 020 7270 6756 or e-mail: Alasdair.Smith@Scotland.gsi.gov.uk) can answer any queries regarding the Order.