

EXPLANATORY MEMORANDUM TO
THE SCOTLAND ACT 1998 (AGENCY ARRANGEMENTS) (SPECIFICATION)
ORDER 2008

2008 No. 1035

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. Description

2.1 This Order allows for functions exercisable by the Scottish Ministers, under the enactments specified in the Schedule to this Order, to be specified so that they can be exercised by arrangement on behalf of the Scottish Ministers by a Minister of the Crown. This is known as an “agency arrangement”. The functions in question relate mainly to the administration of various licensing and inspection regimes regarding animal health and welfare that are common across Great Britain and are carried out under parallel legislation in each jurisdiction.

2.2 Once the Order is made, the Scottish Executive and Defra may enter into an agency arrangement which will provide that the functions specified in this Order will be exercised by Animal Health, an executive agency of Defra.

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

3.1 The Order is made by Her Majesty in Council in exercise of the power conferred by section 93(3) of the Scotland Act 1998 (‘the Scotland Act’). The Order is, by virtue of section 115(1) and paragraphs 1, 2 and 3 of Schedule 7 to that Act, subject to negative resolution procedure in both Houses of the UK Parliament and in the Scottish Parliament.

4. Legislative Background

4.1 Section 93(1) of the Scotland Act 1998 (“the Scotland Act”) enables the Scottish Ministers to 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.

4.2 This Order specifies for the purpose of section 93(1) of the Scotland Act, functions which are exercisable by the Scottish Ministers in relation to animal health and welfare, export and import of animals and the prevention of the spread of animal diseases.

4.3 Orders made under section 93 of the Scotland Act allow agency arrangements to be made, but the overall responsibility for the functions specified in this Order will remain with the Scottish Ministers. As such the regulations specified in this Order and the subject matter remains a devolved matter in Scotland.

5. Extent

5.1 This instrument applies to the United Kingdom with the exception of Northern Ireland.

6. European Convention on Human Rights

6.1 The Minister of State at the Scotland Office 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 (Agency Arrangements) (Specification) Order 2008 are compatible with the Convention rights

7. Policy background

7.1 The Scottish Executive has carried out a review of its operations in the area of animal health and welfare with a view to the separation of the development of policy from service delivery. This review identified a number of areas, mainly in relation to licensing regimes, where it was considered that service delivery by policy civil servants was not, necessarily, the most efficient option.

7.2 A parallel exercise carried out by Defra identified similar areas of activity that might be delivered more efficiently by an operational partner, and some of these have already been transferred to Animal Health; others are under consideration. The transfer of the functions from Defra and the Scottish Executive will enable Animal Health to exercise these functions, providing for an effective joined-up regime for animal health and welfare across Great Britain

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities, or voluntary bodies.

9. Contact

Adam Pile at the Scotland Office (e-mail adam.pile@scotland.gsi.gov.uk) can answer any queries regarding the instrument.

Scotland Office
April 2008