

EXPLANATORY MEMORANDUM TO
THE SCOTLAND ACT 1998 (AGENCY ARRANGEMENTS) (SPECIFICATION)
(NO. 2) ORDER 2008

2008 No. 1788

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 a function exercisable by a Minister of the Crown, as described in Schedule 1 to this Order, to be specified so that it can be exercised by arrangement on behalf of a Minister of the Crown by the Scottish Ministers. This Order also allows for a function exercisable by the Scottish Ministers, under the enactment specified in Schedule 2 to this Order, to be specified so that it 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 to making arrangements for monitoring compliance with a curfew condition included in certain offenders’ release licences under Home Detention Curfew (HDC) schemes operating in both jurisdictions.

2.2 The Order will enable Scottish Ministers to put in place the necessary contractual arrangements for the electronic monitoring of certain offenders who have been transferred from England and Wales to Scotland, and vice versa, and who are released on licence subject to a curfew condition.

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 and 2 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 and also allows a Minister of the Crown to make arrangements for any of his specified functions to be exercised on his behalf by Scottish Ministers. By section 93(3) functions to be subject to such arrangements must be specified in an Order in Council.

4.2 Orders made under section 93 of the Scotland Act allow agency arrangements to be made, but the overall responsibility for the functions specified in Schedule 1 to this Order will remain with a Minister of the Crown and the Scottish Ministers will maintain responsibility for the functions specified in Schedule 2.

4.3 Paragraph 8 of Schedule 1 to the Crime (Sentences) Act 1997 (“1997 Act”) deals with the transfer of prisoners from England and Wales to Scotland. The Management of Offenders etc. (Scotland) Act 2005 (Consequential Modifications) Order 2006 (S.I. 2006/1055) (“the 2006 Order”) made under sections 104 of the Scotland Act 1998, provided that the HDC system in England and Wales (found in sections 246, 253 and 250(5) of the Criminal Justice Act 2003) was to continue to apply to offenders transferred from England and Wales to Scotland on a restricted basis. The 2006 Order, at article 2, amended paragraph 8 of Schedule 1 to the 1997 Act to insert reference to sections 246 and 253 of the Criminal Justice Act 2003 so that the HDC system in England and Wales continued to apply to offenders transferred to Scotland upon the establishment of an equivalent HDC system in Scotland under the Management of Offenders etc. (Scotland) Act 2005 (“the 2005 Act”).

4.4 Section 21(8) of the 2005 Act amends paragraphs 10 and 11 of Schedule 1 to the 1997 Act which deal with the transfer of offenders from Scotland to England and Wales and Northern Ireland respectively. The effect of section 21(8) of the 2005 Act is that the Scottish HDC system may continue to apply to offenders transferred on a restricted basis from Scotland to England and Wales or Northern Ireland, as a matter of Scots law. The 2006 Order, at article 3, provides that the amendment made by section 21(8) of the 2005 Act to the 1997 Act extends to England and Wales and Northern Ireland.

5. Extent

5.1 This Order does not extend to Northern Ireland because the functions specified in this Order do not extend to 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) (No.2) Order 2008 are compatible with the Convention rights

7. Policy background

7.1 The primary aim of HDC is to ease reintegration of prisoners back into the community whilst restricting their movements, in particular by virtue of a curfew condition which is monitored electronically by means of a tag.

7.2 The HDC scheme has been in operation in Scotland since July 2006. This scheme allows selected low risk prisoners to be released from custody earlier than would otherwise be permitted. Such prisoners are on licence and are required to comply with conditions including an electronically monitored curfew condition. Decisions on release and on the conditions of release have to be taken having regard to considerations of public safety, reducing re-offending and reintegration of the offender into the community. Those who fail to comply with the curfew or other conditions can be recalled to custody. A similar system has been in operation in England and Wales since 1999.

7.3 Compliance with the curfew condition will be monitored electronically by companies contracted to deliver services to the Secretary of State for offenders who are to reside in England and Wales and to the Scottish Ministers for offenders who are to reside in Scotland.

7.4 The function of the Secretary of State which is specified in Schedule 1 to this Order is the non-statutory function of making arrangements for the electronic monitoring of compliance with curfew conditions in respect of certain offenders who have transferred from England and Wales to Scotland and are released on licence under the appropriate section of the Criminal Justice Act of 1991 or 2003.

7.5 The function exercisable by the Scottish Ministers which is specified in Schedule 2 is their function under section 245C of the Criminal Procedure (Scotland) Act 1995, as applied to the HDC scheme by section 12AB(3) of the Prisoners and Criminal Proceedings (Scotland) Act 1993. The function in section 245C of the 1995 Act passed from the Secretary of State to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998. Section 12AB(3) of the 1993 Act was inserted by section 15 of the Management of Offenders etc.(Scotland) Act 2005). The functions specified in Schedule 2 enable arrangements, including contractual arrangements, to be put in place for the remote monitoring of compliance with curfew conditions in respect of certain offenders who have transferred to England and Wales from Scotland and whose release on licence is subject to a curfew condition as defined in section 12AB of the 1993 Act.

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

9.1 Adam Pile at the Scotland Office (e-mail adam.pile@scotland.gsi.gov.uk, telephone: 0207270 6756) can answer any queries regarding the instrument.

Scotland Office
July 2008