

**EXPLANATORY MEMORANDUM TO**  
**THE SCOTLAND ACT 1998 (AGENCY ARRANGEMENTS) (SPECIFICATION)**  
**(CORONAVIRUS) ORDER 2020**

**2020 No. 776**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Office of the Secretary of State for Scotland and is laid before Parliament by Command of Her Majesty.
- 1.2 This explanatory memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 The purpose of this instrument is to pave the way for the Scottish Ministers and Ministers of the Crown to enter into agency arrangements, under which specific functions of Scottish Ministers can be exercised in Scotland by Ministers of the Crown in relation to application software for use by the public on mobile devices such as smartphones and tablets. This is being developed by or on behalf of the Secretary of State for Health and Social Care, and is aimed at supporting a reduction in the transmission of coronavirus (the “App”). Ultimately whether those functions are exercisable is dependent on the Scottish Ministers electing to enter into a subsequent arrangement allowing the Secretary of State to exercise these functions.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This Order specifies most of the same healthcare functions as the Scotland Act 1998 (Agency Arrangements) (Specifications) (Coronavirus) (No. 2) Order 2020 but in connection with a different purpose. Given the exceptional context and need for pace, the exact timing and content could not be finalised until very close to the deadline for submitting the orders to the July Privy Council. Due to the urgent nature of these orders, as they relate to the government’s COVID-19 response, it was decided that both orders should remain separate.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument is the whole of the United Kingdom.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

## **6. Legislative Context**

- 6.1 Section 93(1) of the Scotland Act enables a Minister of the Crown to make arrangements for any of that Minister's specified functions to be exercised on that Minister's behalf by the Scottish Ministers; and enables the Scottish Ministers to make arrangements for any of their specific functions to be exercised on their behalf by a Minister of the Crown. Under section 93(3), functions to be subject to such arrangements, known as agency arrangements, must be specified in an Order in Council.
- 6.2 The public health functions of the Secretary of State under the National Health Service (Scotland) Act 1978 were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998. The public health functions listed in article 2(2) of this Order were previously specified for the purposes of section 93(1) of the Scotland Act 1998 insofar as those functions may be exercised by the Scottish Ministers to enter into contracts to secure the provision of equipment, goods and services for the health service (as defined in section 108(1) of the National Health Service (Scotland) Act 1978) by the Scotland Act 1998 (Agency Arrangements)(Specification) Order 2011<sup>1</sup>.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Given the present pandemic, the NHS Test and Trace service in England, and the equivalent in Scotland, Wales and Northern Ireland have a key role to play in pushing down and keeping low the rate of reproduction (R) of COVID-19 and reducing the total number of infected people by identifying cases before they spread the virus.
- 7.2 These services use a combination of dedicated contact tracing staff, local public health experts and an online service to trace the contacts of anyone who tests positive for the SARS-Cov2 Coronavirus. The App developed by and on behalf of the Secretary of State for Health and Social Care is intended to further extend the speed and reach of contact tracing in England, and, should the devolved administrations choose also to adopt it, the other nations of the UK. It is important to be able to introduce the App into the service as soon as it is appropriate to mitigate further transmission of the virus.
- 7.3 This instrument will enable arrangements to be made under which the Secretary of State for Health and Social Care may exercise functions of the Scottish Ministers in respect of the operation of the App in their territory. As only functions which are specified in an Order in Council may be the subject of such an arrangement, this Order is necessary to specify those functions and facilitate this. There is an existing Order in Council which does specify these functions (see SI 2011/2439) but it is considered that the Order is not wide enough to cover the operation of the App.
- 7.4 These functions are:
- Section 1 of the National Health Service (Scotland) Act 1978, which confers the function of the provision of a comprehensive and integrated health service, designed to secure improvement in the physical and mental health of the people of Scotland and the prevention diagnosis, and treatment of illness.

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<sup>1</sup> S.I. 2011/2439

Section 1A of that Act which confers the function of the promotion of the improvement of the physical and mental health of the people of Scotland.

Section 37 of the Act which confers the function of making arrangements for the prevention of illness, the care of persons suffering from illness and the aftercare of those people.

Section 43 again of that Act which confers the function of providing or securing the provision of a service for the control of the spread of infectious disease.

Section 1 of the Public Health etc. (Scotland) Act 2008, which confers the function of protecting public health in Scotland.

Where an agency arrangement is established under the terms of this instrument, the terms under which the functions of Scottish Ministers will be exercised by the Secretary of State will be set out in the agreement.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

## **9. Consolidation**

9.1 The Order does not amend other legislation, so raises no issues relating to consolidation.

## **10. Consultation outcome**

10.1 Although there has been no general consultation specific to this Order, the UK Government departments with responsibility for the legislation which this Order affects have been consulted during the drafting of this Order. The content of this Order has been agreed between the Department of Health and Social Care, the Office of the Secretary of State for Scotland and the Scottish Government.

## **11. Guidance**

11.1 No formal guidance will be available on the use of these powers. However any arrangements made between Scottish Ministers and Ministers of the Crown under the affected powers will be made by mutual agreement.

## **12. Impact**

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because the changes introduced by this Order will have no impact on business, or the private or voluntary sectors. The Order simply allows for future arrangements to be entered into. Whilst any future arrangements made under these powers may be of benefit to organisations such as the NHS, this Order creates no additional public sector costs.

## **13. Regulating small business**

13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

- 14.1 The Order does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Secretary of State for Scotland has made the following statement: “There is no need for review or monitoring as the Order does not regulate businesses”.
- 14.2 There is no need for review or monitoring as any arrangement made as a consequence of the Order will be subject to individual agreement.

## **15. Contact**

- 15.1 Ella Morrell at the Office of the Secretary of State for Scotland. Telephone: 0207 270 6759 or email: [ella.morrell@scotlandoffice.gov.uk](mailto:ella.morrell@scotlandoffice.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Rachel Irvine or Alison Evans (job share), Deputy Director for Constitutional Policy at the Office of the Secretary of State for Scotland can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Secretary of State for Scotland at the Office of the Secretary of State for Scotland can confirm that this Explanatory Memorandum meets the required standard.