

POLICY NOTE

THE SCOTLAND ACT 1998 (AGENCY ARRANGEMENTS) (SPECIFICATION) (CORONAVIRUS) ORDER 2020

2020 No. 776

The purpose of this instrument is to enable the Scottish Ministers and Ministers of the Crown to enter into agency arrangements for specified devolved functions to be exercised by a Minister of the Crown in connection with application software developed by, or on behalf of, the Secretary of State, which has functions aimed at supporting a reduction in the transmission of coronavirus.

The above instrument was made under sections 93(3) and 113(3)(b) of the Scotland Act 1998 on behalf of Her Majesty's Government, specifically the Office of the Secretary of State for Scotland. The instrument specifies functions of Scottish Ministers which may be exercised by a Minister of the Crown on behalf of Scottish Ministers. The Order allows Scottish Ministers and Ministers of the Crown to enter into agency arrangements, under which the Ministers of the Crown may exercise certain functions on the behalf of Scottish Ministers only in so far as they are in connection with application software developed by, or on behalf of the Secretary of State, for use on mobile devices such as smartphones and tablets, and which may have the functions set out in Article 2(4) of the Order.

The instrument is subject to annulment by either House and is subject to the negative procedure in the Scottish Parliament. The Order extends to the whole of the United Kingdom but is concerned solely with agency arrangements between Ministers of the Crown and Scottish Ministers.

Policy Objectives

The purpose of this instrument is to pave the way for Scottish Ministers to make arrangements for certain of their functions to be exercised in Scotland on their behalf by Ministers of the Crown in relation to application software (an "app") developed by or on behalf of the Secretary of State for Health and Social Care, aimed at supporting a reduction in the transmission of coronavirus. Any such arrangement would require agreement between the Scottish Government and UK Government; this instrument only allows for such arrangements to be agreed. This Order in no way confers any agreement by Scottish Ministers (in principle or otherwise) to the launch and operation of the app itself.

The app is intended to further extend the speed and reach of contact tracing in England and, should Scottish Ministers so choose, within Scotland as part of NHS Test and Protect.

This instrument will enable arrangements to be made under which the Secretary of State for Health and Social Care may exercise certain functions of the Scottish Ministers in respect of the operation of the app in their territory. As the specified functions are devolved, and 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 for other purposes (see SI

2011/2439) but it is considered that that Order is not wide enough to cover the operation of the app.

These functions are:

- Section 1 of the National Health Service (Scotland) Act 1978 (“the 1978 Act”), which confers the general duty to promote in Scotland 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.
- Section 1A of the 1978 Act which confers the duty of the Scottish Ministers to promote the improvement of the physical and mental health of the people of Scotland.
- Section 37 of the 1978 Act which empowers the Scottish Ministers to make arrangements for the purposes of the prevention of illness, the care of persons suffering from illness or the after-care of such persons,
- Section 43 of the 1978 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 duty of Scottish Ministers to protect public health in Scotland.

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

Consultation

No formal consultation has taken place on the Order but the terms have been agreed between the Department of Health and Social Care, the Office of the Secretary of State for Scotland and the Scottish Government.

Impact Assessments

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.

Scottish Government
Directorate for Digital Health & Care
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