

EXPLANATORY MEMORANDUM TO
THE SCOTLAND ACT 1998 (AGENCY ARRANGEMENTS) (SPECIFICATION)
(CORONAVIRUS) (NO. 2) ORDER 2020

2020 No. 777

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 Scottish Ministers and Ministers of the Crown to enter into agency arrangements, under which specified functions of Scottish Ministers can be exercised in Scotland by Ministers of the Crown in relation to the operation of the Joint Biosecurity Centre (“JBC”). The JBC has been established to provide early warning of coronavirus (or “COVID-19”) outbreaks across the UK. The JBC has three core functions:
 - i. Gathering and analysing data about COVID-19 infection to inform analytical products (e.g. strategic assessments on the impact of COVID-19 including within specific settings);
 - ii. Provision of advice (either assessment or guidance) to help inform decisions about measures that it may be appropriate to implement to control the spread of COVID-19; and
 - iii. Setting and communicating the COVID-19 Alert level: providing a single, clear view on the level of risk of COVID-19 infection.
- 2.2 Ultimately the extent to which those functions are exercisable is dependent on Scottish Ministers and the Secretary of State for Health and Social Care electing to enter into subsequent arrangements allowing the Secretary of State for Health and Social Care to exercise these functions. This instrument only allows for such arrangements to be agreed.
- 2.3 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.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This Order specifies, with one addition, the same healthcare functions as the Scotland Act 1998 (Agency Arrangements) (Specifications) (Coronavirus) 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 1998 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 Scottish Ministers; and enables 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) of the Scotland Act 1998, functions which are 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 Scottish Ministers by virtue of section 53 of the Scotland Act 1998. The public health functions exercisable under the provisions listed in article 2(2) of this Order have been separately 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 2011¹, and insofar as those functions may be exercised by the Scottish Ministers in relation to application software for use by the public on mobile devices such as smartphones and tablets which is aimed at supporting a reduction in the transmission of coronavirus by the Scotland Act 1998 (Agency Arrangements) (Specification) (Coronavirus) Order 2020.
- 6.3 The functions to be specified in this Order are in relation to the operation of the JBC.

7. Policy background

What is being done and why?

- 7.1 The JBC was established on 1 June 2020 as a directorate of the Department of Health and Social Care. Its objective is to provide early warning of COVID-19 outbreaks across the United Kingdom and to help ensure decision-makers at all levels have

¹ S.I. 2011/2439

access to the best information and guidance to inform appropriate responses. This will include near real-time situational awareness, analysis of key trends and developments, and strategic assessments on the impact of the virus on key sectors, settings and/or communities. These products will be enriched if they are informed by relevant data collected from all four nations of the United Kingdom. The JBC will also share good practice guidance and will ensure decision makers in all four nations have access to the most up to date information on the most effective responses to outbreaks in different circumstances.

7.2 The JBC will also be responsible for setting the COVID-19 Alert Level across the United Kingdom, which is intended to provide the public with an informed indication of population level risk from COVID-19. A single UK-wide infection alert level, applicable across all four nations of the United Kingdom, will help to safeguard clarity of message.

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 Scottish Ministers in connection with the JBC. As only functions which are specified in an Order in Council made under section 93 of the Scotland Act 1998 may be the subject of such an arrangement, this Order is necessary to specify those functions and facilitate this.

7.4 These functions are:

National Health Service (Scotland) Act 1978:

- i. Section 1 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.
- ii. Section 1A confers the function of the promotion of the improvement of the physical and mental health of the people of Scotland.
- iii. Section 37 confers the function of making necessary arrangements for the purposes of the prevention of illness, the care of persons suffering from illness or the after-care of such persons.
- iv. Section 43 confers the function of providing or securing the provision of a service for the control of the spread of infectious disease.
- v. Section 47(2) confers the function of conducting, or assisting by grants to conduct, research into any matters relating to the causation, prevention, diagnosis or treatment of illness.

Public Health etc. (Scotland) Act 2008

7.5 Section 1 confers the function of protecting public health in Scotland.

7.6 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 for Health and Social Care 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 as the Order makes provision for Ministers of the Crown to enter into agency arrangements with the Scottish Government and has no wider impact.

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.

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 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.