EXPLANATORY MEMORANDUM TO

THE SCOTLAND ACT 1998 (TRANSFER OF FUNCTIONS TO THE SCOTTISH MINISTERS ETC.) ORDER 2020

2020 No. [XXXX]

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.

2. Purpose of the instrument

2.1 This Order provides for certain functions which are conferred on the Secretary of State under section 2 of the Employment and Training Act 1973, so far as they are exercisable in or as regards Scotland, to be exercisable by the Scottish Ministers concurrently with the Secretary of State. This will enable the Scottish Ministers to assist young people to retain employment in two specific circumstances; (a) that the young person is aged 16-24 and has an offer of employment after a period of 6 months or more of unemployment, or (b) is aged 16 to 25, left care after their 16th birthday and has an offer of employment.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 The territorial application of this instrument is Scotland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is Scotland.

5. European Convention on Human Rights

5.1 The Secretary of State for Scotland has made the following statement regarding Human Rights:

"In my view the provisions of The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 The Section H3 Job search and support Reservation, at Schedule 5 Scotland Act 1998, reserves the subject matter of the Employment and Training Act 1973 ("the 1973 Act"), except insofar as relating for training for employment and the matters listed in Exception 1 and 2 to Section H3.

6.2 Section 53 of the Scotland Act 1998 ("the 1998 Act") provides that functions conferred on a Minister of the Crown by any pre-commencement enactment such as the 1973 Act shall, so far as they are exercisable within devolved competence, be exercisable by the Scottish Ministers instead of by a Minister of the Crown. The effect of the Section H3 Reservation and exceptions is that the function of providing assistance under section 2 of the 1973 Act is exercisable by Scottish Ministers only in the circumstances listed in the exceptions. The Scottish Ministers wish to be able to create a grant which applies in a wider set of circumstances not listed in the exceptions.

6.3 Section 63(1)(b) of the 1998 Act enables an Order to provide for any functions, so far as they are exercisable by a Minister of the Crown in or as regards Scotland, to be exercisable by the Scottish Ministers concurrently with a Minister of the Crown.

6.4 Section 2(1) of the 1973 Act provides that the Secretary of State shall make such arrangements as he considers appropriate for the purpose of assisting persons to select, train for, obtain and retain employment. Section 2(5) provides that no payments shall be made by or on behalf of the Secretary of State by virtue of any power conferred by this section, other than certain payments which are not relevant here, without Treasury approval. However, where the function is exercised by the Scottish Ministers under an Order made under section 63(1) (b) of the 1998 Act this requirement is disapplied by section 63(2) of the 1998 Act.

6.5 Articles 3 and 4 of the Order amend three enactments in connection with the provisions made by this Order. This will enable the sharing of Revenue and Customs information and social security information with the Scottish Ministers in connection with any arrangements they make by virtue of this Order to help young people retain employment.

7. Policy background

What is being done and why?

7.1 The Scottish Government wishes to use the powers transferred by this Order to create a grant.

7.2 The Scottish Government has committed to introducing a grant for young people aged 16-24 years old (inclusive), who have been out of paid employment for six months or more. The unemployment rate for young people is higher than for those over 25[i]. The grant will provide additional support to care leavers, who will be eligible until their 26th birthday, a year longer than other young people, without having to meet the requirement to have been out of paid work for 6 months.

7.3 This grant will help with the initial costs associated with entering and remaining in work. The grant could be used to pay for lunches, clothing, and help towards travel costs, removing some of the initial pressure of being able to afford these things. The intent is not to replace an unemployment-related benefit and cover all household costs but rather support young people with additional costs associated with moving into employment.

7.4 This grant does not fall within the circumstances in which the Scottish Ministers may currently exercise the powers under section 2 of the 1973 Act. The UK Government has therefore agreed to share the function of making arrangements to provide assistance to retain employment to this cohort of young people with the Scottish

Government. This Order provides that the relevant statutory function, so far as it is exercisable in or as regards Scotland, may be exercisable by the Scottish Ministers concurrently with the Secretary of State. This will enable the Scottish Government to introduce the proposed grant.

7.5 There will be no appeal rights, for example to a tribunal or the Sheriff Court, as this support will be delivered as an administrative scheme, as provided for by the powers being transferred to the Scottish Ministers.

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.

9. Consolidation

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

10. Consultation

10.1 There has been no consultation specifically on this Order.

10.2 However, the Scottish Government has previously asked questions about this policy through the Social Security in Scotland Consultation[ii] which ran from 29 July to 30 October 2016. The question on what the Scottish Government should consider in developing this grant received 131 responses, 51 from individuals and 80 from organisations, with almost all supporting its introduction. A number of responses stressed that the scheme should be simple for both applicants and administrators.

10.3 The Scottish Government consulted on the key eligibility criteria and the format of the payment from 16 January 2019 until 9 April 2019. Consultation responses will help to inform further policy development.

11. Guidance

11.1 This Order stands alone, and guidance is not necessary. The Scottish Government will publish further details about the administrative arrangements for the grant.

12. Impact

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

12.2 There is no significant impact on the public sector. Providing this support is estimated to have a recurring annual cost of £1,200,000 for the Scottish Government.

12.3 An Impact Assessment has not been prepared for this instrument because no impact on business is expected.

13. Regulating small business

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

14. Monitoring & review

14.1 As the purpose of this Order is to allow the Scottish Ministers to concurrently exercise certain functions set out in section 2 of the 1973 Act, no formal review or monitoring is considered necessary.

14.2 The Order does not include a statutory review provision 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."

15. Contact

15.1 Justine Hurst at the Office of the Secretary of State for Scotland. Telephone: 0207 270 6756 or email: Justine.hurst@scotlandoffice.gsi.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.

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[i] https://www2.gov.scot/Topics/Statistics/Browse/Labour-Market/LMTrends

[ii] https://consult.gov.scot/social-security/job-grant-eligibility-criteria-consultation/