EXPLANATORY MEMORANDUM TO

THE SCOTLAND ACT 1998 (AGENCY ARRANGEMENTS) (SPECIFICATION) (No. 2) ORDER 2006

2006 No. 3248

1. This Explanatory Memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty. It contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 This Order allows the payment functions of the Scottish Ministers exercisable under regulations 5(2), 10(4) and 14(2) of the Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005 ("the 2005 Regulations") to be specified so that they can be exercised by arrangement on behalf of the Scottish Ministers by a Minister of the Crown. This is known as an "agency arrangement".

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"). By virtue of Schedule 7 to that Act the Order is subject to negative resolution procedure in both Houses of the UK Parliament and in the Scottish Parliament.

3.2 The Joint Committee may wish to note why this Order was laid in the UK and Scottish Parliaments on 8 January and not immediately after the Privy Council meeting on 14 December at which it was made. Statutory Instrument Practice advises that instruments should, "in general" be laid before Parliament "as soon as may be after registration". The reason this Order was not laid until 8 January was to avoid a breach of the Scottish Parliament's 21 day rule.

3.3 The result of the reference in Article 1 of the Order to Article 1(3) of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.)(No. 3) Order 2006 (the 2006 Order) is that this Order will come into force 21 calendar days after laying in Parliament. If the Order had been laid immediately after its making at the 14 December 2006 Privy Council meeting, this would not have caused any difficulties with the Westminster's 21 day rule. At Westminster recess dates count towards the 21 day period in accordance with the 21 day rule so there would be no difficulty with the Order coming into force 21 calendar days after laying.

3.4 However, laying immediately after making would cause difficulties with the Scottish Parliament's 21 day rule, as recess dates do not count towards the 21 days in accordance with their rule. Therefore, given the Christmas recess, there would have been a breach of the Scottish Parliament's 21 day rule when the Order came into force 21 calendar days after laying.

3.5 A solution was needed which allowed us to respect the rules in both Parliaments and keep the laying dates in both Parliaments the same - so as to avoid any ambiguity for the reader as to the coming into force date. The neatest way to do this was

to ensure that the Order was laid in both Parliaments on the same day immediately after the Scottish Parliamentary recess.

4. Legislative Background

4.1 Section 93(1) of 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. By section 93(3) functions to be subject to such arrangements must be specified in an Order in Council.

4.2 This Order specifies, for the purposes of section 93(1) of the Scotland Act, the functions of the Scottish Ministers under regulations 5(2) (Healthy Start food and payments in lieu), 10(4) (failure to receive benefit represented by the voucher) and 14(2) (payment of food outlet) of the 2005 Regulations in so far as those functions may be exercised by Scottish Ministers. These functions are to be transferred to the Scottish Ministers under the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 3) Order 2006.

4.3 The Order also modifies the specification of the functions of the Scottish Ministers in relation to the Welfare Food scheme under the Welfare Food Regulations 1996, which have previously been specified for the purposes of section 93(1) in the Scotland Act 1998 (Agency Arrangements) (Specification) Order 1999 (S.I. 1999/1512). The changes reflect the abolition of NHS Trusts in Scotland and the recent revocation of the regulations in relation to the provision of dried milk at a reduced price in the 1996 Regulations.

5. Extent

This instrument extends to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Healthy Start scheme is the replacement for the current Welfare Food Scheme, which was first introduced in Britain to combat food shortages during the Second World War. Latterly the scheme offered milk infant formula and vitamins to low income families. Following a Department of Health led review of that scheme, section 13 of the Social Security Act 1988 was substituted by the Health and Social Care (Community Health and Standards) Act 2003, amongst other things to enable the Welfare Food Scheme to be replaced by another scheme or schemes.

7.2 The new scheme offers vouchers which can then be exchanged for milk, fresh fruit and vegetables, and infant formula to pregnant women and children under the age of four in certain low income families. The vouchers can be used in a wide range of participating shops and pharmacies. Under the Welfare Food Scheme, tokens could only be exchanged for milk and infant formula so the new scheme offers much more flexibility and choice. Like the Welfare Food scheme, the new scheme also offers vitamins.

7.3 The Order is one of two being taken forward that relate to the Scottish aspects of the Healthy Start scheme. As mentioned at paragraph 4.2 above, the other Order is the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 3) Order 2006. The purpose of the transfer of functions Order (commonly referred to as "executive devolution") is to enable Scottish Ministers to prescribe the range of foods to be available under the Healthy Start scheme in Scotland and to issue directions to Health Boards on matters relating to the operation of the scheme in Scotland. Scottish Ministers will also be able to reimburse suppliers of Healthy Start food and vitamins, as well as certain beneficiaries in Scotland, in a similar manner to the functions already carried out in relation to the Welfare Food scheme (the predecessor to Healthy Start) reimbursement.

7.2 The purpose of this Order is to enable the Scottish Ministers to enter into an agency arrangement with the Secretary of State for Health. The practical effect of this is to allow for some of the executively devolved functions concerning day to day reimbursement (specifically relating to Healthy Start foods) to be carried out by contractors for the Department of Health. When dealing with the reimbursement of suppliers and beneficiaries in Scotland, the Department of Health will be acting as the agent of Scottish Ministers. This replicates what happened for the Welfare Food scheme and allows Scottish Ministers to take advantage of economies of scale. Scottish Ministers will deal directly with reimbursement in relation to Healthy Start vitamins.

8. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities, or voluntary bodies.

9. Contact

Glenn Preston at the Scotland Office (Glenn.Preston@scotland.gsi.gov.uk) can answer any queries regarding the instrument.

Scotland Office
December 2006

EXECUTIVE NOTE

THE SCOTLAND ACT 1998 (AGENCY ARRANGEMENTS) (SPECIFICATION) (NO. 2) ORDER 2006 SI/2006/3248

1. This Order allows the payment functions of the Scottish Ministers exercisable under regulations 5(2), 10(4) and 14(2) of the Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005 to be specified so that they can be exercised by arrangement by on behalf of the Scottish Ministers by a Minister of the Crown. This is known as an "agency arrangement".

Parliamentary Procedure

2. 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"). By virtue of Schedule 7 to that Act the Order is subject to negative resolution procedure in both Houses of the UK Parliament and in the Scottish Parliament.

3. This Order was laid in the UK and Scottish Parliaments on 8 January and not immediately after the Privy Council meeting on 14 December at which it was made. Statutory Instrument Practice advises that instruments should, "in general" be laid before Parliament "as soon as may be after registration". The reason this Order was not laid until 8 January was to avoid a breach of the Scottish Parliament's 21 day rule.

4. The result of the reference in Article 1 of the Order to Article 1(3) of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.)(No. 3) Order 2006 (the 2006 Order) is that this Order will come into force 21 calendar days after laying in Parliament. If the Order had been laid immediately after its making at the 14 December 2006 Privy Council meeting, this would not have caused any difficulties with Westminster's 21 day rule. At Westminster recess dates count towards the 21 day period in accordance with the 21 day rule so there would be no difficulty with the Order coming into force 21 calendar days after laying.

5. However, laying immediately after making would cause difficulties with the Scottish Parliament's 21 day rule, as recess dates do not count towards the 21 days in accordance with their rule. Therefore, given the Christmas recess, there would have been a breach of the Scottish Parliament's 21 day rule when the Order came into force 21 calendar days after laying.

6. A solution was needed which allowed us to respect the rules in both Parliaments and keep the laying dates in both Parliaments the same - so as to avoid any ambiguity for the reader as to the coming into force date. The neatest way to do this was to ensure that the Order was laid in both Parliaments on the same day immediately after the Scottish Parliamentary recess.

Legislative Background

7. Section 93(1) of 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. By section 93(3) functions to be subject to such arrangements must be specified in an Order in Council.

8. This Order specifies, for the purposes of section 93(1) of the Scotland Act, the functions of the Scottish Ministers under regulations 5(2) (Healthy Start food and payments in lieu), 10(4) (failure to receive benefit represented by the voucher) and 14(2) (payment of food outlet) of the 2005 Regulations in so far as these functions may be exercised by Scottish Ministers. These functions were transferred to the Scottish Ministers under the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 3) Order 2006.

9. The Order also modifies the specification of the functions of the Scottish Ministers in relation to the Welfare Food scheme under the Welfare Food Regulations 1996, which have previously been specified for the purposes of section 93(1) in the Scotland Act 1998 (Agency Arrangements) (Specification) Order 1999 (S.I. 1999/1512). The changes reflect the recent revocation of the regulations in relation to the provision of dried milk at a reduced price in the 1996 Regulations and the dissolution of NHS Trusts in Scotland.

Policy Background

10. The Healthy Start scheme is the replacement for the current Welfare Food Scheme, which was first introduced in Britain to combat food shortages during the Second World War. Latterly the scheme offered milk infant formula and vitamins to low income families. Following a Department of Health led review of that scheme, section 13 of the Social Security Act 1988 was substituted by the Health and Social Care (Community Health and Standards) Act 2003, amongst other things to enable the Welfare Food Scheme to be replaced by another scheme or schemes.

11. The new scheme offers vouchers which can then be exchanged for milk, fresh fruit and vegetables, and infant formula to pregnant women and children under the age of four in certain low income families. The vouchers can be used in a wide range of participating shops and pharmacies. Under the Welfare Food Scheme, tokens could only be exchanged for milk and infant formula so the new scheme offers much more flexibility and choice. Like the Welfare Food scheme, the new scheme also offers vitamins.

12. The Order is one of two being taken forward that relate to the Scottish aspects of the Healthy Start scheme. As mentioned at paragraph 5 above, the other Order is the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 3) Order

2006. The purpose of the transfer of functions Order (commonly referred to as "executive devolution") is to enable Scottish Ministers to prescribe the range of foods to be available under the Healthy Start scheme in Scotland and to issue directions to Health Boards on matters relating to the operation of the scheme in Scotland. Scottish Ministers will also be able to reimburse suppliers of Healthy Start food and vitamins, as well as certain beneficiaries in Scotland, in a similar manner to the functions already carried out in relation to the Welfare Food scheme (the predecessor to Healthy Start) reimbursement.

13. The purpose of this Order is to enable the Scottish Ministers to enter into an agency arrangement with the Secretary of State for Health. The practical effect of this is to allow for some of the executively devolved functions concerning day to day reimbursement (specifically relating to Healthy Start foods) to be carried out by contractors for the Department of Health. When dealing with the reimbursement of suppliers and beneficiaries in Scotland, the Department of Health will be acting as the agent of Scottish Ministers. This replicates what happened for the Welfare Food scheme and allows Scottish Ministers to take advantage of economies of scale. Scottish Ministers will deal directly with reimbursement in relation to Healthy Start vitamins.

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Consultation

14. Consultation has not taken place on this Order as this is a constitutional measure that concerns the appropriate authority for exercising a function in or as regards Scotland.

Regulatory Impact Assessment

15. A Regulatory Impact Assessment has not been prepared for this Order as it has no impact on business, charities, or voluntary bodies. This is a constitutional measure that concerns the appropriate authority for exercising a function in or as regards Scotland.

Scottish Executive Health Department
December 2006