EXPLANATORY MEMORANDUM TO

THE SCOTLAND ACT 1998 (AGENCY ARRANGEMENTS) (SPECIFICATION) ORDER 2006

2006 NO. 1251

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 functions of the Scottish Ministers conferred under section 47(1)(a) and (b) of the Fire (Scotland) Act 2005, in so far as those functions allow the Scottish Ministers to enter into a contract for the provision of a radio system to fire and rescue authorities in Scotland, to be exercised by a Minister of the Crown on behalf of the Scottish Ministers.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This 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.

4. Legislative Background

4.1 Section 93(1) of the Scotland Act enables a Minister of the Crown to make arrangements for any of his specified functions to be exercised on his behalf by the Scottish Ministers; and the Scottish Ministers may 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 section 47(1)(a) and (b) of the Fire (Scotland) Act 2005 in so far as those functions may be exercised by Scottish Ministers to enter into a contract for the provision of a radio system for fire and rescue authorities and joint fire boards in Scotland ("relevant authorities"). The radio system which is to be provided under the contract is known as Firelink.

4.3 Section 47(1)(a) and (b) of the Fire (Scotland) Act 2005 provides that the Scottish Ministers may provide and maintain any equipment, facilities and services and contribute to the provision and maintenance of any equipment, facilities and services, they consider appropriate for promoting the economy, efficiency and effectiveness of relevant authorities.

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 This Order enables an agency arrangement between the Scottish Ministers and a Minister of the Crown under which a new wide area radio system, Firelink, can be provided to relevant authorities in Scotland.

7.2 The Firelink project is for the procurement of a new wide area radio system for fire and rescue services throughout Great Britain, and is being led by the Office of the Deputy Prime Minister (ODPM) in close collaboration with the Scottish Executive and the Welsh Assembly Government. In parallel with Scottish Ministers' consideration, ODPM lead detailed negotiations with the preferred bidder and let the contract (for England) on 29 March 2006. The need for Scottish Ministers to fully consider the implications of participating in Firelink has meant that a decision on Scotland's participation could not be taken prior to contract signature by ODPM. As a consequence, the contract allows for Scotland to opt in at a later date. On 6 April 2006, Scottish Ministers announced their intention to participate in the Firelink project.

7.3 The Firelink contract for Scotland is to be between a Minister of the Crown (the First Secretary of State) and the contractor, and neither Scottish Ministers nor the Welsh Assembly Government will be signatories. The Government believes that this is the best option for procurement, is the best option to avoid significant delay and additional expense, and the best means of avoiding contract management difficulties.

7.4 The provision of fire services in Scotland is a devolved matter and a Minister of the Crown does not have the power to enter into a contract for the provision of a radio system to Scottish fire and rescue authorities. To resolve this, it is necessary for the Scottish Ministers to enter into an agency agreement with a Minister of the Crown, facilitated by this Order under section 93 of the Scotland Act, to enable their functions to be exercised by the Minister on their behalf. The agency arrangement will set out the terms under which the functions are to be exercised.

7.5 Consideration has been given to pursuing a Scotland-only replacement radio system. Whilst this would be technically feasible, it has been concluded that participation in Firelink is likely to produce the best outcome in terms of operational effectiveness and calls on the public purse.

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

Alasdair Smith at the Scotland Office (Alasdair.Smith@Scotland.gsi.gov.uk, or telephone 0207 270 6756) can answer any queries regarding the instrument.

Scotland Office, Department for Constitutional Affairs
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