EXPLANATORY MEMORANDUM TO

THE SCOTLAND ACT 1998 (AGENCY ARRANGEMENTS) (SPECIFICATION) ORDER 2007

2007 No. 286

1. This explanatory memorandum has been prepared by The Scotland Office and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments.

2. Description

2.1 This Order allows the sampling and analysis functions of the Scottish Ministers exercisable under regulation 6 of the Sulphur Content of Liquid Fuels (Scotland) Regulations 2007 ("the 2007 Regulations") and the function of authorising persons to exercise certain powers relating to those functions under section 108(1) of the Environment Act 1995 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 *or* the Select 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"). The Order is, by virtue of section 115(1) and paragraphs 1, 2 and 3 of Schedule 7 to that Act, 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 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 purpose of section 93(1) of the Scotland Act, the functions which are exercisable by the Scottish Ministers relating to sampling and analysis of sulphur in gas oil and heavy fuel oil under regulation 6 of the Sulphur Content of Liquid Fuels (Scotland) Regulations 2007 and the function of authorising persons to exercise certain functions relating to those sampling and analysis functions under section 108(1) of the Environment Act 1995.

5. Extent

5.1 This instrument applies to the United Kingdom with the exception of Northern Ireland.

6. European Convention on Human Rights

6.1 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 2007 Regulations (which are due to come into force on 12 March 2007) provide for the transposition in relation to Scotland of Directive 1999/32/EC of the European Parliament and of the Council of 26 April 1999 regarding the sulphur content of certain liquid fuels as amended by Directive 2005/33/EC of the European Parliament and of the Council of 6 July 2005 for applicable fuels other than marine fuel. Marine fuel, which forms the bulk of the content of the amendments made by Directive 2005/33/EC, are being implemented separately on a UK basis due to the reserved nature of the Marine and Coastguard Agency, the enforcement agency for such purposes.

7.2 Directive 1999/32 was transposed in relation to Scotland by the Sulphur Content of Liquid Fuels (Scotland) Regulations 2000 ("the 2000 Regulations"). These regulations will remain in force in so far as they apply to marine fuel pending the UK regulations to be brought forward to transpose the amendments to the regulation of marine fuel made by Directive 2005/33/EC. The 2000 and 2007 Regulations will continue the reduction of sulphur dioxide emissions from heavy fuel oil and gas oil in Scotland. The principal beneficiaries are members of the public living and working in urban areas. There are also benefits to the natural environment in terms of a reduction in the area of critical load exceedence of acidity and a reduction in damage to buildings.

7.3 The Scottish Executive and other relevant UK administrations agreed in 2000 to have a UK-wide sampling regime for heavy fuel and gas oil to ensure that the use of the fuels complies with the limits set in the Regulations. The sampling regime is managed on an all UK basis, rather than having four separate sampling regimes in the UK. In order to allow the Secretary of State for Environment, Food and Rural Affairs to undertake the function of ensuring that the sampling was carried out in Scotland, the relevant functions were specified in the Scotland Act 1998 (Agency Arrangements) (Specifications)(No 2) Order 2000 (SI 2000/3250). This allowed arrangements to be made for the devolved functions concerning the sampling and analysis of liquid fuels to be carried out by contractors for the Department for Environment and Rural Affairs and for the Secretary of State to authorise persons to carry out certain powers of entry associated with those functions under section 108(1) of the Environment Act 1995. When dealing with the sampling, the Department for Environment Food and Rural Affairs acts as the agent of Scottish Ministers. This allows Scottish Ministers to take advantage of economies of scale. The Scottish Ministers however remain responsible for the exercise of the specified functions.

7.4 The main purpose of this order is therefore to permit a similar arrangement to be made in relation to identical functions under the 2007 Regulations. This will allow the existing sampling arrangements to continue.

8. Impact

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

9. Contact

Adam Pile at the Scotland Office (e-mail adam.pile@scotland.gsi.gov.uk) can answer any queries regarding the instrument.

Scotland Office
January 2007

EXECUTIVE NOTE TO

THE SCOTLAND ACT 1998 (AGENCY ARRANGEMENTS) (SPECIFICATION) ORDER 2007

S.I. 2007 No. 286

1. Background

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.

This Order allows the sampling and analysis functions of the Scottish Ministers exercisable under regulation 6 of the Sulphur Content of Liquid Fuels (Scotland) Regulations 2007 ("the 2007 Regulations") and of authorising persons to exercise certain powers relating to those functions under section 108(1) of the Environment Act 1995 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".

2. Policy Objectives

The 2007 Regulations provide for the transposition in relation to Scotland of Directive 1999/32/EC of the European Parliament and of the Council of 26 April 1999 regarding the sulphur content of certain liquid fuels as amended by Directive 2005/33/EC of the European Parliament and of the Council of 6 July 2005 for applicable fuels other than marine fuel. Controls on marine fuel, which form the bulk of the content of the amendments made by Directive 2005/33/EC, are being implemented separately on a UK basis due to the reserved nature of the Marine and Coastguard Agency, the enforcement agency for such purposes

Directive 1999/32 was transposed in relation to Scotland by the Sulphur Content of Liquid Fuels (Scotland) Regulations 2000 ("the 2000 Regulations"). These regulations will remain in force in so far as they apply to marine fuel pending the UK regulations to be brought forward to transpose the amendments to the regulation of marine fuel made by Directive 2005/33/EC.

The 2000 and 2007 Regulations will continue the reduction of sulphur dioxide emissions from heavy fuel oil and gas oil in Scotland. The principal beneficiaries are members of the public living and working in urban areas. There are also benefits to the natural environment in terms of a reduction in the area of critical load exceedence of acidity and a reduction in damage to buildings.

The Scottish Executive and other relevant UK administrations agreed in 2000 to have a UK wide sampling regime for heavy fuel and gas oil to ensure that the use of the fuels complies with the limits set in the Regulations. The sampling regime is managed on an all UK basis, rather than having four separate sampling regimes in the UK. In order to allow the Secretary of State for the Environment to undertake the function of ensuring that the sampling was carried out in Scotland, the relevant functions were specified in the Scotland Act 1998 (Agency Arrangements) (Specifications)(No 2) Order 2000 (SI 2000/3250). This allowed

arrangements to be made for the devolved functions concerning the sampling and analysis of liquid fuels to be carried out by contractors for the Department for Environment and Rural Affairs and for the Secretary of State to authorise persons to carry out certain powers of entry associated with those functions under section 108(1) of the Environment Act 1995. When dealing with the sampling, the Department for Environment and Rural Affairs acts as the agent of Scottish Ministers. This allows Scottish Ministers to take advantage of economies of scale. The Scottish Ministers however remain responsible for the exercise of the specified functions.

The main purpose of this order is therefore to permit a similar arrangement to be made in relation to identical functions under the 2007 Regulations. This will allow the existing sampling arrangements to continue.

3. Financial Effects

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

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