EXPLANATORY MEMORANDUM TO

THE SCOTLAND ACT 1998 (AGENCY ARRANGEMENTS) (SPECIFICATION) ORDER 2011

2011 No. 2439

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

2. Purpose of the instrument

2.1 The purpose of this instrument is to allow for specific health-related functions of the Scottish Ministers to be exercised on their behalf by Ministers of the Crown when procuring health related goods or services where there is mutual benefit to do so.

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

3.1 The instrument is made under Section 93(3) and 113(2) and (3) of the Scotland Act 1998 and specifies functions of the Scottish Ministers and the circumstances when those functions may be exercised by a Minister of the Crown on behalf of the Scottish Ministers.

3.2 This Order will allow for specific health-related functions of the Scottish Ministers to be exercised on their behalf by Ministers of the Crown when procuring health related goods or services where there is mutual benefit to do so.

4. Legislative Context

4.1 The Scotland Act 1998 (Agency Arrangements) (Specification) Order 2011 will be made in exercise of the powers conferred by section 93 of the Scotland Act 1998. The instrument is subject to annulment by either House and is also subject to the negative procedure in the Scottish Parliament.

4.2 Section 93(1) of the Scotland Act 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 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.

5. Territorial Extent and Application

5.1 This instrument applies to the whole of the United Kingdom.

6. European Convention on Human Rights

The Parliamentary Under Secretary of State for Scotland, Rt. Hon. David Mundell MP has made the following statement regarding Human Rights:

> *'In my view the provisions of The Scotland Act 1998 (Agency Arrangements) (Specification) Order 2011 are compatible with the Convention rights.'*

7. Policy background

7.1 The purpose of this instrument is to allow for specific health-related functions of the Scottish Ministers to be exercised on their behalf by Ministers of the Crown when procuring health related goods or services where there is mutual benefit to do so. For example, there might be financial benefit to collaborating in a particular arrangement or there might be a desire to provide a single service across the UK. The instrument is not necessary for all forms of collaboration, however it will permit Scottish Ministers to take part fully in UK led schemes, where Scottish Ministers and the relevant Minister of the Crown have agreed that it would be advantageous to do so.

7.2 The instrument does not require the making of arrangements by either the Scottish Ministers or by Ministers of the Crown. What arrangements are put into place is a matter for agreement between the Scottish Ministers and Ministers of the Crown, as neither minister has the power to compel the other. Where an agency arrangement is established under the terms of this instrument, the terms under which the functions of Scottish Ministers will be exercised will be set out in the arrangement.

7.3 Examples of how the functions might be exercised under the terms of this Order are set out below:

The undernoted sections of the National Health Service (Scotland) Act 1978 (the "1978 Act"):

7.3.1 Section 1, which 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

This function underpins the remit of the Scottish health service, exercise of this function by Ministers of the Crown on behalf of Scottish Ministers permits Ministers of the Crown to exercise specific functions that relate to the health service (as detailed below) as the agent of the Scottish Ministers.

7.3.2 Section 1A which confers the function of the promotion of the improvement of the physical and mental health of the people of Scotland

Exercise of this function by Ministers of the Crown on behalf of Scottish Ministers permits, for example, greater collaboration in schemes which promote mental health across the UK.

7.3.3 Section 15(1)(a) which confers the function of the supply of goods and services to providers of primary medical services, general dental or ophthalmic services or pharmaceutical services, and section 15(2) which provides that the function in section 15(1)(a) includes a power to make arrangements with third parties for such a supply

Exercise of this function by Ministers of the Crown on behalf of Scottish Ministers permits, for example, greater collaboration in the supply of goods or services to providers of the above services. e.g. joint procurement of dental products.

7.3.4 Section 37 which confers the function of the prevention of illness, and the provision of care of persons suffering from illness or the after-care of such persons

Exercise of this function by Ministers of the Crown on behalf of Scottish Ministers permits, for example, greater collaboration in the provision of care for people suffering from pandemic influenza e.g. through the provision of a telephone assessment service, which could provide antiviral medicines.

7.3.5 Section 38 which confers the function of making arrangements for the care of expectant mothers, nursing mothers and young children

Exercise of this function by Ministers of the Crown on behalf of Scottish Ministers permits, for example, greater collaboration in schemes which help to provide healthy food for new mothers.

7.3.6 Section 40(3) which confers the function of the supply of vaccine, sera or other preparations for vaccinating or immunising persons against disease

Exercise of this function by Ministers of the Crown on behalf of Scottish Ministers permits, for example, greater collaboration in the supply of childhood vaccines.

7.3.7 Section 41 which confers the function to make arrangements for the giving of advice on contraception, the medical examination of persons seeking contraception, the treatment of such persons and the supply of contraceptive substances or appliances

Exercise of this function by Ministers of the Crown on behalf of Scottish Ministers permits, for example, greater collaboration in the provision of sexual health advice services.

7.3.8 Section 42 which confers the function to disseminate information relating to the promotion of health and the prevention of illness

Exercise of this function by Ministers of the Crown on behalf of Scottish Ministers permits, for example, greater collaboration in schemes which provide information to the public across the UK on health promotion. e.g. alcohol awareness.

7.3.9 Section 43 which confers the function of providing or securing the provision of a service for the control of the spread of infectious disease

Exercise of this function by Ministers of the Crown on behalf of Scottish Ministers permits, for example, greater collaboration in the provision of services, such as the provision of a laboratory, to control an infectious disease such as pandemic influenza.

7.3.10 Section 44 which confers the function of arranging for the making of arrangements for the supply of blood, parts of the human body or other substances or preparations not readily obtainable, for the provision of the health service

Exercise of this function by Ministers of the Crown on behalf of Scottish Ministers permits, for example, greater collaboration in the supply of blood clotting factors for the NHS across the UK.

7.3.11 Section 47

Subsection (1) confers the function of making available such facilities, in any premises provided under the Act, as appear to be reasonably required for undergraduate and post-graduate clinical teaching and research, and for the education and training of persons providing or intending to provide services under the Act

Exercise of functions under subsection (1) by Ministers of the Crown on behalf of Scottish Ministers would, for example, permit greater collaboration in the provision of facilities for UK-wide education or training initiatives e.g. for doctors or nurses.

Subsection (2) confers the function of carrying out research, or assisting by grant or otherwise the carrying out of research into matters relating to the health service

Exercise of this function under subsection (2) by Ministers of the Crown on behalf of Scottish Ministers permits, for example, greater collaboration in research projects relating to the health service.

7.3.12 Section 79 which confers the function of the purchase or lease of property

Exercise of this function by Ministers of the Crown on behalf of Scottish Ministers, permits, for example, greater collaboration in the lease of property to provide storage for shared stockpiles of items used by the NHS. The order does not permit the exercise of this function by a Minister of the Crown insofar as it relates to the purchase of heritable property.

7.3.13 Section 7 of the Health and Medicines Act 1988, which confers the function of being able to make more income available for the health service

Exercise of this function by Ministers of the Crown on behalf of Scottish Ministers permits, for example, the Scottish Ministers to take part in UK led joint ventures to generate more income for NHS bodies. The order does not permit the exercise of this function insofar as it relates to the power of the Scottish Ministers to acquire land by agreement and manage and deal with land.

7.3.14 Section 1 of the Public Health etc. (Scotland) Act 2008, which confers the function of protecting public health in Scotland

Exercise of this function by Ministers of the Crown on behalf of Scottish Ministers permits, for example, greater collaboration in the procurement of goods to protect the public in the event of a chemical or biological incident.

8. Consultation outcome

8.1 No formal consultation has taken place on the Order but the terms of the Order have been agreed between the Department of Health, the Scotland Office and the Scottish Government.

9. Guidance

9.1 No formal guidance will be available on the use of these powers. However, any arrangements made between Scottish Ministers and Ministers of the Crown under the powers will be made by mutual agreement and will fall within the terms of those powers.

10. Impact

10.1 There will be no impact on business, charities or voluntary bodies.

10.2 The will be no direct impact on the public sector . However, any arrangements made under these powers may be of benefit to organisations such as the NHS across the UK.

10.3 An Impact Assessment has not been prepared for this Instrument as the changes made by this order will have no impact on the private or voluntary sector.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 There is no need for review or monitoring as any arrangements made as a consequence of this order will be subject to individual agreements. It is possible a review

might take place in the future if it is thought that the powers aren't wide-ranging enough This could lead to another Order in the future, although this is not expected to be the case.

13. Contact

Lizzie Walker at the Scotland Office Tel: 020 7270 6811 or email: lizzie.walker@scotlandoffice.gsi.gov.uk can answer any queries regarding the instrument.