EXPLANATORY MEMORANDUM TO

THE SCOTLAND ACT 1998 (AGENCY ARRANGEMENTS) (SPECIFICATION) ORDER 2024

2024 No. 989

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 His Majesty.

2. Declaration

2.1 Ian Murray, Secretary of State at the Office of the Secretary of State for Scotland confirms that this Explanatory Memorandum meets the required standard.

2.2 Louise Nicholls, Deputy Director for Constitutional Policy at the Office of the Secretary of State for Scotland confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Freya Croxford at the Office of the Secretary of State for Scotland Telephone: 07845 878924 or email: freya.croxford@ukgovscotland.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The purpose of this instrument is to specify certain functions of the Scottish Ministers which relate to winter heating assistance, so that they can be exercised by a Minister of the Crown on their behalf. The detailed arrangements for the exercise of specified functions will be set out in an agency agreement and requires agreement between the UK Government and the Scottish Government; this instrument only allows for such arrangements to be agreed.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 Winter Fuel Payments were introduced in 1997/98 to help older people meet the cost of heating their homes in winter. Until winter 2023/24, any household in Great Britain with someone over State Pension age in the third week of September was eligible for an annual Winter Fuel Payment.

5.2 On 29 July 2024, the Chancellor announced to Parliament that Winter Fuel Payments will be reformed from winter 2024-25. This means that the Winter Fuel Payment in England and Wales will be now targeted to low income pensioners in receipt of Pension Credit and other specified benefits or tax credits.

5.3 Powers in relation to support for winter heating assistance were devolved to the Scottish Parliament under the Scotland Act 2016. From 1 April 2024, the UK Government no longer had the power to make Winter Fuel Payments in Scotland from the Regulated Social Fund. The Scottish Government had planned to replace Winter Fuel Payments in Scotland by introducing a new winter heating assistance – Pension Age Winter Heating Payment (PAWHP) – from winter 2024/25 on the same universal basis as Winter Fuel Payments were anticipated to be made in England and Wales.

5.4 The Scottish Government is funded on an equivalent basis to England and Wales under the Barnett formula. Following the announcement of the decision to means-test the Winter Fuel Payment in England and Wales, the Scottish Government has announced that, due to the change in funding, it will no longer be delivering a universal PAWHP and that Social Security Scotland cannot adapt its delivery infrastructure to deliver a means-tested payment in time for this winter.

5.5 Instead, the Scottish Government has agreed to bring forward legislation in the Scottish Parliament to introduce a means-tested winter heating payment for people of pensionable age that will be equivalent to the Winter Fuel Payments in England and Wales. The Department for Work and Pensions intends to deliver these payments on behalf of the Scottish Ministers. This requires an agency arrangement, which will be permitted by this Order.

What was the previous policy, how is this different?

5.6 The powers to provide winter heating assistance are devolved to the Scottish Parliament under section 23 of the Scotland Act 2016. While the Scottish Government prepared a devolved replacement to the Winter Fuel Payment, the Department for Work and Pensions continued to pay Winter Fuel Payments in Scotland from the Regulated Social Fund at the request of Scottish Ministers. The power to make payments out of the Regulated Social Fund in Scotland ended on 31 March 2024 and from 1 April 2024, the Department for Work and Pensions had no further legislative or administrative authority to pay Winter Fuel Payments in Scotland and functions in relation to winter heating assistance have not previously been specified to allow Ministers of the Crown to exercise these functions on behalf of Scottish Ministers.

5.7 The UK Government has now agreed to deliver a winter heating payment for people of pensionable age on behalf of Scottish Ministers for this winter. As such, this Order in Council now specifies the functions related to those payments in order to allow the two Governments to enter into an agency agreement under which the Department for Work and Pensions will deliver the payments, and carry out functions associated with those payments, for this year.

6. Legislative and Legal Context

How has the law changed?

6.1 Functions in relation to winter heating assistance had not previously been specified for the purpose of agency agreements. The change in law effected by this Order will be to specify those functions so that Scottish Ministers may enter into agency arrangements to allow these functions to be exercised by a Minister of the Crown on their behalf.

Why was this approach taken to change the law?

6.2 Section 93(1) of the Scotland Act 1998 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. Under section 93(3), functions which are to be subject to such arrangements must be specified in an Order in Council.

6.3 This Order specifies, for the purposes of section 93(1) of the Scotland Act 1998, certain functions exercisable in connection with winter heating assistance under section 30 of the Social Security (Scotland) Act 2018.

7. Consultation

Summary of consultation outcome and methodology

7.1 This order specifies certain delegated administrative functions. Therefore, no formal consultation was required.

8. Applicable Guidance

8.1 This instrument does not include applicable guidance.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Regulatory Impact Assessment has not been prepared for this instrument because there is not a significant new impact on business, charities or voluntary bodies – beyond existing obligations.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this instrument allows for an agreement to be made between the UK and Scottish Governments.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because this instrument purely allows for an administrative arrangement to be made between the UK and Scottish Governments.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is through usual business assurance processes

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Secretary of State has made the following statement regarding Human Rights:

"In my view the provisions of The Scotland Act 1998 (Agency Arrangements) (Specification) Order 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").