EXPLANATORY MEMORANDUM TO

THE SCOTLAND ACT 1998 (MODIFICATION OF FUNCTIONS) ORDER 2014

2014 No. 2753 (S. 3)

1. 1.1 This Explanatory Memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

1.2 This Memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

This Order will have the effect of creating a separately exercisable function in relation to those farmers whose holdings are situated partly in Scotland and partly in the territory of another administration of the United Kingdom. This is needed because a "farmer" under the Common Agricultural Policy (CAP) is defined by reference to a "holding" across the whole territory of a Member State and, on its own, it is not sufficient to identify those Scottish farmers over whom the Scottish Ministers have competence. A holding consists of all the production units used for agricultural activities and managed by the farmer in the Member State. Therefore, a farmer may have a holding that straddles the border, or may have holdings that consist of land in both Scotland and England which exist as separate productions units (and, therefore, do not straddle the border) (a "Scottish farmer", as defined by this Order). Without the Order, it would not be clear which administration in the UK (as the member state) would be competent to manage applications and related payments in respect of those farmers in Scotland. The relevant functions which the Order concerns include those which relate to Regulation (EU) No 1306/2013 of the European Parliament and of the Council, as well as prerogative and other executive functions which are exercisable in relation to a Scottish farmer (as defined by the Order).

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

This Instrument (and its companion Instrument – see paragraph 4.4) does no more than give Scottish Ministers the powers to act. Other detailed provisions will be brought forward in secondary legislation to implement the respective schemes in each of the territories of the UK.

4. Legislative Context

4.1 The Scotland Act 1998 (Modification of Functions) Order 2014 will be made in exercise of the powers conferred by section 106 of the Scotland Act 1998. This instrument is subject to negative resolution procedure in the UK Parliament.

4.2 Section 106(1) of the Scotland Act 1998 confers a power upon Her Majesty or a Minister of the Crown, to make provision including provision which modifies a function exercisable by a Minister of the Crown, enabling or otherwise facilitating the transfer of a function to the Scottish Ministers by virtue of section 53 or 63, by subordinate legislation. Section 53(2)(a) of the 1998 Act allows for those functions of Her Majesty's prerogative and other executive functions which are exercisable on behalf of Her Majesty by a Minister of the Crown, so far as they are exercisable within devolved competence, to be exercisable by the Scottish Ministers instead of by a Minister of the Crown.

4.3 Section 106(2) makes provision for any function which is not exercisable separately to be so exercisable. In this instance, the Order will provide for specified functions under EU law or a function to which section 53(2)(a) of the 1998 Act applies which is exercisable by a Minister of the Crown in relation to a Scottish farmer, to be exercisable separately. A section 106 Order allows UK-wide functions to be split so that they can be transferred to the Scottish Ministers by virtue of, in this case, section 53.

4.4 This Order will be taken forward along with an Order under section 30(3) of the Scotland Act 1998 (The Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 2015). The Order under section 30(3) will define a "Scottish farmer" as having land wholly or partly in Scotland and will ensure that the Scottish Ministers have competence to exercise functions as required under the CAP, in relation to these farmers - which are known in the farming industry as "cross-border farmers" (since those will be treated as functions exercisable in or as regards Scotland). This includes the management of applications and related payments in respect of farmers as well as the enforcement of cross-compliance requirements (which a farmer must comply with across the entire holding, including any parts of a holding not being used specifically for agricultural activities). Ultimately, the two Orders will combine to allow the administration of applications for subsidy for cross-border farmers under the CAP to continue when the current arrangements come to an end on 31 December 2014.

4.5 Under the current CAP arrangements, a farmer with land in the territories of more than one administration has his application forms dealt with by the administration in which the majority of the land lies. There exists for the farmer, however, the option to continue dealing with the administration, which historically has dealt with his claims even if subsequent changes in his land holdings mean that the majority of land now lies in a different administration. This allows the farmer to have continuity of service from the administration holding his relevant business details. The use of a particular administration or the election of a different administration has no impact on the value of support the farmer will receive. This option to choose an administration will continue under the new CAP arrangements.

5. Territorial Extent and Application

This instrument applies 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 CAP provides a system of agricultural support and programmes throughout the European Union (EU). First established in 1957, it currently accounts for almost 39% of the EU Budget. It is split into two Pillars: Pillar 1 relates to direct support payments, which is currently worth about £0.5bn a year to Scotland's farmers; Pillar 2 supports the Rural Development Programme (about £0.2bn a year).

7.2 The CAP Pillar 1 was reformed in 2003/2004 to provide income support for farmers. The reforms cut the link between subsidies and production but allowed payments to continue (conditional on observation of certain land management, environmental, animal welfare, and food safety standards). It is a long-standing regulatory requirement for farmers participating in the CAP and receiving Pillar 1 support payments that they must be treated by administrations as a single business within the member state. Farm businesses do not always fall neatly within administration boundaries so that there are a number of businesses with land in more than one administration. Such businesses are known as "cross-border farmers".

7.3 In order to enable the administration of applications for subsidy for cross-border farmers under the CAP to continue, two Scotland Act Orders were taken forward at that time - the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 2004 (SI 2004/3324), a section 30 Order, and the Scotland Act 1998 (Modification of Functions) Order 2004 (SI 2004/2980), a section 106 Order. These replicated two earlier Scotland Act Orders (SIs 1999/1748 and 1999/1756) which referred to the previous CAP arrangements. They combined to define a "Scottish farmer" and to facilitate the transfer of powers to the Scottish Ministers. These Orders also tie in with the UK SI (currently the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009 (SI 2009/3263) ("the IACS Regulations") since the EU rules require claims for subsidy to be administered by a single competent authority.

7.4 The current CAP arrangements will end on 31 December 2014. The latest reforms for direct payments to farmers under support schemes within the framework of CAP are set out in Council Regulation (EC) 1307/2013, which includes repealing Council Regulations (EC) 637/2008 and 73/2009, with effect from 1 January 2015. The new CAP reform proposal seeks to strengthen the competitiveness of the agricultural sector, promote innovation, combat climate change and support jobs and growth in rural areas. To achieve these aims, payments to farmers are being restructured, calculated in a different way and subject to different obligations.

7.5 In order that the Scottish Ministers can continue to administer claims as the competent authority under the IACS Regulations in respect of Scottish farmers (as defined by this Order), two new Scotland Act Orders, one under section 30 and one under section 106 of the 1998 Act and largely in similar terms to those Orders in 2004, are required.

8. Consultation outcome

Although there has been no public consultation specific to the amendments of this Order, the UK Government, Northern Ireland Executive and Welsh Government departments with responsibility for the legislation which this Order affects have been consulted during the drafting of this Order. All amendments contained in this Order have the approval of the relevant departments.

9. Guidance

No further guidance is required.

10. Impact

10.1 This instrument has no impact of a regulatory nature on the private sector or civil society organisations and will not impose or reduce costs.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

No monitoring or review of this Order are required.

13. Contact

Emma Lopinska at the Scotland Office (Tel: 0131 244 9016 or email: emma.lopinska@scotlandoffice.gsi.gov.uk) can answer any queries regarding the instrument.