EXPLANATORY MEMORANDUM TO

THE SCOTLAND ACT 1998 (SPECIFICATION OF FUNCTIONS AND TRANSFER OF PROPERTY ETC.) (AMENDMENT) ORDER 2026

2026 No. 1095

1. Introduction

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

2. Declaration

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

2.2 Rachel Irving, Deputy Director for Constitutional Policy, at the Scotland Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Anthony Gilliland at the Scotland Office can be contacted by email at the following address with any queries regarding the instrument: enquiries@ukgovscotland.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Order removes Article 3(2)(c) of the Scotland Act 1998 (Specification of Functions and Transfer of Property etc.) Order 2019 ("the principal Order"). The Order adds functions to Article 3 of the principal Order, thereby specifying them for the purposes of section 93(1) of the Scotland Act 1998.

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 Scotland, England and Wales and Northern Ireland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Scotland and England.

5. Policy Context

What is being done and why?

5.1 This instrument amends the Scotland Act 1998 (Specification of Functions and Transfer of Property etc.) Order 2019 to update and clarify the functions that may be exercised by a Minister of the Crown on behalf of the Scottish Ministers under arrangements made in accordance with section 93 of the Scotland Act 1998.

5.2 In practice, certain forestry functions are currently delivered by the Forestry Commissioners in Scotland on behalf of the Scottish Ministers under a memorandum of understanding. These arrangements are necessary to ensure the continued effective delivery of tree health functions in Scotland. The instrument gives effect to two main policy objectives.

5.3 First, it removes an otiose reference in the principal Order to functions under section 44 of the Climate Change (Scotland) Act 2009 ('the 2009 Act'). There are no functions under that provision that can be exercised by a Minister of the Crown on behalf of the Scottish Ministers under a section 93 arrangement. The removal of this reference fulfils a commitment made by the Scottish Ministers to the Scottish Parliament to correct this inaccuracy and ensure that the legislation is accurate.

5.4 Secondly, the instrument updates the list of forestry functions specified in the principal Order to reflect the current legislative framework. Since the principal Order was made, the EU Official Controls Regulation (Regulation (EU) 2017/625) ('the OCR') and the Plant Health Regulation (Regulation (EU) 2016/2031) ('the PHR') have come into force and now form part of assimilated law. These regulations are implemented and supplemented domestically by the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019 ('the 2019 Regulations'). Forestry and plant health functions are now primarily exercised under this framework. The principal Order does not presently refer to these more recent legislative changes. This instrument adds references to functions under the OCR, PHR and the 2019 Regulations to the principal Order.

5.5 In addition, the instrument specifies certain forestry functions in more general terms that could be subject to arrangements under section 93. This is intended to "future-proof" the legislation by ensuring that the section 93 framework remains effective in the event of future changes to, or replacement of, the law governing plant health and forestry functions. This approach reduces the need for further immediate legislative amendment should the underlying regulatory framework change, while maintaining continuity of service delivery.

What was the previous policy, how is this different?

5.6 Under the previous framework the principal Order specified a list of functions that could be exercised by a Minister of the Crown on behalf of the Scottish Ministers under section 93 arrangements. That list reflected the legislative landscape as it stood at the time the Order was made.

5.7 Since then the legislative context has changed significantly. The OCR and PHR were implemented and subsequently incorporated into domestic law as assimilated law. These instruments, together with the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019, became the primary basis under which forestry and plant health functions are carried out. However, these newer instruments were not reflected in the principal Order. As a result, the list of specified functions in the principal Order became outdated.

5.8 The new policy, as implemented by this instrument, updates the principal Order so that it reflects the current legislative framework. It removes the inaccurate reference to section 44 of the 2009 Act and introduces references to functions under the OCR, PHR and the 2019 Regulations. This ensures that the exercise of those functions under section 93 arrangements is clearly supported by statute.

5.9 Furthermore, the instrument adopts a broader approach to the specification of certain functions by describing them in more general terms. This is intended to ensure that the framework remains effective in the face of future legislative change, without the need for frequent amendment.

6. Legislative and Legal Context

How has the law changed?

6.1 The draft Order amends the Scotland Act principal Order, which is partially made under section 93 of the Scotland Act 1998.

6.2 It removes a redundant reference in Article 3(2)(c) to functions under section 44 of the Climate Change (Scotland) Act 2009. There are no functions under that provision which can be exercised by a Minister of the Crown on behalf of the Scottish Ministers under a section 93 arrangement.

6.3 The Order updates the list of forestry functions specified in Article 3 of the principal Order. Since the principal Order was made, the OCR and PHR have been implemented and are now assimilated law. These are supplemented in Scotland by the 2019 Regulations. Forestry health functions are now carried out under this framework, and the principal Order is therefore to be amended to reflect this by adding references to these more recent legislative provisions.

6.4 In addition, the Order introduces a more general description of certain forestry functions in Article 3. This is intended to "future-proof" the arrangements so that they continue to operate effectively in the event of future legislative change, such as the revocation or replacement of current law.

Why was this approach taken to change the law?

6.5 Section 93 provides for arrangements under which functions of the Scottish Ministers may be exercised by UK ministers or UK government departments. As the Forestry Commission operates as a UK government department this mechanism is suitable for ensuring that the relevant forestry functions can continue to be exercised effectively by the Forestry Commissioners on behalf of the Scottish Ministers.

7. Consultation

Summary of consultation outcome and methodology

7.1 No public consultation is required as this order does not impact stakeholders.

8. Applicable Guidance

8.1 This Order stands alone, and guidance is not necessary.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because no impact on the private, voluntary or public sector is foreseen.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the instrument does not regulate businesses, charities or voluntary bodies.

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 the instrument does not regulate the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 No monitoring or review of the effects of the order are deemed to be required.

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 As the instrument is subject to negative procedure and does not amend primary legislation, no statement is required.

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").