POLICY NOTE

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

SI 2026/1095

The above instrument was made in exercise of the powers conferred by section 93 of the Scotland Act 1998. The instrument is subject to *negative procedure*.

Summary Box

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.

Policy Objectives

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.

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.

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.

Second, 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'). Tree 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.

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.

EU Alignment Consideration
This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation
No consultation has been carried out as this instrument does not impact stakeholders.

Impact Assessments
No impact assessments are required as this instrument does not introduce any new requirements.

Financial Effects
The Minister for Agriculture, Marine and the Islands confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Environment and Forestry Directorate

October 2026