EXPLANATORY MEMORANDUM TO

THE SCOTLAND ACT 2016 (SAVING) REGULATIONS 2016

2016 No. 761

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions on behalf of the Scotland Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument makes saving provision in connection with the coming into force of section 23(3) of the Scotland Act 2016 as set out in the Scotland Act 2016 (Commencement No. 1) Regulations 2016.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative resolution procedure consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The Scotland Act 2016 (Commencement No. 1) Regulations 2016, commence the majority of the welfare and employment support sections in Part 3 of the Scotland Act 2016.

4.2 The provisions in section 23 which deal with the devolution of (benefits for maternity, funeral and heating expenses are not commenced by the commencement regulations. However, subsection 23(3) needs to be commenced because it has an effect on other provisions which are being commenced.

4.3 Section 23(3) has been drafted as a substitution, but the provisions being repealed are not wholly comparable to the subject matter of the provisions being inserted. The inserted provisions deal with exclusions from exceptions to the social security reservation, whereas the words repealed, amongst other things, provide for exclusions.

4.4 This statutory instrument makes a saving provision in relation to the words which are repealed by the substitution effected by subsection 23(3) of the Scotland Act, to ensure that the reservations are saved while pending the coming into force of provisions elsewhere which deal with the same subject matter.

5. Extent and Territorial Application

5.1 The extent of this instrument is to the United Kingdom.

5.2 The territorial application of this instrument is to the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 These regulations make a savings provision to the Scotland Act 2016 (Commencement No. 1) Regulations 2016 and do not change the policy intentions on the transferring of welfare powers to the Scottish Government as set out in the Command Paper; Scotland in the United Kingdom: An enduring settlement, and enacted by the Scotland Act 2016.

7.2 The commencement regulations commence all the welfare and employment support sections in Part 3 of the Scotland Act 2016 other than provisions in section 22 dealing with disability, industrial injuries and carer's benefits and in section 23 dealing with benefits for maternity, funeral and heating expenses. These sections cover existing or on-going benefits and payment and discussions between the UK and Scottish Government continue on how best to commence the remaining provisions within these sections.

7.3 Section 23(3) needs to be commenced so that benefits created and or payments made under the exceptions to the social security reservation being commenced by the Scotland Act 2016 (Commencement No. 1) Regulations 2016 must be funded by the Scottish Government. These benefits and payments cannot be paid from the UK National Insurance Fund or Social Fund.

7.4 As the new provisions that exclude making payments from the National Insurance Fund or the Social Fund also have the effect of repealing the current reservations in respect of maternity expenses, funeral expenses, expenses for heating incurred due to cold weather and discretionary housing payments, these reservations need to be saved. This saving can come to an end when those reservations are lifted (by the commencement of sections 23(2) and 25 of the Scotland Act).

7.5 The coming into force for the savings regulations is 5 September 2016; the same date as section 23(3) is to be brought into force by the commencement regulations (which is the day the Scottish Parliament returns from summer recess).

8. Consultation outcome

8.1 The provisions in the Scotland Act 2016 were set out in the Command Paper; Scotland in the United Kingdom: An enduring settlement. This followed the agreement contained in the Smith Commission Report on devolving further powers to Scotland.

9. Guidance

9.1 As the Scottish Government put forward details of their policy choices and legislative programme as a result of the transfer of welfare powers under the Scotland Act 2016, DWP guidance and information products for customers and staff will be revised.

10. Impact

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

10.2 There is no impact on the public sector.

10.3 An Impact Assessment was carried for the Scotland Bill 2014-15 (which became the Scotland Act 2016) and this stated that the Scotland Bill would not trigger any immediate impacts but it will be for the Scottish Parliament to determine how the devolved powers are used and to assess the impact of their policy choices. These saving regulations do not change that assessment.

11. Regulating small business

11.1 The regulations do not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 These saving regulations will be reviewed when commencement of the remaining welfare sections in the Scotland Act are taken forward.

13. Contact

13.1 Dave Annison at the Department for Work and Pensions. Telephone: 02074495377 or email: DAVE.ANNISON@DWP.GSI.GOV.UK can answer any queries regarding the instrument.