

2011 No. 2439

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

NATIONAL HEALTH SERVICE

**The Scotland Act 1998 (Agency Arrangements) (Specification)
Order 2011**

Made - - - - - *12th October 2011*

Laid before Parliament *19th October 2011*

Laid before the Scottish Parliament *19th October 2011*

Coming into force - - - *21st November 2011*

At the Court at Buckingham Palace, the 12th day of October 2011

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by sections 93(3) and 113(2) and (3) of the Scotland Act 1998^(a) is pleased, by and with the advice of Her Privy Council, to order as follows:

Citation and commencement

1. This Order may be cited as the Scotland Act 1998 (Agency Arrangements) (Specification) Order 2011 and comes into force on 21st November 2011.

Specification of functions

2.—(1) The functions exercisable by the Scottish Ministers under the provisions mentioned in paragraph (2), insofar as those functions may be exercised by the Scottish Ministers to enter into contracts to secure the provision of equipment, goods or services for the health service, are hereby specified for the purposes of section 93(1) of the Scotland Act 1998.

(2) The provisions are—

(a) the following sections of the National Health Service (Scotland) Act 1978^(b)—

^(a) 1998 c.46.

^(b) 1978 c.29. The functions of the Secretary of State listed in article 2(2)(a) were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

- (i) section 1 (general duty of the Scottish Ministers);
 - (ii) section 1A (duty of the Scottish Ministers to promote health improvement);
 - (iii) section 15(1)(a) and (2) (supply of goods and services to providers of primary medical services, general dental or ophthalmic services or pharmaceutical services);
 - (iv) section 37 (prevention of illness, care and after-care);
 - (v) section 38 (arrangements for the care of expectant mothers, nursing mothers and young children);
 - (vi) section 40(3) (supply of vaccine, sera or other preparations for vaccinating or immunising persons against disease);
 - (vii) section 41 (family planning);
 - (viii) section 42 (health education);
 - (ix) section 43 (control of spread of infectious disease);
 - (x) section 44 (supplies of blood and other substances);
 - (xi) section 47 (educational and research facilities); and
 - (xii) section 79 (property), except insofar as that section relates to the purchase of heritable property;
- (b) section 7 of the Health and Medicines Act 1988**(a)** (extension of powers of Secretary of State for financing the health service), except subsection (2)(b); and
- (c) section 1 of the Public Health etc. (Scotland) Act 2008**(b)** (duty of Scottish Ministers to protect public health).

(3) In this article “the health service” has the same meaning as in section 108(1) of the National Health Service (Scotland) Act 1978.

Judith Simpson
Clerk of the Privy Council

(a) 1988 c.49, as amended by the National Health Service and Community Care Act 1990 (c.19), section 66 and Schedule 9 paragraph 34; the Health and Social Care Act 2001 (c.15) section 5; the National Health Service (Consequential Provisions) Act 2006 (c.43), Schedule 1, paragraph 116 and by S.I. 2009/1941. Section 7 was also amended, in Scotland only, by the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), section 37. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(b) 2008 asp 5.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies functions of the Scottish Ministers for the purposes of section 93(1) of the Scotland Act 1998. Section 93(1) allows a Minister of the Crown to make arrangements for any of that Minister's specified functions to be exercised on that Minister's behalf by the Scottish Ministers and allows the Scottish Ministers to make arrangements for any of their specified functions to be exercised on their behalf by a Minister of the Crown.

This Order, which extends to the whole of the United Kingdom, is concerned solely with agency arrangements between Ministers of the Crown and the Scottish Ministers.

Article 2, for the purposes of section 93(1) of the Scotland Act 1998, specifies the functions (subject to such limitations in that article) of the Scottish Ministers under:

- various sections of the National Health Service (Scotland) Act 1978;
- section 7 of the Health and Medicines Act 1988, which confers the function of being able to make more income available for improving the health service; and
- section 1 of the Public Health etc. (Scotland) Act 2008, which confers the function of protecting public health in Scotland;

all in so far as those functions may be exercised by Scottish Ministers to enter into contracts to secure the provision of equipment, goods or services for the health service.

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STATUTORY INSTRUMENTS

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