RA/S7/26/11/2

Rural Affairs Committee
Wednesday 18 November 2026
11th Meeting, 2026 (Session 7)

Note by the Clerk on The Scotland Act 1998 (Specification of Functions and Transfer of Property etc.) (Amendment) Order 2026 (SI 2026/1095)

Overview

1. At this meeting, the Committee will consider the following Statutory Instrument (SI), which is subject to the negative procedure. The Committee is invited to consider the instrument and decide what, if any, recommendations to make.

2. More information about the instrument is summarised below:

   Title of instrument: The Scotland Act 1998 (Specification of Functions and Transfer of Property etc.) (Amendment) Order 2026 (SI 2026/1095)

   Laid under: section 93 of the Scotland Act 1998

   Laid on: 16 October 2026

   Procedure: Negative

   Deadline for committee consideration: 30 November 2026 (Advisory deadline for any committee report to be published)

   Deadline for Chamber consideration: 4 December 2026 (Statutory 40-day deadline for any decision whether to annul the instrument)

   Commencement: 5 December 2026

Procedure

3. As this instrument is made under the Scotland Act 1998, it differs from a standard Scottish Statutory Instrument that amends policy or regulatory requirements within devolved competence. Scotland Act Orders are constitutional instruments used to give effect to changes to the devolution settlement, including the transfer of functions, powers or property between the UK and Scottish Governments.

4. In contrast to most SSIs, such Orders are typically subject to scrutiny by both the Scottish Parliament and the UK Parliament and are therefore made as Orders in Council through the Scotland Office and Privy Council process, rather than as regulations made directly by the Scottish Ministers. This instrument is subject to the negative procedure.

5. Under the negative procedure, an instrument is laid after it is made, and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid.

6. Once laid, the instrument is referred to:

   - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and

   - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.

7. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated at a meeting of the Committee, and the Committee must then report to the Parliament (by the advisory deadline referred to above).

8. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

Delegated Powers and Law Reform Committee consideration

9. The DPLR Committee considered the instrument on 10 November 2026 and reported on it in its 17th Report,2026, drawing the instrument to the attention of the Parliament regarding its specification of Official Controls Regulation (Regulation (EU) 2017/625) ("OCR") functions.

10. The DPLR Committee noted that the instrument gives Scottish Ministers powers for all official controls, even though the stated goal was only to cover forestry and tree health, stating in their report that this "appears to be an unusual and unexpected use of the power conferred by the parent statute."

11. The DPLR Committee asked the Scottish Government for confirmation that the policy intention is to specify all of the Scottish Ministers' functions under the OCR, not just those which relate to forestry or plant health. The Scottish Government confirmed that this was the case.

12. The scope of the OCR extends beyond forestry and plant health to cover a wider range of areas, for example, food and feed safety, Genetically Modified Organisms for food and feed purposes, animal health and welfare, pesticides, organic production and labelling, and protected designations of origin.

13. The Scottish Government further noted that the specified functions can only be exercised under agency arrangements under section 93 of the Scotland Act 1998 if both the Scottish and UK Ministers agree to such an arrangement, and that "the Scottish Ministers do not intend to agree to non-forestry functions being carried out under a section 93 arrangement".

14. The DPLR Committee noted, however, that any future administration may take a different view and would be entitled to proceed to make agency arrangements on the basis of this instrument. No further legislation or parliamentary scrutiny of the change in policy intention would be required.

15. The DPLR Committee therefore considered “that it would be helpful to the end user if the accompanying documents made clear that the instrument specifies all the Scottish Ministers functions under the OCR, not just those relating to forestry and/or plant health."

Purpose of the instrument

16. This instrument is an Order in Council made under the power in section 93(3) of the Scotland Act 1998 ("1998 Act"). The power is being used to make certain Scottish Government functions exercisable by the UK Government on behalf of the Scottish Government, under agency arrangements.

17. The purpose of this instrument is to amend the Scotland Act 1998 (Specification of Functions and Transfer of Property etc.) Order 2019 (“2019 Order”), by:

    - updating and extending the list of forestry functions of the Scottish Ministers that may be exercised by UK Ministers under agency arrangements; and

    - correcting an error in the 2019 Order by removing a reference to the Scottish Ministers’ functions under section 44 of the Climate Change (Scotland) Act 2009. The inclusion of this reference was a drafting error; there are no functions under section 44 that may be exercised through section 93 agency arrangements.

18. As this instrument is laid in both the UK and the Scottish Parliament, it is accompanied by a both a Policy Note (Annex A) prepared by the Scottish Government and an Explanatory Memorandum (Annex B) prepared by the UK Government.

19. These accompanying documents state that the instrument updates the list of forestry and tree health functions that may be exercised by UK Ministers on behalf of the Scottish Ministers, to reflect current plant health legislation and to specify certain forestry functions in more general terms in order to future-proof the legislation. The “future-proofing” is intended to avoid the need for further immediate amendments in the event of future changes to the law on plant health and forestry.

20. No consultation or anticipated financial effects assessment was undertaken on the instrument. No associated impact assessments were undertaken for this legislation.

Committee consideration

21. So far, no motion recommending annulment has been lodged.

22. Members are invited to consider the instrument and decide whether there are any points they wish to raise. If there are, options include:

    - seeking further information from the Scottish Government (and/or other stakeholders) through correspondence, and/or

- inviting the Minister (and/or other stakeholders) to attend the next meeting to give evidence on the instrument.

It would then be for the Committee, at the next meeting, to consider the additional information gathered and decide whether to make recommendations in relation to the instrument.

23. If members have no points to raise, the Committee should note the instrument (that is, agree that it has no recommendations to make).

24. However, should a motion recommending annulment be lodged later in the 40-day period, it may be necessary for the Committee to consider the instrument again.

Clerks to the Committee
November 2026

Annexe A: Scottish Government Policy Note

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

Annexe B: Scottish Government Explanatory Memorandum

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

2026 No. 1095

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

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

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

Contact
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

Overview of the Instrument

What does the legislation do?
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?
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.

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

Policy Context

What is being done and why?
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.

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.

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?

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.

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.

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.

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.

Legislative and Legal Context

How has the law changed?
The draft Order amends the Scotland Act principal Order, which is partially made under section 93 of the Scotland Act 1998.

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.

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.

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?
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.

Consultation

Summary of consultation outcome and methodology
No public consultation is required as this order does not impact stakeholders.

Applicable Guidance

This Order stands alone, and guidance is not necessary.

Part Two: Impact and the Better Regulation Framework

Impact Assessment

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

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

The legislation does not impact small or micro businesses.

There is no, or no significant, impact on the public sector because the instrument does not regulate the public sector.

Monitoring and review

What is the approach to monitoring and reviewing this legislation?
No monitoring or review of the effects of the order are deemed to be required.

The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

Matters of special interest to Parliament

None.

European Convention on Human Rights

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

The Relevant European Union Acts

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”).