

SCOTLAND ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS (AND SCHEDULES)

Part 4: Miscellaneous

Section 39: Maximum penalties which may be specified in subordinate legislation

204. Section 113(10) of the 1998 Act specifies the maximum penalties that may be applied to criminal offences created in subordinate legislation made under powers conferred by the 1998 Act (for example, orders made under section 104 of the 1998 Act, which may make provision in consequence of any provision made by or under an Act of the Scottish Parliament).
205. Currently section 113(10) restricts the penalties which can be imposed for new criminal offences created in subordinate legislation under the 1998 Act to a maximum of three months imprisonment or a fine not exceeding level 5 on the standard scale on summary conviction and a maximum of two years imprisonment on conviction on indictment.
206. *Subsection (2)* substitutes section 113(10) with new subsections (9A), (9B) and (10).
207. New subsection (9B) changes the maximum penalties which may be applied to offences created in relation to Scotland to reflect summary justice reforms made by the Scottish Parliament in the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. New subsection (10) provides that the maximum penalties which may be applied to offences created in relation to England and Wales and Northern Ireland remain the same as currently provided for by the 1998 Act, other than a change to the maximum fine which may be applied to offences which are triable either way (where correct terminology of the “statutory maximum” now applies – subsection (9B) makes a similar change in relation to Scotland for either way offences).
208. *Subsection (3)* provides a power for Her Majesty, by Order in Council, to amend subsection (9B) or (10) so as to change any period of imprisonment or amount of fine specified there. *Subsection (4)* amends Schedule 7 to the 1998 Act to provide that Type A procedure is applied to such Orders. Paragraph 2 of Schedule 7 defines Type A procedure as meaning that no recommendation to make the legislation is to be made to Her Majesty in Council unless a draft of the Order has been subject to the affirmative procedure in both Houses of Parliament and also the Scottish Parliament.