



Scotland Act 1998

1998 CHAPTER 46

PART V

MISCELLANEOUS AND GENERAL

Remuneration of members of the Parliament and Executive

81 Remuneration of members of the Parliament and Executive.

- (1) The Parliament shall make provision for the payment of salaries to members of the Parliament and members of the Scottish Executive.
- (2) The Parliament may make provision for the payment of allowances to members of the Parliament or members of the Scottish Executive.
- (3) The Parliament may make provision for the payment of pensions, gratuities or allowances to, or in respect of, any person who—
 - (a) has ceased to be a member of the Parliament or the Scottish Executive, or
 - (b) has ceased to hold such office, employment or other post in connection with the Parliament or the Scottish Executive as the Parliament may determine but continues to be a member of the Parliament or the Scottish Executive.
- (4) Such provision may, in particular, include provision for—
 - (a) contributions or payments towards provision for such pensions, gratuities or allowances,
 - (b) the establishment and administration (whether by the Parliamentary corporation or otherwise) of one or more pension schemes.
- (5) In this section “provision” includes provision—
 - (a) by an Act of the Scottish Parliament, or
 - (b) by a resolution of the Parliament conferring functions on the Parliamentary corporation;

and references to a member of the Scottish Executive include a junior Scottish Minister.

Status: Point in time view as at 24/10/2002.

Changes to legislation: There are currently no known outstanding effects for the Scotland Act 1998, Part V. (See end of Document for details)

Modifications etc. (not altering text)

C1 S. 81(3) extended (6.5.1999) by **S.I. 1999/1081, art. 8**

82 Limits on salaries of members of the Parliament.

- (1) The Parliament shall ensure that the amount of salary payable to a member of the Parliament in accordance with section 81 is reduced if any salary is payable to him—
 - (a) pursuant to a resolution (or combination of resolutions) of either House of Parliament relating to the remuneration of members of that House, or
 - (b) under section 1 of the ^{M1}European Parliament (Pay and Pensions) Act 1979 (remuneration of United Kingdom MEPs).
- (2) The Parliament shall ensure that the amount of salary is reduced—
 - (a) to a particular proportion of what it would otherwise be or to a particular amount, or
 - (b) by the amount of any salary payable to the member as mentioned in subsection (1)(a) or (b), by a particular proportion of that amount or by some other particular amount.

Marginal Citations

M1 1979 c. 50.

83 Remuneration: supplementary.

- (1) The Parliament shall ensure that information concerning sums paid as salaries, allowances, pensions or gratuities of the kind mentioned in section 81 is published for each financial year.
- (2) No payment of salary or allowances of the kind mentioned in section 81(1) or (2) shall be made to a person who is required by section 84 to take an oath unless he has done so.
- (3) Subsection (2) does not affect any entitlement to payments in respect of the period before the person concerned took the oath once he has done so.
- (4) For the purposes of sections 81 and 82, a person who is a member of the Parliament immediately before the Parliament is dissolved shall be treated—
 - (a) if he continues to hold office by virtue of section 19(2) or paragraph 1 of Schedule 2, as if he were such a member until the end of the day on which he ceases to hold such office, and
 - (b) if he does not fall within paragraph (a) but is nominated as a candidate at the subsequent general election, as if he were such a member until the end of the day on which the election is held.
- (5) Different provision may be made under section 81 or 82 for different cases.

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Other provision about members of the Parliament etc.

84 Oaths.

- (1) A person who is returned as a member of the Parliament shall take the oath of allegiance (whether or not he has taken the oath after being returned on a previous occasion or otherwise than as a member of the Parliament).
- (2) He shall do so at a meeting of the Parliament and shall not take part in any other proceedings of the Parliament until he has done so.
- (3) If he has not done so within the period of two months beginning with the day on which he was returned, or such longer period as the Parliament may have allowed before the end of that period, he shall cease to be a member of the Parliament (so that his seat is vacant).
- (4) Each member of the Scottish Executive shall on appointment—
 - (a) take the official oath in the form provided by the ^{M2}Promissory Oaths Act 1868, and
 - (b) take the oath of allegiance.
- (5) Each junior Scottish Minister shall on appointment take the oath of allegiance.
- (6) Subsections (4) and (5) do not require a member of the Parliament to take the oath of allegiance again if he has already done so in compliance with his duty as a member.
- (7) In this section, references to taking the oath of allegiance are to taking it in the form provided by the Promissory Oaths Act 1868.

Marginal Citations

M2 1868 c. 72.

85 Exemption from jury service.

- (1) In Part III of Schedule 1 to the ^{M3}Juries Act 1974 (persons excusable as of right from jury service), after the entries under the heading “Parliament” there is inserted—

“ Scottish Parliament and Scottish Executive

Members of the Scottish Parliament. Members of the Scottish Executive.

Junior Scottish Ministers.”

- (2) In Part III of Schedule 1 to the ^{M4}Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (persons excusable as of right from jury service), after the entries in Group A there is inserted—

“GROUP AB

Scottish Parliament and Scottish Executive

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- (a) members of the Scottish Parliament;
- (b) members of the Scottish Executive; and
- (c) junior Scottish Ministers.”

Marginal Citations

M3 1974 c. 23.

M4 1980 c. 55.

Arrangements at Westminster

86 Scottish representation at Westminster.

- (1) Schedule 2 to the ^{M5}Parliamentary Constituencies Act 1986 (rules for redistribution of seats) is amended as follows.
- (2) Rule 1(2) (Scotland to have not less than 71 constituencies) is omitted.
- (3) After rule 3 there is inserted—

“3A
A constituency which includes the Orkney Islands or the Shetland Islands shall not include the whole or any part of a local government area other than the Orkney Islands and the Shetland Islands.”;and in rule 4, for “3” there is substituted “ 3A ”.

- (4) In applying rule 5 (electoral quotas for each part of the United Kingdom) to Scotland for the purposes of the first report of the Boundary Commission for Scotland to be submitted under section 3(1) of that Act after the commencement of this subsection, “electoral quota” means the number which, on the enumeration date in relation to that report, is the electoral quota for England.
- (5) In paragraph 7 (Commissions do not have to give full effect to all rules), after “rules” there is inserted “ (except rule 3A) ”.

Marginal Citations

M5 1986 c. 56.

87 The Advocate General for Scotland.

- (1) In Schedule 2 to the ^{M6}House of Commons Disqualification Act 1975 (Ministerial offices) and Part III of Schedule 1 to the ^{M7}Ministerial and other Salaries Act 1975 (salaries of the Law Officers), after the entry for the Solicitor General there is inserted—

“Advocate General for Scotland”.

- (2) The validity of anything done in relation to the Advocate General is not affected by a vacancy in that office.

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- (3) If that office is vacant or the Advocate General is for any reason unable to act, his functions shall be exercisable by such other Minister of the Crown as the Prime Minister may determine in writing.

Marginal Citations

M6 1975 c. 24.

M7 1975 c. 27.

Cross-border public authorities

88 Cross-border public authorities: initial status.

- (1) Sections 53 and 118 to 121 shall not apply in relation to any function which is specifically exercisable in relation to a cross-border public authority; and section 118 shall not apply in relation to any function of such an authority.
- (2) A Minister of the Crown shall consult the Scottish Ministers before he exercises, in relation to a cross-border public authority, any specific function—
- (a) which relates to any appointment or removal of the cross-border public authority concerned or of any members or office-holders of the cross-border public authority concerned, or
 - (b) whose exercise might affect Scotland otherwise than wholly in relation to reserved matters.
- (3) Any cross-border public authority or other person which is required by a pre-commencement enactment or a prerogative instrument to lay any report relating to a cross-border public authority before Parliament or either House of Parliament shall also lay the report before the Scottish Parliament.
- (4) Subsections (1) to (3) are subject to any Order in Council made under section 89.
- (5) In this Act “cross-border public authority” means any body, government department, office or office-holder specified in an Order in Council made by Her Majesty under this section.
- (6) Such an Order may only specify a body, government department, office or office-holder which (at the time when the Order is made) has, in addition to other functions, functions which are exercisable in or as regards Scotland and do not relate to reserved matters.
- (7) In this section—
- “office-holder” includes employee or other post-holder,
 - “report” includes accounts and any statement.

Modifications etc. (not altering text)

C2 S. 88(1) restricted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, Sch. 23 Pt. II para. 2(1); S.I. 1998/3178, art. 3

C3 S. 88(2) restricted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, Sch. 4 Pt. II para. 3(3); S.I. 1998/3178, art. 3

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- S. 88(2) restricted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 2 Pt. II para. 3(3)**; S.I. 1998/3178, **art. 3**
- S. 88(2) restricted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 5 Pt. II para. 3(3)**; S.I. 1998/3178, **art. 3**
- S. 88(2) restricted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 7 Pt. II para. 3(3)**; S.I. 1998/3178, **art. 3**
- S. 88(2) restricted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 8 Pt. II paras. 3(3), 4(2)**; S.I. 1998/3178, **art. 3**
- S. 88(2) restricted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 11 Pt. II para. 4(3)**; S.I. 1998/3178, **art. 3**
- S. 88(2) restricted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 13 Pt. II para. 3(3)**; S.I. 1998/3178, **art. 3**
- S. 88(2) restricted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 14 Pt. II para. 3(3)**; S.I. 1998/3178, **art. 3**
- S. 88(2) restricted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 16 Pt. II para. 3(3)**; S.I. 1998/3178, **art. 3**
- S. 88(2) restricted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 17 Pt. II para. 3(3)**; S.I. 1998/3178, **art. 3**
- S. 88(2)(a)(b) restricted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 23 Pt. II para. 2(2)(3)**; S.I. 1998/3178, **art. 3**
- C4** S. 88(2)(a) excluded (20.4.2000) by S.I. 2000/1102, **art. 5** (with art. 6(1))
- C5** S. 88(3) restricted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 23 Pt. II para. 2(4)**; S.I. 1998/3178, **art. 3**

Commencement Information

- II** S. 88 in force for certain purposes at 25.1.1999 and for all remaining purposes at 1.7.1999 by S.I. 1998/3178, **art. 2(2), 3**

89 Power to adapt etc. cross-border public authorities.

- (1) Her Majesty may by Order in Council make such provision in relation to a cross-border public authority as She considers necessary or expedient in consequence of this Act.
- (2) Such provision may, in particular, include provision—
- (a) modifying any function of a cross-border public authority or of a Minister of the Crown in relation to such an authority,
 - (b) conferring any function on a cross-border public authority or on a Minister of the Crown or the Scottish Ministers in relation to such an authority,
 - (c) modifying the constitution of a cross-border public authority,
 - (d) modifying the application of section 56(4) or 88(1), (2) or (3),
 - (e) for any function to be exercisable by the Scottish Ministers instead of by a Minister of the Crown, or by the one concurrently with the other, or by both jointly or by either with the agreement of or after consultation with the other,
 - (f) apportioning any assets or liabilities,
 - (g) imposing, or enabling the imposition of, any limits or other restrictions in addition to or in substitution for existing limits or restrictions,
 - (h) providing for sums to be charged on or payable out of, or paid into, the Scottish Consolidated Fund (instead of or in addition to payments into or out of the Consolidated Fund or the National Loans Fund or out of money provided by Parliament),

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- (i) requiring payments, with or without interest, to a Minister of the Crown or into the Consolidated Fund or National Loans Fund.
- (3) No recommendation shall be made to Her Majesty in Council to make an Order under this section unless the cross-border public authority concerned has been consulted.

Commencement Information

I2 S. 89 in force at 6.5.1999 and at 1.7.1999 for all remaining purposes by S.I. 1998/3178, arts. 2(2), 3

90 Power to transfer property of cross-border public authorities.

- (1) This section applies if an Act of the Scottish Parliament provides for any functions of a cross-border public authority to be no longer exercisable in or as regards Scotland.
- (2) Her Majesty may by Order in Council provide—
 - (a) for the transfer of any property to which this section applies, or
 - (b) for any person to have such rights or interests in relation to any property to which this section applies as Her Majesty considers appropriate (whether in connection with a transfer or otherwise).
- (3) This section applies to property belonging to the cross-border public authority concerned which appears to Her Majesty—
 - (a) to be held or used wholly or partly for or in connection with the exercise of any of the functions concerned, or
 - (b) not to be within paragraph (a) but, when last held or used for or in connection with the exercise of any function, to have been so held or used for or in connection with the exercise of any of the functions concerned.
- (4) Her Majesty may by Order in Council provide for the transfer of any liabilities—
 - (a) to which the cross-border public authority concerned is subject, and
 - (b) which appear to Her Majesty to have been incurred wholly or partly for or in connection with the exercise of any of the functions concerned.
- (5) No recommendation shall be made to Her Majesty in Council to make an Order under this section unless the cross-border public authority concerned has been consulted.

Miscellaneous

91 Maladministration.

- (1) The Parliament shall make provision for the investigation of relevant complaints made to its members in respect of any action taken by or on behalf of—
 - (a) a member of the Scottish Executive in the exercise of functions conferred on the Scottish Ministers, or
 - (b) any other office-holder in the Scottish Administration.
- (2) For the purposes of subsection (1), a complaint is a relevant complaint if it is a complaint of a kind which could be investigated under the ^{M8}Parliamentary Commissioner Act 1967 if it were made to a member of the House of Commons in respect of a government department or other authority to which that Act applies.

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- (3) The Parliament may make provision for the investigation of complaints in respect of—
- (a) any action taken by or on behalf of an office-holder in the Scottish Administration,
 - (b) any action taken by or on behalf of the Parliamentary corporation,
 - (c) any action taken by or on behalf of a Scottish public authority with mixed functions or no reserved functions, or
 - (d) any action concerning Scotland and not relating to reserved matters which is taken by or on behalf of a cross-border public authority.
- (4) In making provision of the kind required by subsection (1), the Parliament shall have regard (among other things) to the Act of 1967.
- (5) Sections 53 and 117 to 121 shall not apply in relation to functions conferred by or under the Act of 1967.
- (6) In this section—
- “action” includes failure to act (and related expressions shall be read accordingly),
- “provision” means provision by an Act of the Scottish Parliament;
- and the references to the Act of 1967 are to that Act as it has effect on the commencement of this section.

Modifications etc. (not altering text)

- C6** S. 91(3)(d) modified (27.7.2004) by Energy Act 2004 (c. 20), ss. 2(10), 198(2), **Sch. 1 para. 17(c)**; S.I. 2004/1973, **art. 2**, Sch.
- C7** S. 91(3)(d) modified by Private Security Industry Act 2001 (c. 12), s. 2A (as inserted (E.W.S) (30.6.2006 for S. and 6.7.2006 for E.W.) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 171(1), 178(6), **Sch. 15 para. 3**; S.S.I. 2006/381, **art. 2**)

Marginal Citations

- M8** 1967 c. 13.

92 Queen’s Printer for Scotland.

- (1) There shall be a Queen’s Printer for Scotland who shall—
- (a) exercise the Queen’s Printer functions in relation to Acts of the Scottish Parliament and subordinate legislation to which this section applies, and
 - (b) exercise any other functions conferred on her by this Act or any other enactment.
- (2) In subsection (1), “the Queen’s Printer functions” means the printing functions in relation to Acts of Parliament and subordinate legislation of the Queen’s Printer of Acts of Parliament.
- (3) The Queen’s Printer for Scotland shall also on behalf of Her Majesty exercise Her rights and privileges in connection with—
- (a) Crown copyright in Acts of the Scottish Parliament,
 - (b) Crown copyright in subordinate legislation to which this section applies,
 - (c) Crown copyright in any existing or future works (other than subordinate legislation) made in the exercise of a function which is exercisable by any

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- office-holder in, or member of the staff of, the Scottish Administration (or would be so exercisable if the function had not ceased to exist),
- (d) other copyright assigned to Her Majesty in works made in connection with the exercise of functions by any such office-holder or member.
- (4) This section applies to subordinate legislation made, confirmed or approved—
- (a) by a member of the Scottish Executive,
- (b) by a Scottish public authority with mixed functions or no reserved functions, or
- (c) within devolved competence by a person other than a Minister of the Crown or such a member or authority.
- (5) The Queen’s Printer of Acts of Parliament shall hold the office of Queen’s Printer for Scotland.
- (6) References in this Act to a Scottish public authority include the Queen’s Printer for Scotland.

93 Agency arrangements.

- (1) A Minister of the Crown may make arrangements for any of his specified functions to be exercised on his behalf by the Scottish Ministers; and the Scottish Ministers may make arrangements for any of their specified functions to be exercised on their behalf by a Minister of the Crown.
- (2) An arrangement under this section does not affect a person’s responsibility for the exercise of his functions.
- (3) In this section—
- “functions” does not include a function of making, confirming or approving subordinate legislation,
- “Minister of the Crown” includes government department,
- “specified” means specified in an Order in Council made by Her Majesty under this subsection;
- and this section applies to the Lord Advocate as it applies to the Scottish Ministers.

Modifications etc. (not altering text)

- C8** S. 93 modified (7.4.2005 at 5:45 pm) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), [ss. 15\(1\)](#), [53\(1\)](#); [S.I. 2005/1126](#), [art. 2\(1\)](#)

Commencement Information

- I3** S. 93 in force for certain purposes at 6.5.1999 and at 1.7.1999 for all remaining purposes by [S.I. 1998/3178](#), [arts. 2\(2\)](#), [3](#)

94 Private legislation.

- (1) This section applies where a pre-commencement enactment makes provision which has the effect of—
- (a) requiring any order to be confirmed by Act of Parliament, or

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- (b) requiring any order (within the meaning of the ^{M9}Statutory Orders (Special Procedure) Act 1945) to be subject to special parliamentary procedure, and power to make, confirm or approve the order in question is exercisable by the Scottish Ministers by virtue of section 53.
- (2) The provision shall have effect, so far as it relates to the exercise of the power to make, confirm or approve the order by virtue of section 53, as if it required the order—
- (a) to be confirmed by an Act of the Scottish Parliament, or
 - (b) (as the case may be) to be subject to such special procedure as may be provided by or under such an Act.

Modifications etc. (not altering text)

C9 S. 94 applied (with modifications) (1.7.1999) by S.I. 1999/1750, arts. 1(1), 6(2)(a), **Sch. 5**; S.I. 1998/3178, **art. 3**

S.94 applied (14.12.2000) by S.I. 2000/3251, **art. 3** (with art. 4)

C10 S. 94(2)(b) applied (1.7.1999) (*temp.*) by S.I. 1999/1593, **arts. 1, 2, 3**; S.I. 1998/3178, **art. 2(1)**

Marginal Citations

M9 1945 c. 18.

95 Appointment and removal of judges.

- (1) It shall continue to be for the Prime Minister to recommend to Her Majesty the appointment of a person as Lord President of the Court of Session or Lord Justice Clerk.
- (2) The Prime Minister shall not recommend to Her Majesty the appointment of any person who has not been nominated by the First Minister for such appointment.
- (3) Before nominating persons for such appointment the First Minister shall consult the Lord President and the Lord Justice Clerk (unless, in either case, the office is vacant).
- (4) It is for the First Minister, after consulting the Lord President, to recommend to Her Majesty the appointment of a person as—
 - (a) a judge of the Court of Session (other than the Lord President or the Lord Justice Clerk), or
 - (b) a sheriff principal or a sheriff.
- (5) The First Minister shall comply with any requirement in relation to—
 - (a) a nomination under subsection (2), or
 - (b) a recommendation under subsection (4),
 imposed by virtue of any enactment.
- (6) A judge of the Court of Session and the Chairman of the Scottish Land Court may be removed from office only by Her Majesty; and any recommendation to Her Majesty for such removal shall be made by the First Minister.
- (7) The First Minister shall make such a recommendation if (and only if) the Parliament, on a motion made by the First Minister, resolves that such a recommendation should be made.

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- (8) Provision shall be made for a tribunal constituted by the First Minister to investigate and report on whether a judge of the Court of Session or the Chairman of the Scottish Land Court is unfit for office by reason of inability, neglect of duty or misbehaviour and for the report to be laid before the Parliament.
- (9) Such provision shall include provision—
- (a) for the constitution of the tribunal by the First Minister when requested by the Lord President to do so and in such other circumstances as the First Minister thinks fit, and
 - (b) for the appointment to chair the tribunal of a member of the Judicial Committee who holds or has held any of the offices referred to in section 103(2),
- and may include provision for suspension from office.
- (10) The First Minister may make a motion under subsection (7) only if—
- (a) he has received from a tribunal constituted in pursuance of subsection (8) a written report concluding that the person in question is unfit for office by reason of inability, neglect of duty or misbehaviour and giving reasons for that conclusion,
 - (b) where the person in question is the Lord President or the Lord Justice Clerk, he has consulted the Prime Minister, and
 - (c) he has complied with any other requirement imposed by virtue of any enactment.
- (11) In subsections (8) to (10)—
- “provision” means provision by or under an Act of the Scottish Parliament,
 - “tribunal” means a tribunal of at least three persons.

96 Provision of information to the Treasury.

- (1) The Treasury may require the Scottish Ministers to provide, within such period as the Treasury may reasonably specify, such information, in such form and prepared in such manner, as the Treasury may reasonably specify.
- (2) If the information is not in their possession or under their control, their duty under subsection (1) is to take all reasonable steps to comply with the requirement.

97 Assistance for opposition parties.

- (1) Her Majesty may by Order in Council provide for the Parliamentary corporation to make payments to registered political parties for the purpose of assisting members of the Parliament who are connected with such parties to perform their Parliamentary duties.
- (2) The corporation shall not make any payment to a party in pursuance of such an Order if any of the members of the Parliament who are connected with the party are also members of the Scottish Executive or junior Scottish Ministers.
- (3) But such an Order may, in any circumstances specified in the Order, require the fact that any members who are connected with a party are also members of the Scottish Executive or junior Scottish Ministers to be disregarded.

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- (4) Such an Order may determine the circumstances in which a member of the Parliament and a registered political party are to be regarded for the purposes of this section as connected.

Commencement Information

- I4** S. 97 in force for certain purposes at 25.1.1999 and at 6.5.1999 for all remaining purposes by S.I. 1998/3178, arts. 2(2), 3

Juridical

98 Devolution issues.

Schedule 6 (which makes provision in relation to devolution issues) shall have effect.

99 Rights and liabilities of the Crown in different capacities.

- (1) Rights and liabilities may arise between the Crown in right of Her Majesty's Government in the United Kingdom and the Crown in right of the Scottish Administration by virtue of a contract, by operation of law or by virtue of an enactment as they may arise between subjects.
- (2) Property and liabilities may be transferred between the Crown in one of those capacities and the Crown in the other capacity as they may be transferred between subjects; and they may together create, vary or extinguish any property or liability as subjects may.
- (3) Proceedings in respect of—
- (a) any property or liabilities to which the Crown in one of those capacities is entitled or subject under subsection (1) or (2), or
 - (b) the exercise of, or failure to exercise, any function exercisable by an office-holder of the Crown in one of those capacities,
- may be instituted by the Crown in either capacity; and the Crown in the other capacity may be a separate party in the proceedings.
- (4) This section applies to a unilateral obligation as it applies to a contract.
- (5) In this section—
- “office-holder”, in relation to the Crown in right of Her Majesty's Government in the United Kingdom, means any Minister of the Crown or other office-holder under the Crown in that capacity and, in relation to the Crown in right of the Scottish Administration, means any office-holder in the Scottish Administration,
- “subject” means a person not acting on behalf of the Crown.

100 Human rights.

- (1) This Act does not enable a person—
- (a) to bring any proceedings in a court or tribunal on the ground that an act is incompatible with the Convention rights, or

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- (b) to rely on any of the Convention rights in any such proceedings, unless he would be a victim for the purposes of Article 34 of the Convention (within the meaning of the ^{M10}Human Rights Act 1998) if proceedings in respect of the act were brought in the European Court of Human Rights.
- (2) Subsection (1) does not apply to the Lord Advocate, the Advocate General, the Attorney General or the Attorney General for Northern Ireland.
- (3) This Act does not enable a court or tribunal to award any damages in respect of an act which is incompatible with any of the Convention rights which it could not award if section 8(3) and (4) of the Human Rights Act 1998 applied.
- (4) In this section “act” means—
- (a) making any legislation,
 - (b) any other act or failure to act, if it is the act or failure of a member of the Scottish Executive.

Marginal Citations

M10 1998 c. 42.

101 Interpretation of Acts of the Scottish Parliament etc.

- (1) This section applies to—
- (a) any provision of an Act of the Scottish Parliament, or of a Bill for such an Act, and
 - (b) any provision of subordinate legislation made, confirmed or approved, or purporting to be made, confirmed or approved, by a member of the Scottish Executive,
- which could be read in such a way as to be outside competence.
- (2) Such a provision is to be read as narrowly as is required for it to be within competence, if such a reading is possible, and is to have effect accordingly.
- (3) In this section “competence”—
- (a) in relation to an Act of the Scottish Parliament, or a Bill for such an Act, means the legislative competence of the Parliament, and
 - (b) in relation to subordinate legislation, means the powers conferred by virtue of this Act.

102 Powers of courts or tribunals to vary retrospective decisions.

- (1) This section applies where any court or tribunal decides that—
- (a) an Act of the Scottish Parliament or any provision of such an Act is not within the legislative competence of the Parliament, or
 - (b) a member of the Scottish Executive does not have the power to make, confirm or approve a provision of subordinate legislation that he has purported to make, confirm or approve.
- (2) The court or tribunal may make an order—
- (a) removing or limiting any retrospective effect of the decision, or

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- (b) suspending the effect of the decision for any period and on any conditions to allow the defect to be corrected.
- (3) In deciding whether to make an order under this section, the court or tribunal shall (among other things) have regard to the extent to which persons who are not parties to the proceedings would otherwise be adversely affected.
- (4) Where a court or tribunal is considering whether to make an order under this section, it shall order intimation of that fact to be given to—
 - (a) the Lord Advocate, and
 - (b) the appropriate law officer, where the decision mentioned in subsection (1) relates to a devolution issue (within the meaning of Schedule 6),
 unless the person to whom the intimation would be given is a party to the proceedings.
- (5) A person to whom intimation is given under subsection (4) may take part as a party in the proceedings so far as they relate to the making of the order.
- (6) Paragraphs 36 and 37 of Schedule 6 apply with necessary modifications for the purposes of subsections (4) and (5) as they apply for the purposes of that Schedule.
- (7) In this section—
 - “intimation” includes notice,
 - “the appropriate law officer” means—
 - (a) in relation to proceedings in Scotland, the Advocate General,
 - (b) in relation to proceedings in England and Wales, the Attorney General,
 - (c) in relation to proceedings in Northern Ireland, the Attorney General for Northern Ireland.

Modifications etc. (not altering text)

C11 S. 102 amended (6.5.1999) by S.I. 1999/1347, rule 8(1)(a)

103 The Judicial Committee.

- (1) Any decision of the Judicial Committee in proceedings under this Act shall be stated in open court and shall be binding in all legal proceedings (other than proceedings before the Committee).
- (2) No member of the Judicial Committee shall sit and act as a member of the Committee in proceedings under this Act unless he holds or has held—
 - (a) the office of a Lord of Appeal in Ordinary, or
 - (b) high judicial office as defined in section 25 of the ^{M11}Appellate Jurisdiction Act 1876 (ignoring for this purpose section 5 of the ^{M12}Appellate Jurisdiction Act 1887).
- (3) Her Majesty may by Order in Council—
 - (a) confer on the Judicial Committee in relation to proceedings under this Act such powers as Her Majesty considers necessary or expedient,
 - (b) apply the ^{M13}Judicial Committee Act 1833 in relation to proceedings under this Act with exceptions or modifications,
 - (c) make rules for regulating the procedure in relation to proceedings under this Act before the Judicial Committee.

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- (4) In this section “proceedings under this Act” means proceedings on a question referred to the Judicial Committee under section 33 or proceedings under Schedule 6.

Commencement Information

I5 S. 103(3) in force for certain purposes at 25.1.1999, S. 103(1)(2), (3)(for all remaining purposes), (4) in force at 6.5.1999 by S.I. 1998/3178, arts. 2(2), 3

Marginal Citations

M11 1876 c. 59.

M12 1887 c. 70.

M13 1833 c. 41.

Supplementary powers

104 Power to make provision consequential on legislation of, or scrutinised by, the Parliament.

- (1) Subordinate legislation may make such provision as the person making the legislation considers necessary or expedient in consequence of any provision made by or under any Act of the Scottish Parliament or made by legislation mentioned in subsection (2).
- (2) The legislation is subordinate legislation under an Act of Parliament made by—
- a member of the Scottish Executive,
 - a Scottish public authority with mixed functions or no reserved functions, or
 - any other person (not being a Minister of the Crown) if the function of making the legislation is exercisable within devolved competence.

105 Power to make provision consequential on this Act.

Subordinate legislation may make such modifications in any pre-commencement enactment or prerogative instrument or any other instrument or document as appear to the person making the legislation necessary or expedient in consequence of this Act.

106 Power to adapt functions.

- (1) Subordinate legislation may make such provision (including, in particular, provision modifying a function exercisable by a Minister of the Crown) as the person making the legislation considers appropriate for the purpose of enabling or otherwise facilitating the transfer of a function to the Scottish Ministers by virtue of section 53 or 63.
- (2) Subordinate legislation under subsection (1) may, in particular, provide for any function which—
- is not exercisable separately in or as regards Scotland to be so exercisable, or
 - is not otherwise exercisable separately within devolved competence to be so exercisable.
- (3) The reference in subsection (1) to the transfer of a function to the Scottish Ministers shall be read as including the sharing of a function with the Scottish Ministers or its other adaptation.

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- (4) No recommendation shall be made to Her Majesty in Council to make, and no Minister of the Crown shall make, subordinate legislation under this section which modifies a function of observing or implementing an obligation mentioned in subsection (5) unless the Scottish Ministers have been consulted about the modification.
- (5) The obligation is an international obligation, or an obligation under Community law, to achieve a result defined by reference to a quantity (whether expressed as an amount, proportion or ratio or otherwise), where the quantity relates to the United Kingdom (or to an area including the United Kingdom or to an area consisting of a part of the United Kingdom which includes the whole or part of Scotland).
- (6) If subordinate legislation under this section modifies a function of observing or implementing such an international obligation so that the function to be transferred to the Scottish Ministers relates only to achieving so much of the result to be achieved under the obligation as is specified in the legislation, references in section 58 to the international obligation are to be read as references to the requirement to achieve that much of the result.
- (7) If subordinate legislation under this section modifies a function of observing or implementing such an obligation under Community law so that the function to be transferred to the Scottish Ministers relates only to achieving so much of the result to be achieved under the obligation as is specified in the legislation, references in sections 29(2)(d) and 57(2) and paragraph 1 of Schedule 6 to Community law are to be read as including references to the requirement to achieve that much of the result.

107 Legislative power to remedy ultra vires acts.

Subordinate legislation may make such provision as the person making the legislation considers necessary or expedient in consequence of—

- (a) an Act of the Scottish Parliament or any provision of an Act of the Scottish Parliament which is not, or may not be, within the legislative competence of the Parliament, or
- (b) any purported exercise by a member of the Scottish Executive of his functions which is not, or may not be, an exercise or a proper exercise of those functions.

108 Agreed redistribution of functions exercisable by the Scottish Ministers etc.

- (1) Her Majesty may by Order in Council provide for any functions exercisable by a member of the Scottish Executive to be exercisable—
 - (a) by a Minister of the Crown instead of by the member of the Scottish Executive,
 - (b) by a Minister of the Crown concurrently with the member of the Scottish Executive, or
 - (c) by the member of the Scottish Executive only with the agreement of, or after consultation with, a Minister of the Crown.
- (2) Where an Order is made under subsection (1)(a) or (b) in relation to a function of the Scottish Ministers, the First Minister or the Lord Advocate which is exercisable only with the agreement of, or after consultation with, any other of those persons, the function shall, unless the Order provides otherwise, be exercisable by the Minister of the Crown free from any such requirement.
- (3) An Order under this section may, in particular, provide for any function exercisable by a Minister of the Crown by virtue of an Order under subsection (1)(a) or (b) to be

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exercisable subject to a requirement for the function to be exercised with the agreement of, or after consultation with, another person.

- (4) This section does not apply to any retained functions of the Lord Advocate which fall within section 52(6)(a).

Modifications etc. (not altering text)

C12 S. 108 modified (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), ss. 8(2)(3), 53(1); S.I. 2005/1126, art. 2(2)(e)

109 Agreed redistribution of property and liabilities.

- (1) Her Majesty may by Order in Council provide—
- (a) for the transfer to a Minister of the Crown or government department of any property belonging to the Scottish Ministers or the Lord Advocate, or
 - (b) for a Minister of the Crown or government department to have such rights or interests in relation to any property belonging to the Scottish Ministers or the Lord Advocate as Her Majesty considers appropriate (whether in connection with a transfer or otherwise).
- (2) Her Majesty may by Order in Council provide for the transfer to a Minister of the Crown or government department of any liabilities to which the Scottish Ministers or the Lord Advocate are subject.
- (3) An Order in Council under this section may only be made in connection with any transfer or sharing of functions of a member of the Scottish Executive by virtue of section 108 or in any other circumstances in which Her Majesty considers it appropriate to do so for the purposes of this Act.

110 Scottish taxpayers for social security purposes.

- (1) The Secretary of State may by order provide for individuals of any description specified in the order to be treated for the purposes of any of the matters that are reserved matters by virtue of Head F of Part II of Schedule 5 as if they were, or were not, Scottish taxpayers.
- (2) The Secretary of State may by order provide in relation to any year of assessment that, for those purposes, the basic rate in relation to the income of Scottish taxpayers shall be treated as being such rate as is specified in the order (instead of the rate increased or reduced for that year by virtue of any resolution of the Parliament in pursuance of section 73 passed after the beginning of the year).
- (3) An order under this section may apply in respect of any individuals whether Scotland is the part of the United Kingdom with which they have the closest connection or not.
- (4) In this section “Scottish taxpayer” has the same meaning as in Part IV.

111 Regulation of Tweed and Esk fisheries.

- (1) Her Majesty may by Order in Council make provision for or in connection with the conservation, management and exploitation of salmon, trout, eels and freshwater fish in the Border rivers.

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- (2) An Order under subsection (1) may—
- (a) exclude the application of section 53 in relation to any Border rivers function,
 - (b) confer power to make subordinate legislation.
- (3) In particular, provision may be made by such an Order—
- (a) conferring any function on a Minister of the Crown, the Scottish Ministers or a public body in relation to the Border rivers,
 - (b) for any Border rivers function exercisable by any person to be exercisable instead by a person (or another person) mentioned in paragraph (a),
 - (c) for any Border rivers function exercisable by any person to be exercisable concurrently or jointly with, or with the agreement of or after consultation with, a person (or another person) mentioned in paragraph (a).
- (4) In this section—
- “the Border rivers” means the Rivers Tweed and Esk,
- “Border rivers function” means a function conferred by any enactment, so far as exercisable in relation to the Border rivers,
- “conservation”, in relation to salmon, trout, eels and freshwater fish, includes the protection of their environment,
- “eels”, “freshwater fish”, “salmon” and “trout” have the same meanings as in the ^{M14}Salmon and Freshwater Fisheries Act 1975,
- “the River Tweed” has the same meaning as in section 39 of the Salmon and Freshwater Fisheries Act 1975,
- “the River Esk” means the river of that name which, for part of its length, constitutes the border between England and Scotland including—
- (a) its tributary streams (which for this purpose include the River Sark and its tributary streams), and
 - (b) such waters on the landward side of its estuary limits as are determined by an Order under subsection (1),
- together with its banks;
- and references to the Border rivers include any part of the Border rivers.
- (5) An Order under subsection (1) may modify the definitions in subsection (4) of the River Tweed and the River Esk.

Marginal Citations

M14 1975 c. 51.

Status:

Point in time view as at 24/10/2002.

Changes to legislation:

There are currently no known outstanding effects for the Scotland Act 1998, Part V.