



# Scotland Act 1998

## 1998 CHAPTER 46

### PART V

#### MISCELLANEOUS AND GENERAL

##### *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) a member of the [<sup>F1</sup>Scottish Government],
  - (b) a Scottish public authority with mixed functions or no reserved functions, or
  - (c) any other person (not being a Minister of the Crown) if the function of making the legislation is exercisable within devolved competence.

<sup>F2</sup>(3) .....

#### **Textual Amendments**

**F1** Words in Act substituted (3.7.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 12(2)(a)**, 44(5) (with s. 12(3));

[S.I. 2012/1710](#), art. 2(f)

**F2** [S. 104\(3\)](#) omitted (18.5.2017) by virtue of [Scotland Act 2016 \(c. 11\)](#), **ss. 10(3)**, 72(4)(a); [S.I. 2017/608](#),

reg. 2(1)(h)

#### **Modifications etc. (not altering text)**

**C1** [S. 104\(2\)\(c\)](#) modified (23.3.2016) by [Scotland Act 2016 \(c. 11\)](#), **ss. 36(12)(b)**, 72(1)(b)

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## 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—
  - (a) is not exercisable separately in or as regards Scotland to be so exercisable, or
  - (b) 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.
- (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 [<sup>F3</sup>a retained EU obligation], 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.

<sup>F4</sup>(7) .....

### Textual Amendments

- F3** Words in s. 106(5) substituted (31.12.2020) by [European Union \(Withdrawal\) Act 2018 \(c. 16\)](#), s. 25(4), [Sch. 3 para. 17\(2\)](#) (with s. 19, [Sch. 8 paras. 37, 45](#)); S.I. 2020/1622, reg. 3(l) (with reg. 10)
- F4** S. 106(7) omitted (31.12.2020) by virtue of [European Union \(Withdrawal\) Act 2018 \(c. 16\)](#), s. 25(4), [Sch. 3 para. 17\(3\)](#) (with s. 19, [Sch. 8 paras. 37, 45](#)); S.I. 2020/1622, reg. 3(l) (with regs. 10, 22)

## 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—

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- (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 [F1Scottish Government] of his functions which is not, or may not be, an exercise or a proper exercise of those functions.

#### Textual Amendments

**F1** Words in Act substituted (3.7.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 12(2)(a)**, 44(5) (with s. 12(3)); [S.I. 2012/1710](#), art. 2(f)

### 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 [F1Scottish Government] to be exercisable—
  - (a) by a Minister of the Crown instead of by the member of the [F1Scottish Government],
  - (b) by a Minister of the Crown concurrently with the member of the [F1Scottish Government], or
  - (c) by the member of the [F1Scottish Government] 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 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).

#### Textual Amendments

**F1** Words in Act substituted (3.7.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 12(2)(a)**, 44(5) (with s. 12(3)); [S.I. 2012/1710](#), art. 2(f)

#### Modifications etc. (not altering text)

**C2** 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

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- (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 [<sup>F1</sup>Scottish Government] 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.

#### Textual Amendments

- F1** Words in Act substituted (3.7.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 12(2)(a), 44(5)** (with [s. 12\(3\)](#)); [S.I. 2012/1710](#), [art. 2\(f\)](#)

### 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 [<sup>F5</sup>salmon, trout, eels, lampreys, smelt, shad and freshwater fish] in the Border rivers.
- (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),

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- (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 [<sup>F6</sup>salmon, trout, eels, lampreys, smelt, shad and freshwater fish,] includes the protection of their environment,

“eels”, [<sup>F7</sup>“fish”], “freshwater fish”, “salmon” [<sup>F8</sup>, “smelt”] and “trout” have the same meanings as in the <sup>M1</sup>Salmon and Freshwater Fisheries Act 1975 [<sup>F9</sup>(as amended by the Marine and Coastal Access Act 2009)],

“the River Tweed” [<sup>F10</sup>means the Tweed district (as defined in article 2(1) of the Scotland Act 1998 (River Tweed) Order 2006 (S.I. 2006/2913)).]

“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.

[<sup>F11</sup>(6) An Order under subsection (1) may amend that subsection so as to—

- (a) add any description of fish to it, or
- (b) remove any description of fish from it.]

#### Textual Amendments

- F5** Words in s. 111(1) substituted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 231(2)**, 324(3); S.I. 2009/3345, **art. 2**, Sch. para. 14
- F6** Words in s. 111(4) substituted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 231(3)**, 324(3); S.I. 2009/3345, **art. 2**, Sch. para. 14
- F7** Word in s. 111(4) inserted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 231(4)(a)**, 324(3); S.I. 2009/3345, **art. 2**, Sch. para. 14
- F8** Word in s. 111(4) inserted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 231(4)(b)**, 324(3); S.I. 2009/3345, **art. 2**, Sch. para. 14
- F9** Words in s. 111(4) inserted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 231(4)(c)**, 324(3); S.I. 2009/3345, **art. 2**, Sch. para. 14
- F10** S. 111(4): words in definition of “the River Tweed” substituted (15.11.2006) by [The Scotland Act 1998 \(River Tweed\) Order 2006 \(S.I. 2006/2913\)](#), arts. 1(2), **76**, **Sch. 4 para. 4**
- F11** S. 111(6) inserted (12.11.2009 for certain purposes and 12.1.2010 otherwise) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 231(5)**, 324(1)(c); S.I. 2009/3345, **art. 2**, Sch. para. 14

#### Marginal Citations

- M1** 1975 c. 51.

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