

*Status: Point in time view as at 01/10/2020.*

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

## SCHEDULES

### SCHEDULE 5

#### RESERVED MATTERS

#### PART III

#### GENERAL PROVISIONS

##### *Scottish public authorities*

- 1 (1) This Schedule does not reserve any Scottish public authority if some of its functions relate to reserved matters and some do not, unless it is a cross-border public authority.
- (2) Sub-paragraph (1) has effect as regards—
- (a) the constitution of the authority, including its establishment and dissolution, its assets and liabilities and its funding and receipts,
  - (b) conferring or removing any functions specifically exercisable in relation to the authority.
- (3) Sub-paragraph (2)(b) does not apply to any function which is specifically exercisable in relation to a particular function of the authority if the particular function relates to reserved matters.
- (4) An authority to which this paragraph applies is referred to in this Act as a Scottish public authority with mixed functions.

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

- C1** Sch. 5 Pt. III para. 1(4) applied (S.) (30.9.2002) by [Freedom of Information \(Scotland\) Act 2002 \(asp 13\)](#), [s. 4](#); [S.S.I. 2002/437](#), [art. 2](#)

- 2 Paragraph 1 of Part I of this Schedule does not reserve any Scottish public authority with functions none of which relate to reserved matters (referred to in this Act as a Scottish public authority with no reserved functions).

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

- C2** Sch. 5 Pt. III para. 2 applied (S.) (30.9.2002) by [Freedom of Information \(Scotland\) Act 2002 \(asp 13\)](#), [s. 4](#); [S.S.I. 2002/437](#), [art. 2](#)

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## *F<sup>1</sup>* Tribunals

### Textual Amendments

**F1** Sch. 5 Pt. III para. 2A and cross-heading inserted (23.5.2016) by [Scotland Act 2016 \(c. 11\), ss. 39\(1\), 72\(7\)](#)

- 2A (1) This Schedule does not reserve the transfer to a Scottish tribunal of functions of a tribunal that relate to reserved matters, so far as those functions are exercisable in relation to Scottish cases.
- (2) “Scottish cases” has the meaning given by an Order in Council made by Her Majesty under this sub-paragraph.
- (3) Sub-paragraph (1) does not apply where a function is excluded from transfer.
- (4) Where a function is not excluded from transfer but is subject to qualified transfer, sub-paragraph (1) applies only if the transfer of the function is in accordance with provision made by Her Majesty by Order in Council.
- (5) An Order in Council under sub-paragraph (4)—
- (a) must specify the function to which it relates,
  - (b) must specify the Scottish tribunal to which the function may be transferred, and
  - (c) may make any other provision which Her Majesty considers necessary or expedient for the purposes of or in consequence of the transfer of the function and its exercise by the Scottish tribunal.
- (6) The functions that are subject to qualified transfer are the functions of the following tribunals—
- (a) the First-tier Tribunal or the Upper Tribunal that are established under section 3 of the Tribunals, Courts and Enforcement Act 2007;
  - (b) an employment tribunal or the Employment Appeal Tribunal;
  - (c) a tribunal listed in Schedule 1 to the Tribunals and Inquiries Act 1992;
  - (d) a tribunal listed in Schedule 6 to the Tribunals, Courts and Enforcement Act 2007.
- (7) Sub-paragraph (6)(c) and (d) include a tribunal added to the Schedule concerned after this paragraph comes into force.
- (8) Provision made by virtue of sub-paragraph (5)(c) may—
- (a) include provision that—
    - (i) modifies the function;
    - (ii) imposes conditions or restrictions (including conditions or restrictions relating to the composition or rules of procedure of the Scottish tribunal, or to its staff or accommodation);
  - (b) be made with a view to purposes including—
    - (i) securing consistency in any respect in practice or procedure or otherwise between the Scottish tribunal and other tribunals;
    - (ii) promoting judicial co-operation in the interests of consistency.
- (9) Sub-paragraph (8) does not limit the provision that may be made by virtue of sub-paragraph (5)(c).

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- (10) The following functions are excluded from transfer—
- (a) functions of a national security tribunal;
  - (b) functions of a regulator, or of a person or body that exercises functions on behalf of a regulator;
  - (c) functions of the Comptroller-General of Patents, Designs and Trade Marks.
- (11) In this paragraph—
- a “ national security tribunal ” means—
    - (a) the Pathogens Access Appeal Commission;
    - (b) the Proscribed Organisations Appeal Commission;
    - (c) the Special Immigration Appeals Commission;
    - (d) the tribunal established by section 65(1) of the Regulation of Investigatory Powers Act 2000 (investigatory powers tribunal);
    - (e) any other tribunal that has functions relating to matters falling within Section B8 of Part 2 of this Schedule, except a tribunal mentioned in sub-paragraph (6);
  - a “ regulator ” means a person or body that has regulatory functions (within the meaning given by section 32 of the Legislative and Regulatory Reform Act 2006);
  - a “ Scottish tribunal ” means a tribunal in Scotland—
    - (a) that does not have functions in or as regards any other country or territory, except for purposes ancillary to its functions in or as regards Scotland, and
    - (b) that is not, and does not have as a member, a member of the Scottish Government.
- (12) The powers conferred by this paragraph do not affect the powers conferred by section 30 or section 113.]

#### *Reserved bodies*

- 3 (1) The reservation of any body to which this paragraph applies has effect to reserve—
- (a) its constitution, including its establishment and dissolution, its assets and liabilities and its funding and receipts,
  - (b) conferring functions on it or removing functions from it,
  - (c) conferring or removing any functions specifically exercisable in relation to it.
- (2) This paragraph applies to—
- (a) a body reserved by name by Part II of this Schedule,
  - (b) each of the councils reserved by Section C12 of that Part,
  - (c) the Commission for Racial Equality, the Equal Opportunities Commission and [F<sup>2</sup>the Disability Rights Commission].
  - [F<sup>3</sup>(d) the Commission for Equality and Human Rights.]
  - [F<sup>4</sup>(e) the Office of Communications,
  - (f) the Gas and Electricity Markets Authority.

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#### Textual Amendments

- F2** Words in Sch. 5 Pt. III para. 3(2)(c) substituted (6.8.1999) by 1999 c. 17, s. 14(1), **Sch. 4 para. 4** (with s. 15); S.I. 1999/2210, **art. 2(4)(7)**
- F3** Sch. 5 Pt. III para. 3(2)(d) inserted (1.5.2006) by [The Scotland Act 1998 \(Modifications of Schedule 5\) Order 2006 \(S.I. 2006/609\)](#), **art. 2**
- F4** Sch. 3 Pt III para. 3(2)(e)(f) inserted (23.5.2016) by [Scotland Act 2016 \(c. 11\)](#), ss. 50(8), 72(7)

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

- C3** Sch. 5 Pt. III para. 3 applied (28.7.1999) (*temp.*) by S.I. 1999/2210, **art. 3**

#### *Financial assistance to industry*

- 4 (1) This Schedule does not reserve giving financial assistance to commercial activities for the purpose of promoting or sustaining economic development or employment.
- (2) Sub-paragraph (1)—
- does not apply to giving financial assistance to any activities in pursuance of a power exercisable only in relation to activities which are reserved,
  - does not apply to Part I of this Schedule, except paragraph 9, or to a body to which paragraph 3 of this Part of this Schedule applies,
  - is without prejudice to the exceptions from the reservations in Sections [F5C11,] E2 and E3 of Part II of this Schedule.
- (3) Sub-paragraph (1) does not affect the question whether any matter other than financial assistance to which that sub-paragraph applies is reserved.

#### Textual Amendments

- F5** Words in Sch. 5 Pt. III para. 4(2)(c) inserted (14.12.2000) by S.I. 2000/3252, **art. 2(2)**

#### *Interpretation*

- 5 (1) References in this Schedule to the subject-matter of any enactment are to be read as references to the subject-matter of that enactment as it has effect on the principal appointed day or, if it ceased to have effect at any time within the period ending with that day and beginning with the day on which this Act is passed, as it had effect immediately before that time.
- (2) Subordinate legislation under section 129(1) may, in relation to the operation of this Schedule at any time before the principal appointed day, modify the references to that day in sub-paragraph (1).]

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