



# Scotland Act 2012

## 2012 CHAPTER 11

### PART 1

#### THE PARLIAMENT AND ITS POWERS

##### *The Scottish Parliament*

VALID FROM 01/07/2015

#### **1 Administration of elections**

(1) Section 12 of the 1998 Act (power to make provision about elections) is amended as follows.

(2) In subsection (1)—

- (a) for “Secretary of State” substitute “ Scottish Ministers ”;
- (b) after paragraph (a) insert “ and ”;
- (c) omit paragraph (c) and the “and” before it.

(3) In subsection (2)—

- (a) after “subsection (1)(a)” insert “ does not include provision that may be made by the Secretary of State under section 12A but, subject to that, ”;
- (b) for paragraph (a) substitute—
  - “(a) about supplying or otherwise dealing with a register of electors,”;
- (c) omit paragraph (b);
- (d) after paragraph (c) insert “ and ”;
- (e) in paragraph (d) after “other elections” insert “ , if the conduct of the other election falls within the legislative competence of the Parliament. ”;
- (f) omit paragraphs (e) and (f).

(4) Omit subsection (3).

*Status: Point in time view as at 17/02/2015. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Scotland Act 2012. (See end of Document for details)*

(5) In subsection (4) omit paragraphs (b) and (c).

(6) In subsection (6) for “Secretary of State” substitute “ Scottish Ministers ”.

(7) After that subsection insert—

“(7) Before making an order under this section the Scottish Ministers must consult the Secretary of State.”

(8) In the heading of the section, after “Power” insert “ of the Scottish Ministers ”.

(9) After that section insert—

**“12A Power of the Secretary of State to make provision about elections**

(1) The Secretary of State may by regulations make provision—

- (a) about the registration of electors,
- (b) for modifying the application of section 7(1) where the poll at an election for the return of a constituency member is abandoned (or notice of it is countermanded),
- (c) for modifying section 8(7) to ensure the allocation of the correct number of seats for the region, and
- (d) as to the return of members of the Parliament otherwise than at an election.

(2) The provision that may be made under subsection (1)(a) includes—

- (a) provision for disregarding alterations in a register of electors, and
- (b) other provision about, or for purposes connected with, the content of a register or the effect of registration,

but subject to that it does not include provision about supplying or otherwise dealing with a register.

(3) The provision that may be made under subsection (1)(d) includes, in particular, provision modifying section 10(4) and (5).

(4) Regulations under subsection (1) may—

- (a) apply, with or without modifications or exceptions, any provision made by or under the Representation of the People Acts or the European Parliamentary Elections Act 2002 or by any other enactment relating to parliamentary elections, European Parliamentary elections or local government elections, and
- (b) so far as may be necessary in consequence of any provision made by this Act or regulations under subsection (1), modify any provision made by any enactment relating to the registration of parliamentary electors or local government electors.

(5) Before making regulations under this section the Secretary of State must consult the Scottish Ministers.”

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PROSPECTIVE

**F12      Combination of polls at Scottish Parliamentary and other reserved elections**

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**Textual Amendments**

**F1** S. 2 omitted (18.5.2017) by virtue of Scotland Act 2016 (c. 11), ss. 10(6), 72(4)(a); S.I. 2017/608, reg. 2(1)(h)

VALID FROM 01/07/2015

**3      Supplementary and transitional provision about elections**

(1) In section 113 of the 1998 Act (subordinate legislation: scope of powers) after subsection (1) insert—

“(1A) Subsections (2) to (11), except subsection (9), apply also to the power of the Scottish Ministers to make an order under section 12.”

(2) Schedule 7 to the 1998 Act (procedure for subordinate legislation) is amended as follows.

(3) In paragraph 1—

- (a) in the entry for section 12(1) for “Type C” substitute “ Type L ”;
- (b) after that entry insert—

“Section 12A

Type C”.

(4) In paragraph 2 at the end insert— “ **Type L:** The legislation shall be subject to the affirmative procedure. ”

(5) In section 7 of the Political Parties, Elections and Referendums Act 2000 (Electoral Commission to be consulted on changes to electoral law), in subsection (2)(g) after “12(1) or (6)” insert “ or regulations under section 12A(1) ”.

(6) In section 8 of that Act (powers with respect to elections exercisable only on Commission recommendation) in subsection (2) for “the Secretary of State” substitute “ the person on whom the function is conferred ”.

(7) An order made before the commencement of section 1 under section 12(1) of the 1998 Act has effect after that commencement as if made by the Scottish Ministers, to the extent that they would have power to do so.

(8) To the extent that subsection (7) does not apply, any provision of such an order—

- (a) continues to have effect, but
- (b) may be revoked by regulations under section 12A(1).

(9) A reference to the Secretary of State in such an order is to be read as a reference to the Scottish Ministers.

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- (10) Without prejudice to subsections (7) to (9), section 1 does not affect the validity of anything done by or in relation to a Minister of the Crown before that section comes into force.
- (11) Anything (including legal proceedings) which, at the time when that section comes into force, is in the process of being done by or in relation to a Minister of the Crown under an order under section 12(1) may be continued by or in relation to the Scottish Ministers.
- (12) Anything done by or in relation to a Minister of the Crown for the purposes of or in connection with a function under such an order, if in force at the time when section 1 comes into force, has effect as if done by or in relation to the Scottish Ministers in so far as that is required for continuing its effect after that time.

#### 4 Presiding Officer and deputies

- (1) Section 19 of the 1998 Act (Presiding Officer) is amended as follows.
- (2) In subsection (1) omit “at its first meeting”.
- (3) After subsection (1) insert—
- “(1A) The Parliament must do so—
- (a) before it conducts any other proceedings, except the taking by its members of the oath of allegiance (see section 84), and
- (b) in any event, within the period of 14 days beginning immediately after the day of the poll at the election.
- (1B) The Parliament may, at any time, elect from among its members one or more additional deputies.”
- (4) After subsection (2) insert—
- “(2A) But standing orders may make provision for additional deputies to hold office for a shorter time than provided by subsection (2).”
- (5) In subsection (3), after “deputy” insert “elected under subsection (1) ”.
- (6) In Schedule 3 to that Act (standing orders), for paragraph 5 substitute—
- “5 (1) The standing orders shall include provision for ensuring that the available officers do not all represent the same political party.
- (2) The available officers are—
- (a) the Presiding Officer and the deputies appointed under section 19(1), except in the case where one or more of them is unable to act and there is at least one additional deputy;
- (b) in that case, such of the Presiding Officer and deputies as are for the time being able to act.”

#### Commencement Information

**II** S. 4 in force at 3.7.2012 by S.I. 2012/1710, art. 2(a)

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## 5 Scottish Parliamentary Corporate Body

In section 21 of the 1998 Act (Scottish Parliamentary Corporate Body) in subsection (2)(b) before “four” insert “ at least ”.

### Commencement Information

**I2** S. 5 in force at 3.7.2012 by S.I. 2012/1710, art. 2(b)

## 6 Bills: statements as to legislative competence

In section 31(1) of the 1998 Act (statement by member of the Parliament in charge of a Bill), for “A member of the Scottish Executive” substitute “ A person ”.

### Commencement Information

**I3** S. 6 in force at 15.10.2012 by S.I. 2012/1710, art. 3

## 7 Members' interests

(1) Section 39 of the 1998 Act (members' interests) is amended as follows.

(2) For subsections (5) to (7) substitute—

“(4A) Any requirement or prohibition (however expressed) imposed by provision made in pursuance of subsections (2) to (4) may be subject to such exceptions as are specified in the provision.

(5) Provision may be made for—

- (a) excluding a member from the proceedings of the Parliament,
- (b) imposing on a member such other sanctions as the Parliament considers appropriate,

if the member fails to comply with, or contravenes, any provision made in pursuance of subsections (2) to (4) or this subsection.

(5A) Provision made under subsection (5) may include provision that a sanction is not to be imposed in such circumstances as are specified in the provision.

(6) Provision made under subsection (5) may include provision that the member is guilty of an offence.

(7) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

(3) After the commencement of subsection (2), subsections (5) to (7) as originally enacted continue to have effect until the coming into force of the first provision made in pursuance of those subsections as substituted by subsection (2).

### Commencement Information

**I4** S. 7 in force at 3.7.2012 by S.I. 2012/1710, art. 2(c)

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## 8 Constituencies, regions and regional members

- (1) In the Scottish Parliament (Constituencies) Act 2004, omit section 1(2) and (3) and Schedule 2 (modification of Schedule 1 to the 1998 Act).
- (2) Schedule 1 contains—
  - (a) amendments reproducing the effect of the modifications contained in Schedule 2 to the Scottish Parliament (Constituencies) Act 2004, and
  - (b) other minor amendments of Schedule 1 to the 1998 Act.

### Commencement Information

**I5** [S. 8](#) in force at 31.10.2012 by [S.I. 2012/2516](#), [art. 2\(a\)](#)

### *Legislative competence*

## 9 Continued effect of provisions ceasing to be within legislative competence

- (1) In section 30 of the 1998 Act (legislative competence: supplementary) after subsection (4) insert—
  - “(5) Subsection (6) applies where any alteration is made—
    - (a) to the matters which are reserved matters, or
    - (b) to Schedule 4,
 (whether by virtue of the making, revocation or expiry of an Order in Council under this section or otherwise).
  - (6) Where the effect of the alteration is that a provision of an Act of the Scottish Parliament ceases to be within the legislative competence of the Parliament, the provision does not for that reason cease to have effect (unless an enactment provides otherwise).”
- (2) After section 29(4) of that Act (legislative competence) insert—
  - “(5) Subsection (1) is subject to section 30(6).”
- (3) In section 92 of that Act (Queen's Printer for Scotland), after subsection (4A) (inserted by section 13) insert—
  - “(4B) If, following an alteration such as is mentioned in section 30(5)—
    - (a) subordinate legislation is made, confirmed or approved under a provision which continues to have effect by virtue of section 30(6), and
    - (b) the making, confirmation or approval would be within devolved competence but for the alteration,
 the subordinate legislation is to be regarded for the purposes of this section as being made, confirmed or approved within devolved competence.”

### Commencement Information

**I6** [S. 9](#) in force at 3.7.2012 by [S.I. 2012/1710](#), [art. 2\(d\)](#)

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## 10 Air weapons

In Part 2 of Schedule 5 to the 1998 Act, in Section B4 (specific reservations: firearms) at the end insert—

*“Exception*

The regulation of air weapons within the meaning given by section 1(3)(b) of the Firearms Act 1968 (which is subject to the following which remain powers of the Secretary of State—

- (a) the power to make rules under section 53 of that Act for the purposes of that provision (specially dangerous weapons requiring firearms certificate), and
- (b) the power to make an order under section 1(4) of the Firearms (Amendment) Act 1988 (specially dangerous weapons to be prohibited).”

### Commencement Information

**I7** S. 10 in force at 3.7.2012 by S.I. 2012/1710, art. 2(e)

## 11 Antarctica

(1) In Part 2 of Schedule 5 to the 1998 Act, under Head L (miscellaneous) at the end insert—

**“L7. Antarctica** Regulation of activities in Antarctica.

*Interpretation*“Antarctica” has the meaning given by section 1 of the Antarctic Act 1994.”

(2) The provision inserted by subsection (1) is to be regarded as having been included in Schedule 5 to the 1998 Act since the day on which that Schedule came into force.

## PART 2

### MINISTERS AND THEIR POWERS

#### *The Scottish Ministers*

## 12 The Scottish Government

(1) The Scottish Executive is renamed the Scottish Government.

(2) Accordingly, in the 1998 Act—

- (a) for “Scottish Executive” in each place substitute “ Scottish Government ”;
- (b) in the heading to section 81 and the italic cross-heading preceding it, for “Executive” substitute “ Government ”.

(3) Subsection (2) does not apply to section 31(1) of the 1998 Act (as to which, see section 6 of this Act).

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- (4) Unless the context requires otherwise, any reference to the Scottish Executive in any enactment, instrument or other document made before the date on which this section comes into force (except the enactments mentioned in subsections (2) and (3)) is to be read as a reference to the Scottish Government.

**Commencement Information**

**I8** S. 12 in force at 3.7.2012 by S.I. 2012/1710, art. 2(f)

**13 Exercise of power to make Order disqualifying persons from membership of the Parliament**

- (1) The 1998 Act is amended as follows.
- (2) In section 112 (subordinate legislation: general), after subsection (5) insert—
- “(6) Section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (functions exercisable by Scottish statutory instrument) applies to the function of making an Order in Council under section 15(1) or (2).”
- (3) In section 92 (Queen's Printer for Scotland), after subsection (4) insert—
- “(4A) For the purposes of subsection (4)(c), the function of Her Majesty of making an Order in Council under section 15(1) or (2) (power to specify persons disqualified from membership of the Parliament) is to be regarded as being exercisable within devolved competence.”
- (4) In section 104 (power to make provision consequential on legislation of, or scrutinised by, the Parliament), after subsection (2) insert—
- “(3) For the purposes of subsection (2)(c), the function of Her Majesty of making an Order in Council under section 15(1) or (2) (power to specify persons disqualified from membership of the Parliament) is to be regarded as being exercisable within devolved competence.”
- (5) In Schedule 4 (enactments etc protected from modification), in paragraph 11 (general exceptions: subordinate legislation), after sub-paragraph (3) insert—
- “(4) For the purposes of sub-paragraph (3)(c), the function of Her Majesty of making an Order in Council under section 15(1) or (2) (power to specify persons disqualified from membership of the Parliament) is to be regarded as being exercisable within devolved competence.”

**Commencement Information**

**I9** S. 13 in force at 31.10.2012 by S.I. 2012/2516, art. 2(b)

**14 Time limit for human rights actions against Scottish Ministers etc**

- (1) In section 100 of the 1998 Act the following (as inserted by the Convention Rights Proceedings (Amendment) (Scotland) Act 2009) (asp 11) are omitted—
- (a) subsections (3A) to (3E);



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- (b) in subsection (4), the words “Subject to subsection (3D),”.
- (2) The Convention Rights Proceedings (Amendment) (Scotland) Act 2009 (asp 11) is repealed.
- (3) Omit paragraph 4A of Schedule 4 to the 1998 Act.
- (4) The Scotland Act 1998 (Modification of Schedule 4) Order 2009 (S.I. 2009/1380) is revoked.
- (5) Subsections (1) to (4) above do not apply to any proceedings brought before this section comes into force.
- (6) After subsection (3) of section 100 of the 1998 Act insert—
- “(3A) Subsection (3B) applies to any proceedings brought by virtue of this Act against the Scottish Ministers or a member of the Scottish Government in a court or tribunal on the ground that an act of the Scottish Ministers or a member of the Scottish Government is incompatible with the Convention rights.
- (3B) Proceedings to which this subsection applies must be brought before the end of—
- (a) the period of one year beginning with the date on which the act complained of took place, or
- (b) such longer period as the court or tribunal considers equitable having regard to all the circumstances,
- but that is subject to any rule imposing a stricter time limit in relation to the procedure in question.
- (3C) Subsection (3B) does not apply to proceedings brought by the Lord Advocate, the Advocate General, the Attorney General, the Attorney General for Northern Ireland or the Advocate General for Northern Ireland.
- (3D) In subsections (3A) and (3B) “act” does not include the making of any legislation but it does include any other act or failure to act (including a failure to make legislation).
- (3E) In subsection (3B) “rule” has the same meaning as it has in section 7(5) of the Human Rights Act 1998.”
- (7) In subsection (4) of that section at the beginning insert “ Subject to subsection (3D), ”.
- (8) Subsections (6) and (7) above apply to any proceedings brought after this section comes into force (including proceedings in respect of an act taking place before this section comes into force).

#### Commencement Information

**I10** S. 14 in force at 3.7.2012 by S.I. 2012/1710, art. 2(g)

## 15 Power to vary retrospective decisions about non-legislative acts

In section 102 of the 1998 Act (powers of courts or tribunals to vary retrospective decisions), in subsection (1) at the end add “, or

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- (c) any other purported exercise of a function by a member of the Scottish Government was outside devolved competence.”

**Commencement Information**

**I11** S. 15 in force at 3.7.2012 by S.I. 2012/1710, art. 2(h)

*Executive competence*

**16 BBC Trust member for Scotland**

In the 1998 Act, after section 90 insert—

*“The BBC*

**90A BBC Trust member for Scotland**

- (1) A Minister of the Crown must not exercise without the agreement of the Scottish Ministers functions relating to selection for a particular appointment by which—
- (a) a person is to become a member of the BBC Trust and hold a Scottish post, or
  - (b) an existing member of the Trust is to hold a Scottish post.
- (2) “Scottish post” means a position, held as a member of the Trust, with specific reference to Scotland.”

**Commencement Information**

**I12** S. 16 in force at 3.7.2012 by S.I. 2012/1710, art. 2(i)

**17 Exercise of functions relating to Seirbheis nam Meadhanan Gàidhlig**

- (1) The Broadcasting Act 1990 is amended as follows.
- (2) In section 183 (financing of programmes in Gaelic out of Gaelic Television Fund) for subsection (1) substitute—
- “(1) The Scottish Ministers must, for each financial year, pay to OFCOM such amount as they may determine to be appropriate for the purposes of this section.”
- (3) Omit subsection (8) of that section.
- (4) Section 183A (membership of the Gaelic Media Service) is amended as follows.
- (5) In subsection (4) after “the Secretary of State” insert “ and the Scottish Ministers ”.
- (6) In subsection (6)(b) after “the Secretary of State” insert “ with the agreement of the Scottish Ministers ”.

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- (7) In Schedule 19 (Gaelic Media Service: supplementary provisions), paragraph 12 (annual reports) is amended as follows.
- (8) In sub-paragraph (3) for the words from “the Secretary of State” to the end substitute—
- “(a) the Secretary of State, who must lay a copy of it before each House of Parliament, and
  - (b) the Scottish Ministers, who must lay a copy of it before the Scottish Parliament.”
- (9) Sub-paragraph (4) is omitted.
- (10) In the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999 (S.I. 1999/1750)—
- (a) in Schedule 1 (functions transferred to the Scottish Ministers), omit the entry relating to section 183 of the Broadcasting Act 1990;
  - (b) in Schedule 2 (functions made exercisable concurrently), omit the reference to paragraph 12(3) of Schedule 19 to that Act;
  - (c) in Schedule 5 (modification of enactments), omit paragraph 10(4).

#### Commencement Information

**I13** S. 17 in force at 31.10.2012 by [S.I. 2012/2516](#), [art. 2\(c\)](#)

### 18 Crown Estate Commissioner with special responsibility for Scotland

- (1) In Schedule 1 to the Crown Estate Act 1961 (constitution etc of Crown Estate Commissioners), paragraph 1 is amended as follows.
- (2) After sub-paragraph (3) insert—
- “(3A) One of the Commissioners shall be appointed as the Crown Estate Commissioner with special responsibility for Scotland, who must be a person who knows about conditions in Scotland as they relate to the functions of the Commissioners.”
- (3) After sub-paragraph (4) insert—
- “(4A) The Crown Estate Commissioner with special responsibility for Scotland shall be appointed on the recommendation of the Chancellor of the Exchequer, who shall consult the Scottish Ministers before making that recommendation.”

#### Commencement Information

**I14** S. 18 in force at 1.8.2013 by [S.I. 2012/2516](#), [art. 3](#)

### 19 Misuse of drugs

- (1) The Misuse of Drugs Act 1971 is amended as follows.
- (2) In section 10 (power to make regulations for preventing misuse of controlled drugs)—
- (a) in subsection (2)(i) for “Secretary of State” substitute “ appropriate authority ”.

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(b) after subsection (2) insert—

“(2A) Regulations made in pursuance of subsection (2)(i) must secure that under any licence a doctor may—

- (a) administer, supply or prescribe a controlled drug, or
- (b) authorise the administration or supply of a controlled drug, only while at an address specified in the licence.

(2B) The appropriate authority for the purposes of subsection (2)(i) is—

- (a) where the specified address for the purposes of subsection (2A) is in Scotland, the Scottish Ministers;
- (b) otherwise, the Secretary of State.”

(3) In section 13 (directions where regulations or licence contravened) after subsection (1A) insert—

“(1B) In relation to regulations made in pursuance of section 10(2)(i) or to a licence under those regulations, the reference in subsection (1) to the Secretary of State is to be read as a reference to the appropriate authority.

(1C) The appropriate authority for the purposes of subsection (1B) is—

- (a) in relation to a contravention taking place in Scotland, the Scottish Ministers;
- (b) otherwise, the Secretary of State.”

(4) In section 14 (investigation where grounds for direction under section 13 are considered to exist) after subsection (1) insert—

“(1A) In relation to section 13(1), references in this section to the Secretary of State are to be read in accordance with section 13(1B).”

(5) In section 16 (provisions supplementary to sections 14 and 15) after subsection (1) insert—

“(1A) Where in accordance with section 14(1A) a case is referred to a tribunal or advisory body by the Scottish Ministers—

- (a) references in this section and Schedule 3 to the Secretary of State are to be read as references to the Scottish Ministers, and
- (b) references in that Schedule to the approval of the Treasury do not apply.”

(6) In section 30 (licences and authorities)—

- (a) at the beginning insert “ (1) ”;
- (b) at the end insert—

“(2) Subsection (1) applies to a licence issued by the Scottish Ministers under regulations made in pursuance of section 10(2)(i) as if references in that subsection to the Secretary of State were references to the Scottish Ministers.”

(7) In paragraph 4 of Schedule 3 (tribunal rules) at the end add—

“(4) Where the Scottish Ministers have power to make rules under this paragraph (by virtue of section 16(1A) or otherwise)—

- (a) sub-paragraph (3) does not apply, and

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(b) the rules are subject to the negative procedure.”

**Commencement Information**

**I15** S. 19 in force at 31.10.2012 by S.I. 2012/2516, art. 2(d)

**20 Power to prescribe drink-driving limits**

- (1) The Road Traffic Act 1988 is amended as follows.
- (2) Section 8 (choice of specimens of breath) is amended as follows.
- (3) In subsection (3), for “The Secretary of State may by regulations” substitute “Regulations may”.
- (4) After subsection (3) insert—
  - “(4) Regulations under subsection (3) may be made—
    - (a) by the Secretary of State, in relation to cases where the suspected offence is an offence committed in England and Wales;
    - (b) by the Scottish Ministers, in relation to cases where the suspected offence is an offence committed in Scotland.”
- (5) Section 11 (interpretation of sections 3A to 10) is amended as follows.
- (6) In the definition of “the prescribed limit” in subsection (2), omit “made by the Secretary of State”.
- (7) After subsection (2) insert—
  - “(2ZA) Regulations under subsection (2) may be made—
    - (a) by the Secretary of State, in relation to driving or attempting to drive, or being in charge of a vehicle, in England and Wales;
    - (b) by the Scottish Ministers, in relation to driving or attempting to drive, or being in charge of a vehicle, in Scotland.”
- (8) Section 195 (provisions as to regulations) is amended as follows.
- (9) After subsection (2) insert—
  - “(2A) Before making any regulations under this Act the Scottish Ministers must consult with such representative organisations as they think fit.”
- (10) After subsection (4) insert—
  - “(4A) Regulations made by the Scottish Ministers under section 8(3) or 11(2) are subject to the affirmative procedure.”

**Commencement Information**

**I16** S. 20 in force at 3.7.2012 by S.I. 2012/1710, art. 2(j)

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## 21 Speed limits

- (1) The Road Traffic Regulation Act 1984 is amended as follows.
- (2) Section 17 (traffic regulation on special roads) is amended as follows.
- (3) In subsection (2) for “The Secretary of State may make regulations” substitute “Regulations may make provision”.
- (4) After subsection (3) insert—
  - “(3ZA) The power to make provision of the following kinds by regulations under subsection (2) is exercisable by the Scottish Ministers—
    - (a) provision with respect to a particular special road in Scotland;
    - (b) provision for regulating the speed of vehicles on special roads in Scotland.
  - (3ZB) The power to make provision of any other kind by regulations under subsection (2) is exercisable by the Secretary of State.
  - (3ZC) In relation to special roads in Scotland that power of the Secretary of State is exercisable only after consultation with the Scottish Ministers.
  - (3ZD) Regulations made by the Scottish Ministers under subsection (2) are subject to the negative procedure.”
- (5) In subsection (3A)—
  - (a) the words from “the National Park Authority” to the end become paragraph (a), and
  - (b) after that paragraph insert “, and
    - (b) such representative organisations as they think fit.”
- (6) Section 64 (general provision as to traffic signs) is amended as follows.
- (7) After subsection (2) insert—
  - “(2A) The functions under this section that are exercisable by the Scottish Ministers instead of the Secretary of State include the function of making regulations under subsection (1)(a) specifying signs for a Scottish national speed limit.
  - (2B) The function of making such regulations is exercisable only with the agreement of the Secretary of State.
  - (2C) “Scottish national speed limit” means any of these—
    - (a) a speed limit that, by virtue of regulations under section 17(2) made by the Scottish Ministers, is to be observed—
      - (i) on all special roads,
      - (ii) on all special roads provided for the use of particular classes of traffic,
      - (iii) on all special roads other than special roads of such description as may be specified in the regulations, or
      - (iv) as mentioned in sub-paragraph (i), (ii) or (iii) except for such lengths of special road as may be specified in the regulations;
    - (b) a speed limit that, by virtue of regulations under section 86 or an order under section 88 made by the Scottish Ministers, is to be observed on

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all roads, on all roads of any class specified in the regulations or order or on all roads other than roads of any class so specified.”

(8) After subsection (6) insert—

“(7) Regulations made by the Scottish Ministers under subsection (1)(a) are subject to the negative procedure.

(8) Before making any regulations under subsection (1)(a) the Scottish Ministers must consult with such representative organisations as they think fit.”

(9) Section 86 (speed limits for particular classes of vehicles) is amended as follows.

(10) For “Secretary of State” in each place substitute “ national authority ”.

(11) After subsection (6) insert—

“(7) The national authority in this section—

(a) as respects the driving of vehicles on roads in England and Wales, is the Secretary of State;

(b) as respects the driving of vehicles on roads in Scotland, is the Scottish Ministers.

(8) Regulations made by the Scottish Ministers under this section are subject to the affirmative procedure.

(9) Before making any regulations under this section the Scottish Ministers must consult with such representative organisations as they think fit.”

(12) Section 88 (temporary speed limits with power to continue indefinitely) is amended as follows.

(13) For “the Secretary of State” in each place substitute “ the national authority ”.

(14) In subsection (1)—

(a) for “he” substitute “ the authority ”;

(b) for “his” substitute “ the ”.

(15) In subsection (4) omit the words from “made by statutory instrument” to the end.

(16) After subsection (7) insert—

“(7A) The national authority in this section—

(a) in relation to roads in England and Wales, is the Secretary of State;

(b) in relation to roads in Scotland, is the Scottish Ministers.”

(17) In subsection (8) after “subsection (1)(b)” insert “ by the Secretary of State ”.

(18) After subsection (8) insert—

“(9) The power of the Scottish Ministers to make an order under subsection (1) is not to be exercisable by Scottish statutory instrument.

(10) The first order to be made under subsection (1)(b) by the Scottish Ministers shall not be made until a draft of the order has been laid before the Scottish Parliament and approved by it.

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- (11) The power of the Secretary of State to make an order under subsection (4) is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) An order made by the Scottish Ministers under subsection (4) is subject to the negative procedure.”
- (19) In section 134(4) (provision as to regulations under sections 86 and 140) after “Regulations made” insert “ by the Secretary of State ”.

#### Commencement Information

**I17** S. 21 in force at 3.7.2012 by S.I. 2012/1710, art. 2(k)

## 22 Speed limits: supplementary

- (1) The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999 (S.I. 1999/1750) is amended as follows.
- (2) In Schedule 3 (functions exercisable after consultation), in the entry for the Road Traffic Regulation Act 1984—
- omit paragraph (a) (section 17(2));
  - omit paragraph (f) (sections 86(2) and 88(1) and (4)).
- (3) In the Schedule to the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2000 (S.I. 2000/1563) omit the entry for the Road Traffic Regulation Act 1984 (section 88(1)(a) and (4)).
- (4) The transfer by virtue of section 21 of a function exercisable by the Secretary of State to the Scottish Ministers (a “transferred function”) does not affect the validity of anything done (or which has effect as if done) by or in relation to the Secretary of State before the commencement of that section.
- (5) Anything (including legal proceedings) which, at that commencement, is in the process of being done by or in relation to the Secretary of State may, so far as it relates to a transferred function, be continued by or in relation to the Scottish Ministers.
- (6) Anything done (or which has effect as if done) by or in relation to the Secretary of State for the purposes of or in connection with a transferred function has effect, if it is in force at that commencement, as if done by or in relation to the Scottish Ministers, so far as that is required for continuing its effect.
- (7) But an instrument containing regulations or an order made by the Secretary of State is not to be treated as if made by the Scottish Ministers for the purposes of section 64(2C) (a) or (b) of the Road Traffic Regulation Act 1984.

#### Commencement Information

**I18** S. 22 in force at 3.7.2012 by S.I. 2012/1710, art. 2(l)



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## PART 3

### FINANCE

#### *Introductory*

## 23 Taxation: introductory

- (1) The 1998 Act is amended as follows.
- (2) Before Part 5 insert—

## “PART 4A

### TAXATION

## CHAPTER 1

### INTRODUCTORY

#### 80A Overview of Part 4A

- (1) In this Part—
  - (a) Chapter 2 confers on the Scottish Parliament power to set a rate of income tax to be paid by Scottish taxpayers, and
  - (b) Chapters 3 and 4 specify the taxes about which the Scottish Parliament may make provision in the exercise of the power conferred by section 28(1).
- (2) The power to make provision about a devolved tax is subject to the restrictions imposed by—
  - (a) subsection (3), and
  - (b) the other provisions of this Part.
- (3) A devolved tax may not be imposed where to do so would be incompatible with any international obligations.
- (4) In this Act “devolved tax” means a tax specified in this Part as a devolved tax.

#### 80B Power to add new devolved taxes

- (1) Her Majesty may by Order in Council amend this Part so as to—
  - (a) specify, as an additional devolved tax, a tax of any description, or
  - (b) make any other modifications of the provisions relating to devolved taxes which She considers necessary or expedient.
- (2) An Order in Council under this section may also make such modifications of—
  - (a) any enactment or prerogative instrument (including any enactment comprised in or made under this Act), or

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(b) any other instrument or document,  
as Her Majesty considers necessary or expedient in connection with other provision made by the Order.”

(3) In section 93 (agency arrangements)—

(a) after subsection (2) insert—

“(2A) The collection and management of a devolved tax is a specified function of the Scottish Ministers.”;

(b) in subsection (3), in the definition of “specified”, after “specified” insert “(subject to subsection (2A))”.

(4) In section 127 (index of defined expressions), at the appropriate place insert—

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“Devolved tax Section 80A(4)”.

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(5) In Part 2 of Schedule 5 to that Act, in Section A1 (specific reservations: fiscal, economic and monetary policy), for “*Exception*” substitute “*Exceptions*” and after that heading insert— “Devolved taxes, including their collection and management.”

(6) In Schedule 7 (procedure for subordinate legislation), in paragraph 1, at the appropriate place insert—

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“Section 80B Type A”.

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**24 Amendments relating to the Commissioners for Revenue and Customs**

(1) The Commissioners for Revenue and Customs Act 2005 is amended as follows.

(2) Section 18 (confidentiality) is amended as follows.

(3) In subsection (2)—

(a) omit “or” at the end of paragraph (g), and

(b) after paragraph (h) insert “, or

(i) which is made to the Scottish Ministers in connection with the collection and management of a devolved tax within the meaning of the Scotland Act 1998.”

<sup>F2</sup>(4) .....

<sup>F2</sup>(5) .....

(6) In section 51 (interpretation) after subsection (2) insert—

“(2A) But a reference to the functions of the Commissioners or of officers of Revenue and Customs does not include a function which—

(a) is conferred on them by or by virtue of an Act of the Scottish Parliament or an instrument made under such an Act, and

(b) relates to a devolved tax within the meaning of the Scotland Act 1998.”

(7) In section 1(1) of the Customs and Excise Management Act 1979 (interpretation), at the end of the definition of “assigned matter” insert “, except that it does not include any matter relating to a devolved tax within the meaning of the Scotland Act 1998;”.

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### Textual Amendments

- F2** S. 24(4)(5) omitted (1.1.2015) by virtue of The Revenue Scotland and Tax Powers Act 2014 (Consequential Provisions and Modifications) Order 2014 (S.I. 2014/3294), arts. 1(2), 4(2)

### *Scottish rate of income tax*

## **25 Scottish rate of income tax**

- (1) The 1998 Act is amended as follows.
- (2) Part 4 (power to vary income tax rate) is omitted.
- (3) In Part 4A (as inserted by section 23), after Chapter 1 insert—

## **“CHAPTER 2**

### **INCOME TAX**

#### **80C Power to set Scottish rate for Scottish taxpayers**

- (1) The Scottish Parliament may by resolution (a “Scottish rate resolution”) set the Scottish rate for the purpose of calculating the rates of income tax to be paid by Scottish taxpayers.
- (2) Section 6(2B) of the Income Tax Act 2007 provides for the calculation of those rates.
- (3) A Scottish rate resolution applies—
  - (a) for only one tax year, and
  - (b) for the whole of that year.
- (4) A Scottish rate resolution may specify only one rate.
- (5) The Scottish rate must be a whole number or half a whole number.
- (6) A Scottish rate resolution—
  - (a) must specify the tax year for which it applies,
  - (b) must be made before the start of that tax year, and
  - (c) must not be made more than 12 months before the start of that year.
- (7) If a Scottish rate resolution is cancelled before the start of the tax year for which it is to apply—
  - (a) the Income Tax Acts have effect for that year as if the resolution had never been passed, and
  - (b) the resolution may be replaced by another Scottish rate resolution.
- (8) Standing orders must provide that only a member of the Scottish Government may move a motion for a Scottish rate resolution.

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### 80D Scottish taxpayers

- (1) In any tax year, a Scottish taxpayer is an individual (T)—
  - (a) who is resident in the UK for income tax purposes, and
  - (b) who, for that year, meets condition A, B or C.
- (2) T meets condition A if T has a close connection with Scotland (see section 80E).
- (3) T meets condition B if—
  - (a) T does not have a close connection with any part of the UK other than Scotland (see section 80E), and
  - (b) T spends more days of that year in Scotland than in any other part of the UK (see section 80F).
- (4) T meets condition C if, for the whole or any part of the year, T is—
  - (a) a member of Parliament for a constituency in Scotland,
  - (b) a member of the European Parliament for Scotland, or
  - (c) a member of the Scottish Parliament.
- (5) In this Chapter “the UK” means the United Kingdom.

### 80E Close connection with Scotland or another part of the UK

- (1) To find whether, for any year, T has a close connection with any part of the UK see—
  - (a) subsection (2) (where T has only one place of residence in the UK), or
  - (b) subsection (3) (where T has 2 or more places of residence in the UK).
- (2) T has a close connection with a part of the UK if in that year—
  - (a) T has only one place of residence in the UK,
  - (b) that place of residence is in that part of the UK, and
  - (c) for at least part of the year, T lives at that place.
- (3) T has a close connection with a part of the UK if in that year—
  - (a) T has 2 or more places of residence in the UK,
  - (b) for at least part of the year, T's main place of residence in the UK is in that part of the UK,
  - (c) the times in the year when T's main place of residence is in that part of the UK comprise (in aggregate) at least as much of the year as the times when T's main place of residence is in any one other part of the UK, and
  - (d) for at least part of the year, T lives at a place of residence in that part of the UK.
- (4) In this section “place” includes a place on board a vessel or other means of transport.

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#### 80F Days spent in Scotland or another part of the UK

- (1) T spends more days of a year in Scotland than in any other part of the UK if (and only if)—
  - (a) the number of days in the year on which T is in Scotland at the end of the day  
equals or exceeds
  - (b) the number of days in the year on which T is in any other part of the UK at the end of the day.
- (2) But T is not to be treated as being in the UK at the end of a day if—
  - (a) on that day T arrives in the UK as a passenger,
  - (b) T departs from the UK on the next day, and
  - (c) during the time between arrival and departure T does not engage in activities which are to a substantial extent unrelated to T's passage through the UK.

#### 80G Supplemental powers to modify enactments

- (1) The Treasury may by order provide that subsections (2A) to (2C) of section 6 of the Income Tax Act 2007 are to be disapplied, or that their effect is to be modified, in relation to any enactment.
- (2) The Treasury may by order make such modifications of any enactment as they consider necessary or expedient in consequence of or in connection with—
  - (a) the power of the Parliament to set a rate under section 80C;
  - (b) the making of a Scottish rate resolution;
  - (c) an order under subsection (1).
- (3) An order under subsection (2) may, in particular, provide that a Scottish rate resolution does not require any change in the amounts repayable or deductible under PAYE regulations between—
  - (a) the beginning of the tax year for which the resolution has effect, and
  - (b) such date (falling after the date of the resolution) as may be specified in the order.
- (4) An order under this section may, to the extent that the Treasury consider it to be appropriate, take effect retrospectively from the beginning of the tax year in which the order is made.

#### 80H Reimbursement of expenses

The Scottish Ministers may reimburse any Minister of the Crown or government department for administrative expenses incurred by virtue of this Chapter at any time after the passing of the Scotland Act 2012 by the Minister or department.”

- (4) The repeal by subsection (2) of Part 4 of the 1998 Act has effect so that a tax-varying resolution may not be passed so as to relate to any tax year following such tax year as is appointed by the Treasury by order under this subsection (as the last year for which that Part is to have effect).

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- (5) A Scottish rate resolution made under the provisions inserted by subsection (3) may not apply for a tax year preceding such tax year as is appointed by the Treasury by order under this subsection (as the first year for which those provisions are to have effect).
- (6) The tax year appointed under subsection (4) must precede the tax year appointed under subsection (5).
- (7) Schedule 2 (which contains other amendments relating to the power to set a Scottish rate of income tax) has effect.

#### Commencement Information

**I19** S. 25(1)-(6) in force at 1.7.2012, see s. 44(2)(b)(3)(a)(4)(a).

### <sup>F3</sup>26 Income tax for Scottish taxpayers

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#### Textual Amendments

**F3** S. 26 omitted (17.7.2014) by virtue of [Finance Act 2014 \(c. 26\)](#), [Sch. 38 para. 17\(a\)](#)

### 27 Definition of Scottish taxpayer for Scottish variable rate

- (1) In Part 4 of the 1998 Act (power to vary income tax rate), for subsections (1) to (6) of section 75 (Scottish taxpayers) substitute—
 

“Sections 80D to 80F (definition of Scottish taxpayer) apply for the purposes of this Part.”
- (2) This section ceases to have effect at the end of the last year for which Part 4 has effect (see section 25(2) and (4)).

#### *Scottish tax on land transactions*

### 28 Scottish tax on transactions involving interests in land

- (1) In Part 4A of the 1998 Act (as inserted by section 23), after Chapter 2 (inserted by section 25) insert—

## “CHAPTER 3

### TAX ON TRANSACTIONS INVOLVING INTERESTS IN LAND

#### 80I Tax on transactions involving interests in land

- (1) A tax charged on any of the following transactions is a devolved tax—

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- (a) the acquisition of an estate, interest, right or power in or over land in Scotland;
- (b) the acquisition of the benefit of an obligation, restriction or condition affecting the value of any such estate, interest, right or power.

(2) The tax may be chargeable—

- (a) whether or not there is any instrument effecting the transaction,
- (b) if there is such an instrument, regardless of where it is executed, and
- (c) regardless of where any party to the transaction is or is resident.

## 80J Certain transactions not taxable

(1) Tax may not be imposed under section 80I on so much of a transaction as relates to land below mean low water mark.

(2) The following persons are not to be liable to pay a tax imposed under section 80I—

### *Government*

A Minister of the Crown

The Scottish Ministers

A Northern Ireland department

The Welsh Ministers, the First Minister for Wales and the Counsel General to the Welsh Assembly Government

### *Parliament etc*

The Corporate Officer of the House of Lords

The Corporate Officer of the House of Commons

The Scottish Parliamentary Corporate Body

The Northern Ireland Assembly Commission

The National Assembly for Wales Commission

The National Assembly for Wales.”

(2) Tax may not be charged in accordance with the provisions inserted by this section on a land transaction within the meaning of Part 4 of the Finance Act 2003 unless section 29 (disapplication of UK stamp duty land tax) has effect in relation to that transaction.

## 29 Disapplication of UK stamp duty land tax

(1) Part 4 of the Finance Act 2003 (stamp duty land tax) is amended as follows.

(2) In section 48 (chargeable interests), in subsection (1)(a) for “the United Kingdom” substitute “England and Wales or Northern Ireland”.

(3) In Schedule 3—

- (a) Part 1 contains further amendments relating to the disapplication of stamp duty land tax to Scotland, and
- (b) Part 2 makes provision, in consequence of the disapplication of paragraph 1(1)(b) of Schedule 10 to the Finance Act 2003 (prescribed information in land transaction returns) to transactions relating to land in Scotland, about the supply of information to Her Majesty's Revenue and Customs.

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- (4) This section has effect in relation to land transactions with an effective date on or after such date as is appointed by the Treasury by order under this subsection.
- (5) But this section does not have effect in relation to any transaction—
  - (a) effected in pursuance of a contract entered into and substantially performed on or before the date on which this Act receives Royal Assent, or
  - (b) effected in pursuance of a contract entered into on or before that date and not excluded by subsection (6).
- (6) A transaction effected in pursuance of a contract entered into on or before the date on which this Act receives Royal Assent is excluded if—
  - (a) there is any variation of the contract, or assignment of rights under the contract, after that date,
  - (b) the transaction is effected in consequence of the exercise after that date of any option, right of pre-emption or similar right, or
  - (c) after that date there is an assignment, subsale or other transaction relating to the whole or part of the subject-matter of the contract as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance.

*Scottish tax on disposals to landfill*

**30 Scottish tax on disposals to landfill**

- (1) In Part 4A of the 1998 Act (as inserted by section 23), after Chapter 3 (inserted by section 28) insert—

**“CHAPTER 4**

TAX ON DISPOSALS TO LANDFILL

**80K Tax on disposals to landfill**

- (1) A tax charged on disposals to landfill made in Scotland is a devolved tax.
- (2) A disposal is a disposal to landfill if—
  - (a) it is a disposal of material as waste, and
  - (b) it is made by way of landfill.”
- (2) Tax may not be charged in accordance with the provision inserted by this section on a disposal if the disposal is made before the date appointed under section 31(4).

**31 Disapplication of UK landfill tax**

- (1) Part 3 of the Finance Act 1996 (landfill tax) is amended as follows.
- (2) In section 40(1) (charge on taxable disposal), after “taxable disposal” insert “ made in England and Wales or Northern Ireland ”.
- (3) Schedule 4 contains further amendments relating to the disapplication of landfill tax to Scotland.



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- (4) This section has effect in relation to disposals made on or after such date as is appointed by the Treasury by order under this subsection.

### *Borrowing*

## **32 Borrowing by the Scottish Ministers**

- (1) The 1998 Act is amended as follows.
- (2) Section 66 (borrowing by the Scottish Ministers etc) is amended as follows.
- (3) For subsection (1) substitute—
- “(1) The Scottish Ministers may borrow from the Secretary of State—
- (a) any sums required by them for the purpose of meeting a temporary excess of sums paid out of the Scottish Consolidated Fund over sums paid into that Fund,
  - (b) any sums required by them for the purpose of providing a working balance in the Scottish Consolidated Fund, and
  - (c) any sums which in accordance with rules determined by the Treasury are required by them to meet current expenditure because of a shortfall in receipts from devolved taxes, or from income tax charged by virtue of a Scottish rate resolution, against forecast receipts.
- (1A) The Scottish Ministers may, with the approval of the Treasury, borrow by way of loan any sums required by them for the purpose of meeting capital expenditure.
- (1B) A sum is required for the purpose of meeting capital expenditure if the expenditure would be capital expenditure for the purposes of accounts under section 70.”
- (4) In subsection (3) after “section” insert “ from the Secretary of State ”.
- (5) After subsection (4) insert—
- “(5) The Secretary of State may by order made with the consent of the Treasury amend subsection (1A) so as to vary the means by which the Scottish Ministers may borrow money.”
- (6) Section 67 (lending by the Secretary of State) is amended as follows.
- (7) In subsection (2) for “that section” substitute “ section 66(1) ”.
- (8) In subsection (3) omit “increased”.
- (9) After subsection (3) insert—
- “(3A) An amount substituted under subsection (3) may be more or less than the amount for which it is substituted but may not be less than £500 million.”
- (10) After section 67 insert—

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### “67A Lending for capital expenditure

- (1) The aggregate at any time outstanding in respect of the principal of sums borrowed under section 66(1A) shall not exceed £2.2 billion.
- (2) The Secretary of State may by order made with the consent of the Treasury substitute for the amount (or substituted amount) specified in subsection (1) such amount as may be specified in the order.
- (3) An amount substituted under subsection (2) may be more or less than the amount for which it is substituted but may not be less than £2.2 billion.
- (4) A person lending money to a member of the Scottish Government is not bound to enquire whether the member of the Scottish Government has power to borrow the money and is not to be prejudiced by the absence of any such power.
- (5) The Scottish Ministers may not mortgage or charge any of their property as security for money which they have borrowed under section 66(1A).  
  
This is subject to section 66(2).
- (6) Security given in breach of subsection (5) is unenforceable.”
- (11) In section 114(1) (powers which may be exercised by modifying the 1998 Act), after “sections” insert “ 66(5), ”.
- (12) In Schedule 7 (procedure for subordinate legislation), in paragraph 1, at the appropriate places insert—

“Section 66(5)	Type E”; and
““Section 67A(2)	Type E”.

#### Commencement Information

**I20** S. 32 in force at 12.12.2014 by S.I. 2014/3250, art. 2

### *Reports on operation of this Part*

#### **33 Reports on the implementation and operation of this Part**

- (1) The Secretary of State must—
  - (a) make reports on the implementation and operation of this Part (see subsection (5)),
  - (b) lay a copy of each report before each House of Parliament, and
  - (c) send a copy of each report to the Scottish Ministers, who must lay a copy of it before the Scottish Parliament.
- (2) The Scottish Ministers must—

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- (a) make reports on the implementation and operation of this Part (see subsection (5)),
  - (b) lay a copy of each report before the Scottish Parliament, and
  - (c) send a copy of each report to the Secretary of State, who must lay a copy of it before each House of Parliament.
- (3) A report must be made under each of subsections (1) and (2)—
- (a) before the end of the period of one year beginning with the day on which this Act is passed, and
  - (b) thereafter, before the end of each subsequent period of one year until the final reports are made under subsection (4).
- (4) Final reports must be made on or as soon as practicable after—
- (a) 1 April 2020, or
  - (b) if later, the first anniversary of the day on which the last of the provisions of this Part comes into force.
- (5) A report on the implementation and operation of this Part must include—
- (a) a statement of the steps which have been taken, whether by the maker of the report or by others, since the making of the previous report (or, in the case of the first report, since the passing of this Act) towards the commencement of the provisions of this Part,
  - (b) a statement of the steps which the maker of the report proposes should be taken, whether by the maker of the report or by others, towards the commencement of the provisions of this Part,
  - (c) an assessment of the operation of the provisions of this Part which have been commenced,
  - (d) an assessment of the operation of any other powers to devolve taxes to the Scottish Parliament or to change the powers of the Scottish Ministers to borrow money, and of any other changes affecting the provisions inserted or amended by this Part,
  - (e) the effect of this Part on the amount of any payments made by the Secretary of State under section 64(2) of the 1998 Act (payments into the Scottish Consolidated Fund), and
  - (f) any other matters concerning the sources of revenue for the Scottish Administration (within the meaning of section 126(6) of the 1998 Act) which the maker of the report considers should be brought to the attention of the Parliament of the United Kingdom or the Scottish Parliament.

## PART 4

### MISCELLANEOUS AND GENERAL

#### *Miscellaneous*

#### **34 Convention rights and EU law: role of Advocate General in relation to criminal proceedings**

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

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**Changes to legislation:** There are currently no known outstanding effects for the Scotland Act 2012. (See end of Document for details)

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(2) For the italic heading before section 288A substitute “ Convention rights and EU law compatibility issues, and devolution issues ”.

(3) After that heading insert—

**“288ZA Right of Advocate General to take part in proceedings**

(1) The Advocate General for Scotland may take part as a party in criminal proceedings so far as they relate to a compatibility issue.

(2) In this section “compatibility issue” means a question, arising in criminal proceedings, as to—

- (a) whether a public authority has acted (or proposes to act)—
  - (i) in a way which is made unlawful by section 6(1) of the Human Rights Act 1998, or
  - (ii) in a way which is incompatible with EU law, or
- (b) whether an Act of the Scottish Parliament or any provision of an Act of the Scottish Parliament is incompatible with any of the Convention rights or with EU law.

(3) In subsection (2)—

- (a) “public authority” has the same meaning as in section 6 of the Human Rights Act 1998;
- (b) references to acting include failing to act;
- (c) “EU law” has the meaning given by section 126(9) of the Scotland Act 1998.”

(4) Section 288A (rights of appeal for Advocate General: devolution issues) is amended as follows.

(5) In the heading, before “devolution issues” insert “ compatibility issues and ”.

(6) In subsection (1) omit “in pursuance of paragraph 6 of Schedule 6 to the Scotland Act 1998 (devolution issues)”.

(7) For subsection (2) substitute—

“(2) Where the Advocate General for Scotland was a party in pursuance of paragraph 6 of Schedule 6 to the Scotland Act 1998 (devolution issues), the Advocate General may refer to the High Court for their opinion any devolution issue which has arisen in the proceedings.

(2A) Where the Advocate General for Scotland was a party in pursuance of section 288ZA, the Advocate General may refer to the High Court for their opinion any compatibility issue (within the meaning of that section) which has arisen in the proceedings.

(2B) If a reference is made under subsection (2) or (2A) the Clerk of Justiciary shall send to the person acquitted or convicted and to any solicitor who acted for that person at the trial a copy of the reference and intimation of the date fixed by the Court for a hearing.”

(8) In subsection (6) after “(2)” insert “ or (2A) ”.

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**Commencement Information**

**I21** S. 34 in force at 22.4.2013 by S.I. 2013/6, art. 2(a)

**35 References of compatibility issues to the High Court or Supreme Court**

In the Criminal Procedure (Scotland) Act 1995, after section 288ZA (inserted by section 34) insert—

**“288ZB References of compatibility issues to the High Court or Supreme Court**

- (1) Where a compatibility issue has arisen in criminal proceedings before a court, other than a court consisting of two or more judges of the High Court, the court may, instead of determining it, refer the issue to the High Court.
- (2) The Lord Advocate or the Advocate General for Scotland, if a party to criminal proceedings before a court, other than a court consisting of two or more judges of the High Court, may require the court to refer to the High Court any compatibility issue which has arisen in the proceedings.
- (3) The High Court may, instead of determining a compatibility issue referred to it under subsection (2), refer it to the Supreme Court.
- (4) Where a compatibility issue has arisen in criminal proceedings before a court consisting of two or more judges of the High Court, otherwise than on a reference, the court may, instead of determining it, refer it to the Supreme Court.
- (5) The Lord Advocate or the Advocate General for Scotland, if a party to criminal proceedings before a court consisting of two or more judges of the High Court, may require the court to refer to the Supreme Court any compatibility issue which has arisen in the proceedings otherwise than on a reference.
- (6) On a reference to the Supreme Court under this section—
  - (a) the powers of the Supreme Court are exercisable only for the purpose of determining the compatibility issue;
  - (b) for that purpose the Court may make any change in the formulation of that issue that it thinks necessary in the interests of justice.
- (7) When it has determined a compatibility issue on a reference under this section, the Supreme Court must remit the proceedings to the High Court.
- (8) An issue referred to the High Court or the Supreme Court under this section is referred to it for determination.
- (9) In this section “compatibility issue” has the meaning given by section 288ZA.”

**Commencement Information**

**I22** S. 35 in force at 22.4.2013 by S.I. 2013/6, art. 2(b)

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*Changes to legislation: There are currently no known outstanding effects for the Scotland Act 2012. (See end of Document for details)*

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### **36 Convention rights and EU law: criminal appeals to the Supreme Court**

- (1) The 1998 Act is amended as follows.
- (2) In section 57(3) (EU law and Convention rights: excepted acts of the Lord Advocate) omit the words after paragraph (b).
- (3) In section 102 (powers of courts or tribunals to vary retrospective decisions)—
  - (a) in subsection (4)(b) at the end insert “ or to a compatibility issue, ”;
  - (b) after subsection (5) insert—
 

“(5A) Where the decision mentioned in subsection (1) is a decision of the Supreme Court on a compatibility issue, the power to make an order under this section is exercisable by the High Court of Justiciary instead of the Supreme Court.”;
  - (c) in subsection (7) before the definition of “intimation” insert—
 

““compatibility issue” has the meaning given by section 288ZA of the Criminal Procedure (Scotland) Act 1995,”.
- (4) In paragraph 1 of Schedule 6 (devolution issues), after sub-paragraph (f) insert—
 

“But a question arising in criminal proceedings in Scotland that would, apart from this paragraph, be a devolution issue is not a devolution issue if (however formulated) it relates to the compatibility with any of the Convention rights or with EU law of

  - (a) an Act of the Scottish Parliament or any provision of an Act of the Scottish Parliament,
  - (b) a function,
  - (c) the purported or proposed exercise of a function,
  - (d) a failure to act.”
- (5) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (6) After section 288A insert—

#### **“288AA Appeals to the Supreme Court: compatibility issues**

- (1) For the purpose of determining any compatibility issue an appeal lies to the Supreme Court against a determination in criminal proceedings by a court of two or more judges of the High Court.
- (2) On an appeal under this section—
  - (a) the powers of the Supreme Court are exercisable only for the purpose of determining the compatibility issue;
  - (b) for that purpose the Court may make any change in the formulation of that issue that it thinks necessary in the interests of justice.
- (3) When it has determined the compatibility issue the Supreme Court must remit the proceedings to the High Court.
- (4) In this section “compatibility issue” has the same meaning as in section 288ZA.

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- (5) An appeal under this section against a determination lies only with the permission of the High Court or, failing that permission, with the permission of the Supreme Court.
- (6) Subsection (5) does not apply if it is an appeal by the Lord Advocate or the Advocate General for Scotland against a determination by the High Court of a compatibility issue referred to it under section 288ZB(2).
- (7) An application to the High Court for permission under subsection (5) must be made—
  - (a) within 28 days of the date of the determination against which the appeal lies, or
  - (b) within such longer period as the High Court considers equitable having regard to all the circumstances.
- (8) An application to the Supreme Court for permission under subsection (5) must be made—
  - (a) within 28 days of the date on which the High Court refused permission under that subsection, or
  - (b) within such longer period as the Supreme Court considers equitable having regard to all the circumstances.”
- (7) Section 288B (appeals to the Supreme Court) is amended as follows.
- (8) For the heading substitute “ Appeals to the Supreme Court: general ”.
- (9) In subsection (1)—
  - (a) after “under” insert “ section 288AA of this Act or ”;
  - (b) omit “of a devolution issue”.
- (10) In sections 112(6), 121(5)(a), 121A(5), 122(4) and (5) and 177(8), after “under” insert “ section 288AA of this Act or ”.
- (11) In section 124(2)—
  - (a) after “Part XA” insert “ and sections 288ZB and 288AA ”;
  - (b) after “purposes of” insert “ a reference under section 288ZB or ”;
  - (c) after “appeal under” insert “ section 288AA of this Act or ”.

**Commencement Information**

**123** S. 36 in force at 22.4.2013 by S.I. 2013/6, art. 2(c)

**37 Time limits for appeals on devolution issues in criminal proceedings**

In Schedule 6 to the 1998 Act (devolution issues) after paragraph 13 insert—

- “13A In criminal proceedings, an application to the High Court for permission under paragraph 13 must be made—
- (a) within 28 days of the date of the determination against which the appeal lies, or

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- (b) within such longer period as the High Court considers equitable having regard to all the circumstances.

13B In criminal proceedings, an application to the Supreme Court for permission under paragraph 13 must be made—

- (a) within 28 days of the date on which the High Court refused permission under that paragraph, or
- (b) within such longer period as the Supreme Court considers equitable having regard to all the circumstances.”

**Commencement Information**

**I24** S. 37 in force at 22.4.2013 by S.I. 2013/6, art. 2(d)

**38 Review and power to amend sections 34 to 37**

- (1) The Secretary of State must arrange—
  - (a) for a review of the provision made by sections 34 to 37,
  - (b) for a report of the conclusions of the review to be made to the Secretary of State, and
  - (c) for a copy of the report to be given to the Scottish Ministers.
- (2) The review must be carried out as soon as practicable after the end of 3 years beginning with the day on which section 36(6) comes into force, or earlier if the Secretary of State considers it appropriate.
- (3) The review must—
  - (a) consider whether changes should be made to the provision made by sections 34 to 37;
  - (b) consider whether further provision should be made in relation to any matter dealt with by those sections;
  - (c) consider (in particular) whether an appeal to the Supreme Court on a compatibility issue should lie only if the High Court of Justiciary certifies that the issue raises a point of law of general public importance.
- (4) The Secretary of State may by order—
  - (a) amend the provision made by sections 34 to 37;
  - (b) make further provision in relation to any matter dealt with by those sections.
- (5) Provision made by order under subsection (4) may—
  - (a) amend, repeal or revoke an enactment passed or made before the order is made;
  - (b) confer power on the Secretary of State or the Scottish Ministers to make an order or regulations;
  - (c) include consequential, transitional or saving provision.
- (6) In this section “enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978) and an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament.



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- (7) In making the first order under subsection (4) the Secretary of State must take into account the report made in accordance with subsection (1)(b).
- (8) No order under subsection (4) may be made unless the Secretary of State has consulted the Scottish Ministers.
- (9) A statutory instrument containing an order under subsection (4) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

#### Commencement Information

**I25** S. 38 in force at 22.4.2013 by S.I. 2013/6, art. 2(e)

### 39 Maximum penalties which may be specified in subordinate legislation

- (1) The 1998 Act is amended as follows.
- (2) In section 113 (subordinate legislation: scope of powers), for subsection (10) substitute—
  - “(9A) A power may not be exercised so as to create any criminal offence punishable with any of the penalties specified for the offence in subsection (9B) or (10).
  - (9B) In relation to Scotland, the specified penalties are—
    - (a) where the offence is triable on summary complaint only, imprisonment for a period exceeding 12 months and a fine exceeding level 5 on the standard scale,
    - (b) where an offence triable either on indictment or on summary complaint is tried on summary complaint, imprisonment for a period exceeding 12 months and a fine exceeding the statutory maximum,
    - (c) where the offence is tried on indictment, imprisonment for a period exceeding two years.
  - (10) In relation to England and Wales and Northern Ireland, the specified penalties are—
    - (a) where the offence is tried summarily, imprisonment for a period exceeding three months and a fine exceeding—
      - (i) in the case of a summary offence, level 5 on the standard scale,
      - (ii) in the case of an offence triable either way, the statutory maximum,
    - (b) where the offence is tried on indictment, imprisonment for a period exceeding two years.”
- (3) After subsection (11) of that section insert—
  - “(12) Her Majesty may by Order in Council amend subsection (9B) or (10) so as to change—
    - (a) any period of imprisonment specified there, or
    - (b) the amount of any fine so specified.”

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- (4) In Schedule 7 (procedure for subordinate legislation), in paragraph 1, at the appropriate place insert—

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“Section 113(12)

Type A”.

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- (5) The amendments made by paragraph 7 of Schedule 27 to the Criminal Justice Act 2003 (alteration of maximum penalties etc) have effect (when they come into force) in relation to section 113 as amended by this section as they have effect in relation to that section as originally enacted, except that in subsection (10A)(c) the words “Scotland and” are omitted.

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**Commencement Information**

**I26** S. 39 in force at 31.10.2012 by S.I. 2012/2516, art. 2(e)

*General*

**40 Interpretation**

In this Act “the 1998 Act” means the Scotland Act 1998.

**41 Orders**

Any power to make an order conferred by this Act is exercisable by statutory instrument.

**42 Power to make consequential, transitional and saving provision**

- (1) The Secretary of State may by order make provision consequential on any provision of Part 1 or 2 or the preceding provisions of this Part.
- (2) The Secretary of State may by order make transitional or saving provision in connection with the coming into force of any provision of Part 1 or 2 or the preceding provisions of this Part.
- (3) The Treasury may by order make—
  - (a) provision consequential on section 29 or 31;
  - (b) transitional or saving provision in connection with the coming into force of any provision of Part 3.
- (4) Provision under this section may amend, repeal or revoke an enactment passed or made before this Act is passed.
- (5) In this section “enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978) and an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament.
- (6) A statutory instrument containing an order under subsection (1) or (2) which includes provision amending or repealing any provision of an Act or an Act of the Scottish Parliament may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

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- (7) Any other statutory instrument containing an order under subsection (1) or (2) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) A statutory instrument containing an order under subsection (3) which includes provision amending or repealing any provision of an Act may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.
- (9) Any other statutory instrument containing an order under subsection (3) is subject to annulment in pursuance of a resolution of the House of Commons.

#### **43 Financial provisions**

- (1) There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums payable under any other Act out of money so provided.
- (2) There shall be paid into the Consolidated Fund any sums received by a Minister of the Crown by virtue of this Act which are not payable into the National Loans Fund.

#### **44 Commencement**

- (1) The following come into force on the day on which this Act is passed—
  - (a) sections 40 to 43;
  - (b) this section;
  - (c) section 45.
- (2) The following provisions come into force at the end of the period of two months beginning with the day on which this Act is passed—
  - (a) section 11;
  - (b) Part 3, except section 25(7) (and Schedule 2) and section 32.
- (3) Subsection (2)(b) is subject to the provision made in the following sections as to how those sections have effect—
  - (a) sections 25(1) to (6) and 26;
  - (b) sections 28 and 29;
  - (c) sections 30 and 31.
- (4) The following provisions come into force on such day as the Treasury may by order appoint—
  - (a) section 25(7) and Schedule 2;
  - (b) section 32.
- (5) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint.
- (6) The Secretary of State or the Treasury may appoint different days for different purposes.

#### **45 Short title**

This Act may be cited as the Scotland Act 2012.

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