



# Scotland Act 2012

## 2012 CHAPTER 11

VALID FROM 03/07/2012

### 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).
- (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.

VALID FROM 31/10/2012

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

- (1) The 1998 Act is amended as follows.

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- (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.”

#### **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);
  - (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.

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(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).

## **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

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

### *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.”

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VALID FROM 31/10/2012

## **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 ”.
- (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).

VALID FROM 01/08/2013

## **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

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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.”

VALID FROM 31/10/2012

## 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)

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- (a) in subsection (2)(i) for “Secretary of State” substitute “ appropriate authority ”;
  - (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—

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

## **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.

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(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.”

## **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—

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- (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 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.”



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- (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.
- (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 ”.

## **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—
- (a) omit paragraph (a) (section 17(2));
- (b) 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.

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