

## **SCOTLAND ACT 2012**

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### **EXPLANATORY NOTES**

#### **COMMENTARY ON SECTIONS (AND SCHEDULES)**

#### **Part 3: Finance**

#### ***Section 23: Taxation: introductory***

80. This section provides the structure within which the Scottish Parliament may legislate on tax. The Act is providing for the Scottish Parliament to set a rate of income tax for Scottish taxpayers; it is devolving stamp duty land tax and landfill tax to Scotland and it is making provision for new devolved taxes.
81. Section 28 of the 1998 Act gives the Scottish Parliament the power to make laws, to be known as Acts of the Scottish Parliament, within the limits set out in the 1998 Act. Sections 29 and 30 of, and Schedule 5 to, that Act specify that tax policy is outside the Scottish Parliament's legislative competence, although an exception is made for local taxes (e.g. council tax and business rates).
82. *Subsection (1)* introduces the amendments made by the section to the 1998 Act.
83. *Subsection (2)* inserts Chapter 1 (new sections 80A and 80B) of the new Part 4A, the remaining Chapters of which deal with income tax and each of the devolved taxes.
84. Section 80A(1)(a) of the new Part 4A introduces Chapter 2, which provides that the Scottish Parliament may set a rate of income tax to be paid by Scottish taxpayers.
85. Section 80A(1)(b) introduces Chapters 3 and 4, which provide that the Scottish Parliament may legislate in respect of the devolved taxes (that is, taxes on land transactions and disposals of waste to landfill).
86. Section 80A(2) provides that the Part may impose restrictions on that power to legislate in relation to devolved taxes.
87. Section 80A(3) provides that a devolved tax introduced by the Scottish Parliament may not be imposed where to do so would be incompatible with the UK's international obligations.
88. Section 80A(4) defines a "devolved tax" as meaning a tax specified in the new Part 4A as a devolved tax.
89. Section 80B(1) provides that Part 4A may be amended by Order in Council to provide for additional devolved taxes or to modify the provisions in relation to devolved taxes.
90. Section 80B(2) provides that an Order in Council under this section may modify any enactment, prerogative instrument or any other instrument or document in connection with other provisions made by the Order. Section 80B mirrors the power in section 30 of the 1998 Act to make changes to Schedules 4 and 5 to the Act.
91. *Subsection (3)* of the section amends section 93 (agency arrangements) of the 1998 Act to provide that the collection and management of a devolved tax is a specified

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function of Scottish Ministers. This will enable the Scottish Ministers to contract out the collection and management of devolved taxes, should they wish to do.

92. *Subsection (4)* includes “devolved tax” in section 127 (index of defined expressions) of the 1998 Act.
93. *Subsection (5)* provides that devolved taxes, including their collection and management, are excepted from the reserved tax matters, bringing these taxes within the Scottish Parliament’s power to legislate.
94. *Subsection (6)* specifies the legislative procedure to be used in making any Orders in Council under section 80B, by inserting section 80B into Schedule 7 (procedure for subordinate legislation) to the 1998 Act. The Order will be subject to the Type A procedure; an Order must be laid in draft before, and approved by a resolution of, both Houses of Parliament and the Scottish Parliament.

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

95. This section amends existing legislation to enable Her Majesty’s Revenue and Customs (HMRC) to disclose information to Scottish Ministers regarding devolved taxes; to make such information confidential and subject to onward disclosure controls; and to ensure that such devolved taxes are neither a function nor an “assigned matter” of HMRC.
96. HMRC has a statutory duty of confidentiality which sets out the circumstances in which lawful disclosure of information held by HMRC can be made. Disclosure may only occur in a limited number of specific circumstances. Devolution of some areas of taxation to the Scottish Government means that amendments are needed to the Commissioners for Revenue and Customs Act 2005 to provide HMRC with the ability to disclose information regarding devolved taxes. Further amendments are required to ensure that devolved taxes do not become a statutory function of HMRC but remain instead a matter for the Scottish Government.
97. This section sets out amendments to the Commissioners for Revenue and Customs Act 2005 and the Customs and Excise Management Act 1979 to provide for the role of HMRC in relation to devolved taxes.
98. *Subsections (2) and (3)* amend HMRC’s statutory duty of confidentiality at section 18 of the Commissioners for Revenue and Customs Act 2005 so that HMRC may disclose revenue and customs information to Scottish Ministers in connection with devolved taxes.
99. *Subsection (4)* introduces an onward disclosure control forbidding further disclosure of such information without the consent of the Commissioners.
100. *Subsection (5)* makes it a criminal offence for the Scottish Ministers or any other person to unlawfully disclose information in breach of the control added by *subsection (4)*.
101. *Subsection (6) and (7)* provide that the Commissioners and officers of HMRC shall not have functions or “assigned matters” conferred on them in relation to the devolved taxes. This ensures that the Scottish Government remain wholly responsible for devolved taxes.

***Section 25: Scottish rate of income tax***

102. This section deals with the Scottish rate of income tax.
103. *Subsection (2)* provides that Part 4 of the 1998 Act is to be repealed. Part 4 provides that the Scottish Parliament may fix the basic rate of income tax for Scottish taxpayers – this is commonly referred to as the “Scottish variable rate”. *Subsection (4)* provides that HM Treasury may, by order, appoint a tax year as the last year for which Part 4 is to have effect.

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104. *Subsection (3)* inserts a new Chapter 2, consisting of sections 80C to 80H, into Part 4A of the 1998 Act. *Subsection (5)* provides that HM Treasury may appoint a tax year as the first tax year for which a Scottish rate resolution set under the new provisions is to have effect.
105. New section 80C confers on the Scottish Parliament a power to set a Scottish rate of income tax, for Scottish taxpayers.
106. Section 80C(1) provides that this power is exercisable by resolution.
107. Section 80C(2) provides a signpost to the reader that the rate is to be calculated under section 6(2B) of the Income Tax Act (ITA) 2007. Section 6(2B) is inserted by section 26 of this Act.
108. Sections 80C(3) to (6) provide that a Scottish rate resolution applies for only one tax year. The resolution applies for the whole of that year and may specify only one rate, which must be a whole or a half number. The resolution must specify the tax year to which it applies. It must be made before the start of that tax year, but no more than 12 months before the start of that year. Standing orders must provide that only a member of the Scottish Government may move a motion for a Scottish rate resolution.
109. Section 80C(7) provides that if a Scottish rate resolution is cancelled before the start of the tax year for which it is to apply the Income Tax Acts have effect for that year as if the resolution had never been passed. The Interpretation Act 1978 defines the Income Tax Acts as meaning all enactments relating to income tax. If a resolution is cancelled it may be replaced by another Scottish rate resolution provided that that replacement resolution is passed before the start of the tax year for which it is to apply.
110. Section 80D defines a “Scottish taxpayer” for the purposes of Part 4A of the 1998 Act.
111. Section 80D(1) states that a Scottish taxpayer is an individual (and not, for example, a company or a trust) who is resident in the UK for income tax purposes and who also meets condition A, B or C.
112. Section 80D(2) sets out condition A and provides that an individual will meet condition A if they have a close connection with Scotland.
113. Section 80D(3) sets out condition B and provides that an individual will meet condition B if they do not have a close connection with any part of the UK other than Scotland and if they spend more days of that year in Scotland than in any other part of the UK.
114. Section 80D(4) sets out condition C. An individual will meet condition C if, for a whole or part of a year, that individual is a member of Parliament for a constituency in Scotland, a member of the European Parliament for Scotland or a member of the Scottish Parliament.
115. New section 80E defines what is meant by a close connection with Scotland or any part of the UK for the purposes of sections 80D(2) and 80D(3)(a).
116. Section 80E(2) applies where an individual has only one place of residence in the UK in which they live for at least part of the year. It provides that such an individual will have a close connection with the part of the UK in which that place of residence is located. If that place is in Scotland the individual will be a Scottish taxpayer. If that place is in another part of the UK, the individual will not be a Scottish taxpayer (unless they meet condition C).
117. Section 80E(3) applies where an individual has 2 or more places of residence in the UK. It provides that such an individual will have a close connection with the part of the UK in which their main place of residence is located, provided they live in that residence for at least part of the year and provided the times when their main place of residence is in that place comprise in aggregate at least as much of the year as the times when their main place of residence is in any one other part of the UK. If the times when their

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main place of residence is in Scotland comprise in aggregate at least as much of the year as the times when their main place of residence is in any one other part of the UK the individual will be a Scottish taxpayer.

118. Section 80E(4) provides that, for the purposes of applying the definition of a Scottish taxpayer, a 'place' includes a sailing vessel and other means of transport.
119. Section 80F provides the means of determining the number of days in which an individual spends in Scotland or in another part of the UK.
120. Section 80F(1) provides that an individual spends more days in Scotland than in any other part of the UK if (and only if) the number of days in the year in which they are in Scotland at the end of the day equals or exceeds the number of days in the year in which they are in any other part of the UK at the end of the day.
121. Section 80F(2) provides an exception from the rule in section 80F(1) where an individual arrives in the UK as a passenger and, on the next day, departs from the UK without engaging in activities which are to a substantial extent unrelated to their passage through the UK
122. Section 80G provides supplemental powers to modify enactments.
123. Section 80G(1) provides that a Treasury Order may exclude the effect of the tax-varying power in relation to any enactment, or provide that its effect is to be modified in relation to any enactment. Several tax reliefs are calculated by reference to gross income before deduction of income tax. The introduction of a Scottish rate raises a number of questions about the rate which should be used in the calculation of reliefs and of income from which tax is deducted at source. The Government wishes to discuss this with relevant stakeholders before coming to a final view on the treatment of such reliefs and, where appropriate, to deal with such matters by secondary legislation once those discussions have taken place.
124. Section 80G(2) gives HM Treasury a power to make an order modifying any enactment as they consider necessary or expedient in consequence of or in connection with the fact that the Scottish Parliament has the power to set a Scottish rate (under section 80C), in the making of any resolution, or the exercise of the order making power in subsection (1). A number of detailed technical consequential amendments are likely to be required to tax legislation as a result of the introduction of the new Scottish rate. It would not be appropriate to set such details out in primary legislation, particularly as the expected date on which the Scottish rate is set for the first time will not be for several years.
125. Section 80G(3) provides that an order made under subsection (2) may, in particular, postpone temporarily the effect of a resolution in relation to the operation of PAYE. A fundamental part of the PAYE system is the use of tax tables by employers to calculate how much is to be deducted from their employees. If for any reason the Scottish Parliament either did not pass a resolution until shortly before the start of the tax year, or replaced one resolution with another shortly before the start of the tax year, there may be practical difficulties for HMRC, payroll providers and others in making the necessary changes required to properly operate the PAYE system before the start of the tax year. Similar problems may arise if the UK Government were not to make a decision in relation to the main rates of income tax, or to any relevant allowances, until shortly before the start of the tax year. Where such a problem arises in relation to the main rates of income tax the relevant Finance Act will normally contain a provision to deal with the impact on the PAYE system (see, for example, sections 2(3) and 4(3) of the Finance Act 2008). The power provided by section 80G(3) will allow similar provision to be made in relation to the Scottish rate.
126. Section 80G(4) provides that an order under section 80G may, to the extent that HM Treasury consider it to be appropriate, take effect retrospectively from the beginning of the year of assessment in which it is made. It is not uncommon for a Finance Act

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to receive Royal Assent after the start of the tax year to which it applies and for provisions made under such an Act to be given retrospective effect from the start of that tax year. This power would allow HM Treasury to make any necessary consequential amendments required as a result of such a provision.

127. New section 80H provides that the Scottish Ministers may reimburse any Minister of the Crown or any government department for administrative expenses incurred by virtue of the new Chapter 2 at any time after the Act receives Royal Assent. This would include both the implementation and running costs of the new Scottish rate.

***Section 26: Income tax for Scottish taxpayers***

128. This section makes amendments relating to income tax for Scottish taxpayers.
129. *Subsection (1)* of the section introduces various amendments to ITA 2007.
130. *Subsection (2)* of the section inserts new sections 6(2A) to (2C) into ITA 2007.
131. Section 6(2) of ITA 2007 provides that the basic rate, higher rate and additional rate for a tax year (i.e. a year for which income tax is charged) are the rates determined as such by the UK Parliament for that year. Section 6(2A) provides that section 6(2) does not apply to the non-savings income of a Scottish taxpayer.
132. Section 6(2B) provides that, for the non-savings income of a Scottish taxpayer, the basic rate, higher rate and additional rate are found by:
- Taking the rates determined under section 6(2);
  - Deducting 10 percentage points; and
  - Adding the Scottish rate (if any) set by the Scottish Parliament for that year.
133. Section 6(2C) is a signpost to the provisions of the 1998 Act, inserted by this Act, about the meaning of “Scottish taxpayer” and the setting of the Scottish rate.
134. *Subsections (3) and (4)* amend sections 10 and 16 of ITA 2007. Section 10 of ITA 2007 sets out how much of an individual’s income is subject to tax at the basic, higher and additional rates. Section 10 is subject to section 13 of ITA 2007 which deals with dividend income (as defined by section 19 of ITA 2007). Dividend income is charged at the dividend ordinary, dividend upper and dividend additional rates rather than at the main rates of income tax. The dividend income of Scottish taxpayers will continue to be charged at these rates.
135. Special rules also apply in relation to savings income (as defined by section 18 of ITA 2007). Broadly speaking savings income is charged at the starting rate for savings (rather than the basic rate) on so much of an individual’s income up to the starting rate limit for savings as is savings income (see section 12 of ITA 2007) and at the basic, higher or additional rate as appropriate thereafter.
136. Section 16 of ITA 2007 sets out the rules for determining the extent to which a person’s income consists of savings income or dividend income and for determining the highest part of the person’s total income.
137. *Subsections (3) and (4)* make consequential amendments to sections 10 and 16 to reflect the fact that the Scottish rate does not apply to savings income.
138. *Subsection (5)* amends section 809H of ITA 2007. Chapter A1 of Part 14 of ITA 2007 provides for an alternative basis of charge for individuals who are not domiciled in the United Kingdom or not ordinarily resident in the United Kingdom. Such an individual, if resident for income tax purposes in the United Kingdom, may make a claim for the remittance basis to apply. Under the remittance basis, income and gains only come within the charge to UK income tax and UK capital gains tax when they are brought into the United Kingdom. However, an individual who has been resident in the United

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Kingdom for at least seven of the previous nine tax years, and who wishes to be taxed on the remittance basis, is subject under section 809H(2) of ITA 2007 to a minimum charge to income tax and capital gains tax of £30,000. For the purposes of calculating income tax charged under section 809H(2), *subsection (5)* of this section disapples new sections 6(2A) to (2C) of ITA 2007.

139. *Subsection (6)* amends section 989 of ITA 2007. Section 989 contains a number of definitions which apply for the purposes of income tax legislation. The definitions of basic rate, higher rate, and additional rate are defined as the rate of income tax in pursuance of section 6(2) ITA 2007. Section 6(2) only refers to the income tax calculated at the UK level. *Subsection (6)* adds a reference to section 6(2B) to extend the definition to the rates applicable to Scottish taxpayers.
140. *Subsection (7)* amends the Provisional Collection of Taxes Act 1968. That Act gives temporary statutory effect to resolutions passed by the House of Commons relating to the rate of various taxes, including income tax. This allows HMRC to collect the tax until such time as the Finance Bill containing the relevant tax provisions receives Royal Assent and becomes law or until such time as the resolutions cease to have effect. *Subsection (7)* amends the Act so as to include a reference to the rates as calculated in relation to Scottish taxpayers by reference to new sections 6(2A) to (2C) of ITA 2007.
141. *Subsection (8)* of this section is the commencement provision. The amendments will take effect from the beginning of the tax year appointed by order by HM Treasury under the power given by section 25(5).

***Section 27: Definition of Scottish taxpayer for Scottish variable rate***

142. This section ensures that the definition of a Scottish taxpayer for the Scottish rate of income tax will also be applied to the Scottish variable rate (SVR).
143. *Subsection (1)* replaces the definition of a Scottish taxpayer used for SVR set out in section 75 Scotland Act 1998 with the definition proposed for the Scottish rate of income tax. The definition of a Scottish taxpayer for the Scottish rate of income tax is inserted as new section 80D of the 1998 Act by section 25(3) of this Act.
144. *Subsection (2)* ensures that when the Scottish rate of income tax replaces SVR this section will cease to have effect at the end of the last tax year for which SVR applies. Sections 25(2) and (4) of this Act provide for the repeal of the provisions on SVR.

***Section 28: Scottish tax on transactions involving interests in land***

145. This section is one of a series which together provide the mechanism for bringing to an end the collection and management of stamp duty land tax (“SDLT”) in Scotland and allowing the Scottish Parliament to bring in its own land transaction tax.
- Section 23 indicates that the Scottish Parliament has the power (conferred by section 28 of the 1998 Act) to legislate for their own devolved taxes.
  - Section 29 disapples the United Kingdom SDLT by excluding land transactions in Scotland from the SDLT charge, from a date to be appointed by HM Treasury.
  - Section 28 defines the scope of this devolved tax, broadly a transaction tax applying to acquisitions of interests in land in Scotland.
  - Schedule 4 contains further amendments relating to the disapplication of SDLT to Scotland and provides for the supply of information about land transactions in Scotland to HMRC.
146. SDLT is a transaction tax which applies to acquisitions of a chargeable interest in land. The definition of “chargeable interest” at section 48 of the Finance Act 2003 includes an estate, interest, right or power in or over land in the United Kingdom.

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147. The tax is to be fully devolved by excluding acquisitions of interests in land in Scotland from the charge to SDLT and granting a power to the Scottish Parliament to tax those acquisitions. The devolved tax will apply regardless of the residence of any party to the transaction.
148. **Section 28** introduces Chapter 3 (sections 80I and 80J) of new Part 4A of the 1998 Act (as inserted by Section 23) which provides for the devolved Scottish tax.
149. New section 80I provides for the devolved Scottish tax. Subsection (1) provides that a tax charged on certain acquisitions relating to land in Scotland is a devolved tax. Subsection (2) makes clear that such a tax may apply regardless of whether or not the transaction is effected by means of a formal document or the residence of the parties to the transaction.
150. New section 80J provides that certain transactions and statutory bodies are not subject to the devolved tax. Subsection (1) excludes transactions to the extent that they relate to land below mean low water mark. Subsection (2) excludes Ministers of the UK and devolved governments and corporate bodies associated with legislative assemblies in the UK.
151. *Subsection (2)* ensures that the devolved tax cannot apply to a land transaction to which SDLT applies and thereby links commencement of the tax to the disapplication of SDLT in Scotland under section 29.

***Section 29: Disapplication of UK stamp duty land tax***

152. SDLT is a transaction tax which applies to acquisitions of a chargeable interest in land. The definition of “chargeable interest” at section 48 of the Finance Act 2003 includes an estate, interest, right or power in or over land in the United Kingdom.
153. This section provides for SDLT to be disappplied by reference to the “effective date” of a land transaction for SDLT purposes. This is normally the date on which the purchase contract is completed but may be earlier if the transaction is “substantially performed” (that is, if the consideration for the transaction is paid or the property is occupied) before this date.
154. *Subsection (1)* introduces the amendments to the SDLT provisions in Part 4 of the Finance Act 2003.
155. *Subsection (2)* amends the definition of “chargeable interests” in Section 48 by limiting it to interests in land in England and Wales or Northern Ireland.
156. *Subsection (3)* introduces Schedule 3. Part 1 of Schedule 3 contains further amendments relating to the disapplication of SDLT in Scotland and Part 2 provides for the supply of information about land transactions in Scotland to HMRC, as this information will no longer be available to HMRC from land transaction returns.
157. *Subsection (4)* applies the amendments introduced by the section to land transactions with an effective date on or after a date appointed by HM Treasury.
158. *Subsection (5)* makes transitional provisions to ensure that SDLT continues to apply to transactions where a contract is entered into on or before the date on which the Act receives the Royal Assent.
159. *Subsection (6)* disapplies the transitional rules in *subsection (5)* where certain events in relation to the transaction occur after Royal Assent.

***Section 30: Scottish tax on disposals to landfill***

160. This section is one of a series which, together, provides the mechanism for bringing to an end the collection and management of landfill tax in Scotland and allowing the Scottish Parliament to bring in its own tax on disposals of waste to landfill.

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161. This section sets out the scope of the Scottish Parliament's power to introduce a Scottish landfill tax.
162. Currently landfill tax is charged on the disposal of waste to landfill in the UK. The UK Government has decided to fully devolve landfill tax to Scotland. Section 31 disapplies the existing landfill tax in Scotland.
163. Together with section 23 of this Act and section 28 of the 1998 Act, this section provides the Scottish Parliament with the power to introduce a Scottish landfill tax.
164. *Subsection (1)* introduces Chapter 4 (section 80K) of new Part 4A of the 1998 Act.
165. In new section 80K:
- *Subsection (1)* provides that a tax charged on disposals to landfill made in Scotland is a devolved tax for the purposes of this part.
  - *Subsection (2)* provides a definition of a disposal to landfill for the purposes of this part.
166. *Subsection (2)* refers to section 31(4) and provides that tax cannot be charged on disposals made prior to a date to be specified by a Treasury Order.

***Section 31: Disapplication of UK landfill tax***

167. *Subsection (1)* introduces the amendments to the existing landfill tax provisions in Part 3 of the Finance Act 1996.
168. *Subsection (2)* limits the existing landfill tax to disposals made in England, Wales or Northern Ireland.
169. *Subsection (3)* introduces Schedule 4, which makes amendments consequential upon the disapplication of landfill tax in Scotland.
170. *Subsection (4)* provides for the date of these changes to be set out by a Treasury Order.

***Section 32: Borrowing by the Scottish Ministers***

171. This section amends sections 66 and 67 of the 1998 Act to revise the circumstances under which the Scottish Ministers may borrow to set out the main controls and limits on such borrowing.
172. This section enables the Scottish Ministers to borrow - subject to HM Treasury's controls and limits - for the following purposes:
- a) to meet a 'temporary excess of sums paid out of the Scottish Consolidated Fund (SCF) over the sums paid into the fund' – this means that the Scottish Government can borrow to manage excessive in-year volatility of receipts, where actual income differs greatly from the forecast receipts for that month;
  - b) to provide a working balance to the SCF, i.e. enough balance to ensure cash-flow;
  - c) to meet the differences between forecast and outturn receipts for devolved taxes or from income tax charged by virtue of a Scottish rate resolution; and
  - d) to fund capital expenditure.
173. The Scottish Ministers will be able to run up to £2.7bn of outstanding debt, of which up to £500m of debt can be from current borrowing and £2.2bn of debt from capital borrowing.
174. Scottish Ministers will be able to borrow from the Secretary of State for the purposes (a) to (c) above and from wider sources in addition to the Secretary of State for capital borrowing (purpose (d) above).



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175. *Subsection (1)* introduces the amendments to the 1998 Act.
176. *Subsection (2)* introduces the amendments to the existing borrowing provisions in section 66 of the 1998 Act.
177. *Subsection (3)* replaces subsection (1) in section 66. It:
- re-enacts sections 66(1)(a) and (b) of the 1998 Act which enable Scottish Ministers to borrow temporarily from the Secretary of State to provide a working balance to the SCF and to manage excessive in-year volatility of receipts; and
  - extends the Scottish Ministers' borrowing powers to include borrowing across years to fund deviations between forecast and outturn receipts of the devolved taxes.
178. New subsection (1A) enables the Scottish Ministers to borrow to fund capital expenditure, subject to HM Treasury's approval. The borrowing must be in the form of a loan either from the National Loan Fund (through the Secretary of State) or from another lender, such as a commercial bank. The section does not allow Scottish Ministers to issue Scottish gilts or bonds as the section requires borrowing to be by way of a loan.
179. New subsection (1B) defines capital expenditure. The definition of capital expenditure is drawn from the rules (provided by HM Treasury to the Scottish Government) governing the preparation of the accounts under section 70 of the 1998 Act.
180. *Subsection (4)* is a consequential amendment to take account of the fact that not all borrowing need be from the Secretary of State.
181. *Subsection (5)* inserts a new subsection (5) into section 66 which enables the Secretary of State, by order and with the consent of HM Treasury, to change the manner in which the Scottish Ministers can borrow money for capital purposes, for example, to permit borrowing by the issue of bonds. Orders under this new subsection are subject to the approval of the House of Commons through the draft affirmative procedure (this is provided for by *subsection (12)*).
182. *Subsection (6)* introduces the amendments to the existing borrowing provisions in section 67 of the 1998 Act.
183. *Subsection (7)* specifies that the £500m limit applied to the aggregate outstanding of principal sums borrowed under the existing section 66(1) -which appears on the face of the 1998 Act - now applies to the borrowing powers listed in new section 66(1), i.e. current borrowing.
184. *Subsections (8) to (9)* amend section 67(3) of the 1998 Act and allow the Secretary of State, by order and with the consent of HM Treasury, to revise the £500m limit on the Scottish Ministers' current borrowing either upwards or downwards, although never below the initial £500m. These provisions enable the Secretary of State to increase the amount from time to time, for example, to keep pace with inflation or to meet exceptional circumstances. Orders under this section are subject to the approval of the House of Commons through the draft affirmative procedure.
185. *Subsection (10)* inserts a new section 67A into the 1998 Act which includes further provisions on capital borrowing.
186. New section 67A(1) provides that the aggregate outstanding of principal sums borrowed under new section 66(1A) - borrowing to fund capital expenditure - must not exceed £2.2 billion. This provision, together with that in section 67, means that the total aggregate outstanding of principal (both current and capital) cannot exceed £2.7 billion.
187. New sections 67A(2) and (3) allow the Secretary of State, by order and with the consent of HM Treasury, to revise the £2.2 billion limit either upwards or downwards, but never below the initial £2.2 billion. Orders under this section are subject to the approval of

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the House of Commons through the draft affirmative procedure (this is provided for by *subsection (12)*).

188. Section 67A(4), (5) and (6) contain further rules on Scottish Ministers' borrowing to fund capital spending. In particular:
- a) Subsection (4) provides that lenders are not bound to make enquiries into the power to borrow (such as checking whether the Scottish Government has breached its borrowing limits or is acting without HM Treasury approval). In the absence of such a provision, lenders could fear that doubtful vires could render loans unenforceable and could see the Scottish Government as a risky borrower.
  - b) Subsection (5) states that Scottish Ministers are prohibited from mortgaging or charging any property as security for money which they have borrowed.
  - c) Subsection (6) provides that any security given in the breach of subsection (5) is unenforceable.

***Section 33: Reports on the implementation and operation of this Part***

189. *Subsections (1) and (3)* require the Secretary of State to publish a report on the implementation and operation of Part 3 of the Act (that is, the provisions relating to finance) within a period of one year beginning with the day on which the Act is passed and thereafter an annual report until 2020 or, if later, until a year after the tax and borrowing powers are fully transferred to the Scottish Parliament (see *subsection (4)*). Copies of such reports must be laid before both Houses of Parliament and sent to Scottish Ministers, who must lay the reports before the Scottish Parliament.
190. *Subsections (2) and (3)* require Scottish Ministers to make and lay reports of the same kind before the Scottish Parliament on an annual basis and to provide a copy of each report to the Secretary of State to lay before both Houses of Parliament.
191. *Subsection (5)* sets out the areas that each report must include. These are: an update on all aspects of progress towards the commencement of provisions in Part 3 of the Act since the previous report, detail of any steps towards commencement which the maker of the report proposes should be taken, an assessment of the operation of the provisions which have been commenced, an assessment of the operation of powers to devolve taxes to the Scottish Parliament or changes to the powers of the Scottish Ministers to borrow, or of any other changes to the finance provisions in this Act, the effect of transferring tax powers on the Scottish block grant and any other matters concerning sources of revenue for the Scottish Administration which the maker of the report considers should be brought to the attention of the UK or Scottish Parliaments.