

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

SCOTLAND ACT 1998

EXPLANATORY NOTES

COMMENTARY

Part V: Miscellaneous and General

SECTION 110: Scottish taxpayers for social security purposes

Purpose and Effect

This section provides 2 order-making powers to enable the Secretary of State to take account of the implications of varied Scottish rates of income tax for social security, child support, pension and war pension purposes. They allow him, for those purposes, to determine whether a person is or is not to be treated as a Scottish taxpayer, and to specify what shall be treated as the Scottish rate of tax in any year of assessment.

The intention of the provisions is to ensure that benefit decisions can be made promptly without uncertainty over the appropriate tax rate to apply, where tax is relevant to benefit entitlement. In the great majority of cases, the powers will have no effect on benefit entitlement. They will reduce administrative costs which would otherwise arise, and prevent inconvenience to claimants both in Scotland and in the rest of the UK.

General

This section is necessary because of the provisions in Part IV of the Act which enable the Scottish Parliament to vary the basic rate of income tax in respect of Scottish taxpayers, and in some circumstances to do so after the start of the tax year. It ensures that the Parliament's exercise of its powers can be accommodated without disruption to the reserved social security, child support and pension systems.

The order-making powers are applicable for all reserved matters under Head F of Part II of Schedule 5, although it is expected that their main use will be in relation to social security benefits and child support.

Entitlement to many social security benefits, including the main income-related benefits of Jobseeker's Allowance, Income Support, Family Credit and Housing/Council Tax Benefit, is assessed on income net of tax and National Insurance contributions. Where the Scottish Parliament exercises its power to vary the basic rate of income tax, it is necessary to determine whether a benefit claimant should be treated as a Scottish taxpayer in order to pay the right amount of benefit. The criteria set out in section 75 to decide whether or not a person is a Scottish taxpayer are (like other tax matters) designed to apply over a full year. But in order to make a clear decision for benefit purposes, it is necessary to know whether a person is a Scottish taxpayer or not at the point of claim.

Section 75 provides, in certain circumstances, for changes in the Scottish rate of tax at short notice and after the start of the tax year. It would present operational difficulties for the social security system to reflect changes at very short notice, and could mean that large numbers of benefit claims decided before a tax change might need to be re-examined.

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The section provides powers to put the benefit position beyond doubt in both these cases, by specifying who is regarded as a Scottish taxpayer for benefit purposes and what the relevant rate of tax should be.

Details of Provisions

Subsection (1) provides an enabling power to allow the Secretary of State to treat individuals of any description specified in the order as - or as not - a Scottish taxpayer for the purpose of any reserved matter set out in Head F of Part II of Schedule 5 (social security, child support, pensions - including public service pensions - and war pensions). Its main purpose is to remove uncertainty and the risk of delay in the assessment process, and to preclude the need to ask all benefit claimants, including claimants in England, about connections in Scotland. It is intended to exercise the power so that for benefit and child support purposes a person's address at the time of assessment will normally be the determining factor in deciding whether or not the Scottish tax rate should apply. In the overwhelming majority of cases, this administrative easement will have no effect on the amount of benefit.

Subsection (2) provides an enabling power to allow the Secretary of State to specify what shall be treated as the Scottish rate of tax for the purposes of social security, child support and pensions. The intention is to remove uncertainty over the relevant rate of tax, particularly for claims assessed in any part of a year before the Parliament passes a tax resolution.

Subsection (3) provides that orders under this section can apply to individuals irrespective of whether they are more closely connected with Scotland or another part of the United Kingdom for the purposes of Part IV.

Subsection (4) defines "Scottish taxpayer" by reference to in Part IV.