



# Scotland Act 1998

## 1998 CHAPTER 46

### PART I

#### THE SCOTTISH PARLIAMENT

##### *Legislation*

#### **28 Acts of the Scottish Parliament.**

- (1) Subject to section 29, the Parliament may make laws, to be known as Acts of the Scottish Parliament.
- (2) Proposed Acts of the Scottish Parliament shall be known as Bills; and a Bill shall become an Act of the Scottish Parliament when it has been passed by the Parliament and has received Royal Assent.
- (3) A Bill receives Royal Assent at the beginning of the day on which Letters Patent under the Scottish Seal signed with Her Majesty's own hand signifying Her Assent are recorded in the Register of the Great Seal.
- (4) The date of Royal Assent shall be written on the Act of the Scottish Parliament by the Clerk, and shall form part of the Act.
- (5) The validity of an Act of the Scottish Parliament is not affected by any invalidity in the proceedings of the Parliament leading to its enactment.
- (6) Every Act of the Scottish Parliament shall be judicially noticed.
- (7) This section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland.
- [<sup>F1</sup>(8) But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament.]

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**Annotations:**

**Amendments (Textual)**

**F1** S. 28(8) added (23.5.2016) by [Scotland Act 2016 \(c. 11\)](#), **ss. 2, 72(7)**

**29 Legislative competence.**

- (1) An Act of the Scottish Parliament is not law so far as any provision of the Act is outside the legislative competence of the Parliament.
- (2) A provision is outside that competence so far as any of the following paragraphs apply—
  - (a) it would form part of the law of a country or territory other than Scotland, or confer or remove functions exercisable otherwise than in or as regards Scotland,
  - (b) it relates to reserved matters,
  - (c) it is in breach of the restrictions in Schedule 4,
  - (d) it is incompatible with any of the Convention rights or with <sup>[F2]</sup>EU law,
  - (e) it would remove the Lord Advocate from his position as head of the systems of criminal prosecution and investigation of deaths in Scotland.
- (3) For the purposes of this section, the question whether a provision of an Act of the Scottish Parliament relates to a reserved matter is to be determined, subject to subsection (4), by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances.
- (4) A provision which—
  - (a) would otherwise not relate to reserved matters, but
  - (b) makes modifications of Scots private law, or Scots criminal law, as it applies to reserved matters,
 is to be treated as relating to reserved matters unless the purpose of the provision is to make the law in question apply consistently to reserved matters and otherwise.

<sup>[F3]</sup>(5) Subsection (1) is subject to section 30(6).]

**Annotations:**

**Amendments (Textual)**

**F2** Words in s. 29(2)(d) substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 3, 6

**F3** S. 29(5) inserted (3.7.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 9(2), 44(5)**; S.I. 2012/1710, art. 2(d)

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

**C1** S. 29(2)(b)(c) excluded by 1974 c. 53, Sch. 3 para. 9(1) (as inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), **ss. 19, 95(1)**; S.I. 2015/778, art. 3, Sch. 1 para. 15)

**30 Legislative competence: supplementary.**

- (1) Schedule 5 (which defines reserved matters) shall have effect.

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- (2) Her Majesty may by Order in Council make any modifications of Schedule 4 or 5 which She considers necessary or expedient.
- (3) Her Majesty may by Order in Council specify functions which are to be treated, for such purposes of this Act as may be specified, as being, or as not being, functions which are exercisable in or as regards Scotland.
- (4) 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
  - (b) any other instrument or document,as Her Majesty considers necessary or expedient in connection with other provision made by the Order.
- [<sup>F4</sup>(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).]

**Annotations:**

**Amendments (Textual)**

**F4** S. 30(5)(6) inserted (3.7.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 9(1), 44(5)**; [S.I. 2012/1710](#), art. 2(d)

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

**C2** S. 30(3) power extended by 1992 c. 4, s. 138(4C) (as inserted (17.5.2017 for specified purposes) by [Scotland Act 2016 \(c. 11\)](#), **ss. 23(5), 72(4)(b)**; [S.I. 2017/455](#), reg. 2(b)(iii))

[<sup>F5</sup>**30A** **Legislative competence: restriction relating to retained EU law**

- (1) An Act of the Scottish Parliament cannot modify, or confer power by subordinate legislation to modify, retained EU law so far as the modification is of a description specified in regulations made by a Minister of the Crown.
- (2) But subsection (1) does not apply to any modification so far as it would, immediately before exit day, have been within the legislative competence of the Parliament.
- (3) A Minister of the Crown must not lay for approval before each House of the Parliament of the United Kingdom a draft of a statutory instrument containing regulations under this section unless—
  - (a) the Scottish Parliament has made a consent decision in relation to the laying of the draft, or
  - (b) the 40 day period has ended without the Parliament having made such a decision.
- (4) For the purposes of subsection (3) a consent decision is—
  - (a) a decision to agree a motion consenting to the laying of the draft,

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- (b) a decision not to agree a motion consenting to the laying of the draft, or
  - (c) a decision to agree a motion refusing to consent to the laying of the draft;
- and a consent decision is made when the Parliament first makes a decision falling within any of paragraphs (a) to (c) (whether or not it subsequently makes another such decision).
- (5) A Minister of the Crown who is proposing to lay a draft as mentioned in subsection (3) must—
    - (a) provide a copy of the draft to the Scottish Ministers, and
    - (b) inform the Presiding Officer that a copy has been so provided.
  - (6) See also paragraph 6 of Schedule 7 (duty to make explanatory statement about regulations under this section including a duty to explain any decision to lay a draft without the consent of the Parliament).
  - (7) No regulations may be made under this section after the end of the period of two years beginning with exit day.
  - (8) Subsection (7) does not affect the continuation in force of regulations made under this section at or before the end of the period mentioned in that subsection.
  - (9) Any regulations under this section which are in force at the end of the period of five years beginning with the time at which they came into force are revoked in their application to any Act of the Scottish Parliament which receives Royal Assent after the end of that period.
  - (10) Subsections (3) to (8) do not apply in relation to regulations which only relate to a revocation of a specification.
  - (11) In this section—
 

“the 40 day period” means the period of 40 days beginning with the day on which a copy of the draft instrument is provided to the Scottish Ministers, and, in calculating that period, no account is to be taken of any time during which the Parliament is dissolved or during which it is in recess for more than four days.]

**Annotations:**

**Amendments (Textual)**

- F5** S. 30A inserted (26.6.2018 for specified purposes) by [European Union \(Withdrawal\) Act 2018 \(c. 16\)](#), [ss. 12\(2\), 25\(2\)\(a\)](#) (with s. 19, Sch. 2 paras. 3(5), 14(5), Sch. 8 para. 37, Sch. 8 para. 41)

**31 Scrutiny of Bills [<sup>F6</sup>for legislative competence and protected subject-matter] .**

- (1) [<sup>F7</sup>A person] in charge of a Bill shall, on or before introduction of the Bill in the Parliament, state that in his view the provisions of the Bill would be within the legislative competence of the Parliament.
- (2) The Presiding Officer shall, on or before the introduction of a Bill in the Parliament, decide whether or not in his view the provisions of the Bill would be within the legislative competence of the Parliament and state his decision.

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[<sup>F8</sup>(2A) The Presiding Officer shall, after the last time when a Bill may be amended but before the decision whether to pass or reject it, decide whether or not in his view any provision of the Bill relates to a protected subject-matter and state his decision.]

(3) The form of any statement, and the manner in which it is to be made, shall be determined under standing orders, and standing orders may provide for any statement to be published.

[<sup>F9</sup>(4) For the purposes of this Part a provision of a Bill relates to a protected subject-matter if it would modify, or confer power to modify, any of the matters listed in subsection (5) (but not if the provision is incidental to or consequential on another provision of the Bill).

(5) The matters are—

- (a) the persons entitled to vote as electors at an election for membership of the Parliament,
- (b) the system by which members of the Parliament are returned,
- (c) the number of constituencies, regions or any equivalent electoral area, and
- (d) the number of members to be returned for each constituency, region or equivalent electoral area.]

**Annotations:**

**Amendments (Textual)**

- F6** Words in s. 31 heading substituted (18.5.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 11(3)**, 72(4)(a); S.I. 2017/608, reg. 2(1)(i)
- F7** Words in s. 31(1) substituted (15.10.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 6**, 44(5); S.I. 2012/1710, art. 3
- F8** S. 31(2A) inserted (18.5.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 11(4)**, 72(4)(a); S.I. 2017/608, reg. 2(1)(i)
- F9** S. 31(4)(5) inserted (18.5.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 11(5)**, 72(4)(a); S.I. 2017/608, reg. 2(1)(i)

[<sup>F10</sup>**31A Two-thirds majority for Bills relating to a protected subject-matter**

If the Presiding Officer states under section 31(2A) that in his view any provision of a Bill relates to a protected subject-matter, the Bill is not passed unless the number of members voting in favour of it at the final stage is at least two-thirds of the total number of seats for members of the Parliament.]

**Annotations:**

**Amendments (Textual)**

- F10** S. 31A inserted (18.5.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 11(6)**, 72(4)(a); S.I. 2017/608, reg. 2(1)(i)

**32 Submission of Bills for Royal Assent.**

- (1) It is for the Presiding Officer to submit Bills for Royal Assent.
- (2) The Presiding Officer shall not submit a Bill for Royal Assent at any time when—

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- (a) the Advocate General, the Lord Advocate or the Attorney General is entitled to make a reference in relation to the Bill under section [F1132A or] 33,
- (b) any such reference has been made but has not been decided or otherwise disposed of by the [F12Supreme Court], or
- (c) an order may be made in relation to the Bill under section 35.

[F13(2A) The Presiding Officer shall not submit a Bill for Royal Assent if the Supreme Court has decided on a reference made in relation to the Bill under section 32A(2)(b) that any provision of the Bill relates to a protected subject-matter, unless since the decision the Bill has been approved in accordance with standing orders made by virtue of section 36(5).]

- (3) The Presiding Officer shall not submit a Bill in its unamended form for Royal Assent if—
  - (a) the [F14Supreme Court has] decided that the Bill or any provision of it would not be within the legislative competence of the Parliament, or
  - (b) a reference made in relation to the Bill under section 33 has been withdrawn following a request for withdrawal of the reference under section 34(2)(b).
- (4) In this Act—

“Advocate General” means the Advocate General for Scotland,

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.....

#### Annotations:

##### Amendments (Textual)

- F11** Words in s. 32(2)(a) inserted (18.5.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 11(8)**, 72(4)(a); S.I. 2017/608, reg. 2(1)(i)
- F12** Words in s. 32(2)(b) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), **ss. 40(4)**, 148(1), **Sch. 9 para. 95(a)**; S.I. 2009/1604, **art. 2**
- F13** S. 32(2A) inserted (18.5.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 11(9)**, 72(4)(a); S.I. 2017/608, reg. 2(1)(i)
- F14** Words in s. 32(3)(a) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), **ss. 40(4)**, 148(1), **Sch. 9 para. 95(b)**; S.I. 2009/1604, **art. 2**
- F15** S. 32(4): definition of "Judicial Committee" repealed (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), **ss. 40(4)**, 146, 148(1), **Sch. 9 para. 95(c)**, **Sch. 18 Pt. 5**; S.I. 2009/1604, **art. 2**

#### [F1632A Scrutiny of Bills by the Supreme Court (protected subject-matter)

- (1) The Advocate General, the Lord Advocate or the Attorney General may refer the question of whether a Bill or any provision of a Bill relates to a protected subject-matter to the Supreme Court for decision.
- (2) Subject to subsection (3), he may make a reference in relation to a Bill—
  - (a) at any time during the period of four weeks beginning with the rejection of the Bill, if the Presiding Officer has made a statement under section 31(2A) that in his view any provision of the Bill relates to a protected subject-matter, and
  - (b) at any time during the period of four weeks beginning with the passing of the Bill, if the Presiding Officer has made a statement under section 31(2A) that in his view no provision of the Bill relates to a protected subject-matter, unless the number of members voting in favour of the Bill at its passing is at least two-thirds of the total number of seats for members of the Parliament.

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- (3) He shall not make a reference in relation to a Bill if he has notified the Presiding Officer that he does not intend to make a reference in relation to the Bill, unless since the notification the Bill has been approved or rejected in accordance with standing orders made by virtue of section 36(5).]

**Annotations:**

**Amendments (Textual)**

- F16** S. 32A inserted (18.5.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 11(10)**, 72(4)(a); S.I. 2017/608, reg. 2(1)(i)

**33 Scrutiny of Bills by the [<sup>F17</sup>Supreme Court][<sup>F18</sup>(legislative competence)] .**

- (1) The Advocate General, the Lord Advocate or the Attorney General may refer the question of whether a Bill or any provision of a Bill would be within the legislative competence of the Parliament to the [<sup>F19</sup>Supreme Court] for decision.
- (2) Subject to subsection (3), he may make a reference in relation to a Bill at any time during—
- (a) the period of four weeks beginning with the passing of the Bill, and
  - (b) any period of four weeks beginning with any <sup>F20</sup>... approval of the Bill in accordance with standing orders made by virtue of section 36(5).
- (3) He shall not make a reference in relation to a Bill if he has notified the Presiding Officer that he does not intend to make a reference in relation to the Bill, unless the Bill has been approved as mentioned in subsection (2)(b) since the notification.

**Annotations:**

**Amendments (Textual)**

- F17** S. 33: words in sidenote substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40(4), 148(1), **Sch. 9 para. 96(1)**; S.I. 2009/1604, **art. 2**
- F18** Words in s. 33 heading inserted (18.5.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 11(12)**, 72(4)(a); S.I. 2017/608, reg. 2(1)(i)
- F19** Words in s. 33(1) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40(4), 148(1), **Sch. 9 para. 96(2)**; S.I. 2009/1604, **art. 2**
- F20** Word in s. 33(2)(b) omitted (18.5.2017) by virtue of [Scotland Act 2016 \(c. 11\)](#), **ss. 11(13)**, 72(4)(a); S.I. 2017/608, reg. 2(1)(i)

**34 ECJ references.**

- (1) This section applies where—
- (a) a reference has been made in relation to a Bill under section 33,
  - (b) a reference for a preliminary ruling has been made by the [<sup>F21</sup>Supreme Court] in connection with that reference, and
  - (c) neither of those references has been decided or otherwise disposed of.
- (2) If the Parliament resolves that it wishes to reconsider the Bill—
- (a) the Presiding Officer shall notify the Advocate General, the Lord Advocate and the Attorney General of that fact, and

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- (b) the person who made the reference in relation to the Bill under section 33 shall request the withdrawal of the reference.
- (3) In this section “a reference for a preliminary ruling” means a reference of a question to the European Court under [<sup>F22</sup>Article 267 of the Treaty on the Functioning of the European Union] or Article 150 of the Treaty establishing the European Atomic Energy Community.

**Annotations:**

**Amendments (Textual)**

- F21** Words in s. 34(1)(b) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 97; S.I. 2009/1604, art. 2](#)
- F22** Words in s. 34(3) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\), art. 2\(1\), Sch. Pt. 1 \(with art. 2\(2\)\)](#)

**35 Power to intervene in certain cases.**

- (1) If a Bill contains provisions—
- (a) which the Secretary of State has reasonable grounds to believe would be incompatible with any international obligations or the interests of defence or national security, or
  - (b) which make modifications of the law as it applies to reserved matters and which the Secretary of State has reasonable grounds to believe would have an adverse effect on the operation of the law as it applies to reserved matters,
- he may make an order prohibiting the Presiding Officer from submitting the Bill for Royal Assent.
- (2) The order must identify the Bill and the provisions in question and state the reasons for making the order.
- (3) The order may be made at any time during—
- (a) the period of four weeks beginning with the passing of the Bill,
  - (b) any period of four weeks beginning with any <sup>F23</sup>... approval of the Bill in accordance with standing orders made by virtue of section 36(5),
  - (c) if a reference is made in relation to the Bill under section [<sup>F24</sup>32A(2)(b) or] 33, the period of four weeks beginning with the reference being decided or otherwise disposed of by the [<sup>F25</sup>Supreme Court].
- (4) The Secretary of State shall not make an order in relation to a Bill if he has notified the Presiding Officer that he does not intend to do so, unless the Bill has been approved as mentioned in subsection (3)(b) since the notification.
- (5) An order in force under this section at a time when such approval is given shall cease to have effect.

**Annotations:**

**Amendments (Textual)**

- F23** Word in s. 35(3)(b) omitted (18.5.2017) by virtue of [Scotland Act 2016 \(c. 11\), ss. 11\(14\)\(a\), 72\(4\)\(a\); S.I. 2017/608, reg. 2\(1\)\(i\)](#)



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- F24** Words in s. 35(3)(c) inserted (18.5.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 11(14)(b)**, 72(4)(a); S.I. 2017/608, reg. 2(1)(i)
- F25** Words in s. 35(3)(c) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40(4), 148(1), **Sch. 9 para. 98**; S.I. 2009/1604, **art. 2**

### 36 Stages of Bills.

- (1) Standing orders shall include provision—
- (a) for general debate on a Bill with an opportunity for members to vote on its general principles,
  - (b) for the consideration of, and an opportunity for members to vote on, the details of a Bill, and
  - (c) for a final stage at which a Bill can be passed or rejected.
- (2) Subsection (1) does not prevent standing orders making provision to enable the Parliament to expedite proceedings in relation to a particular Bill.
- (3) Standing orders may make provision different from that required by subsection (1) for the procedure applicable to Bills of any of the following kinds—
- (a) Bills which restate the law,
  - (b) Bills which repeal spent enactments,
  - (c) private Bills.
- (4) Standing orders shall provide for an opportunity for the reconsideration of a Bill after its passing if (and only if)—
- (a) the <sup>F26</sup>[Supreme Court decides] that the Bill or any provision of it would not be within the legislative competence of the Parliament,
  - <sup>F27</sup>(aa) the Supreme Court decides on a reference made in relation to the Bill under section 32A(2)(b) that any provision of the Bill relates to a protected subject-matter,]
  - (b) a reference made in relation to the Bill under section 33 is withdrawn following a request for withdrawal of the reference under section 34(2)(b), or
  - (c) an order is made in relation to the Bill under section 35.
- <sup>F28</sup>(4A) Standing orders shall provide for an opportunity for the reconsideration of a Bill after its rejection if (and only if), on a reference made in relation to the Bill under section 32A(2)(a), the Supreme Court decides that no provision that is subject to the reference relates to a protected subject-matter.]
- (5) Standing orders shall, in particular, ensure that <sup>F29</sup>[—
- (a) any Bill amended on reconsideration in accordance with standing orders made by virtue of subsection (4)(a), (b) or (c), and
  - (b) any Bill reconsidered in accordance with standing orders made by virtue of subsection (4)(aa) or (4A),]
- is subject to a final stage at which it can be approved or rejected.
- (6) References in subsection (4), sections 28(2)<sup>F30</sup>, 31(2A), 31A, 32A(2)(b)] and 38(1)(a) and paragraph 7 of Schedule 3 to the passing of a Bill shall, in the case of a Bill <sup>F31</sup>[to which subsection (5)(a) or (b) applies], be read as references to the approval of the Bill.

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**Annotations:****Amendments (Textual)**

- F26** Words in s. 36(4) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40(4), 148(1), [Sch. 9 para. 99](#); S.I. 2009/1604, [art. 2](#)
- F27** S. 36(4)(aa) inserted (18.5.2017) by [Scotland Act 2016 \(c. 11\)](#), [ss. 11\(16\)](#), 72(4)(a); S.I. 2017/608, [reg. 2\(1\)\(i\)](#)
- F28** S. 36(4A) inserted (18.5.2017) by [Scotland Act 2016 \(c. 11\)](#), [ss. 11\(17\)](#), 72(4)(a); S.I. 2017/608, [reg. 2\(1\)\(i\)](#)
- F29** S. 36(5)(a)(b) substituted (18.5.2017) for words by [Scotland Act 2016 \(c. 11\)](#), [ss. 11\(18\)](#), 72(4)(a); S.I. 2017/608, [reg. 2\(1\)\(i\)](#)
- F30** Words in s. 36(6) inserted (18.5.2017) by [Scotland Act 2016 \(c. 11\)](#), [ss. 11\(19\)\(a\)](#), 72(4)(a); S.I. 2017/608, [reg. 2\(1\)\(i\)](#)
- F31** Words in s. 36(6) substituted (18.5.2017) by [Scotland Act 2016 \(c. 11\)](#), [ss. 11\(19\)\(b\)](#), 72(4)(a); S.I. 2017/608, [reg. 2\(1\)\(i\)](#)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 30A power to repeal conferred by 2018 c. 16 s. 12(9)-(11)
- s. 57(4)-(15) power to repeal conferred by 2018 c. 16 s. 12(9)-(11)
- s. 80D(4A)(4B) inserted by 2014 c. 29 s. 11(5)
- s. 80D(4B) words substituted by 2018 c. 16 Sch. 3 para. 14(3)
- s. 80F(1)(a)-(c) substituted for words in s. 80F(1) by 2014 c. 29 s. 11(8)(a)
- s. 80DA inserted by 2014 c. 29 s. 11(6)
- s. 80DA(2)(a) words substituted by 2018 c. 16 Sch. 3 para. 15
- s. 113(10A) inserted by 2003 c. 44 Sch. 27 para. 7(3)
- Sch. 1 para. 1(2)(za) inserted by 2018 asp 12 s. 18(1)(a)
- Sch. 5 Pt. 2 s. J5 omitted by 2016 c. 11 s. 27(4)
- Sch. 5 Pt. 2 s. F1 words inserted by 2016 c. 11 s. 27(2)
- Sch. 5 Pt. 2 s. F1 words inserted by 2016 c. 11 s. 27(3)
- Sch. 5 Pt. 2 s. C8 words substituted by 2018 c. 16 Sch. 3 para. 22