# Scotland Act 2016

**2016 CHAPTER 11**

## PART 5

OTHER EXECUTIVE COMPETENCE

### 58 Fuel poverty: support schemes

(1) The Energy Act 2010 is amended as follows.

(2) In section 9 (schemes for reducing fuel poverty) after subsection (1) insert—

"(1A) In relation to Scotland, that is subject to section 14A (power of the Scottish Ministers to make schemes)."

(3) After section 14 (regulations under Part 2: procedure) insert—

"**14A Power of the Scottish Ministers to make schemes under Part 2**

(1) Subject to the following provisions of this section the power under section 9 to make a scheme in relation to Scotland is exercisable by the Secretary of State so as to make only—

(a) provision as to the licensed suppliers to whom the scheme applies,

(b) provision as to the aggregate amount of benefits to be provided under it by scheme suppliers, and

(c) any other provision within section 9(4) or (9)(a) or (c)(v) or (vi).

(2) The power to make other provision under that section for the purposes of the scheme is exercisable by the Scottish Ministers.

(3) For the purposes of the exercise of that power by the Scottish Ministers, this Part applies—

(a) as if references to the Secretary of State in sections 9, 10 and 14(1) and (4) were references to the Scottish Ministers;

(b) as if in section 10(7) "Parliament" were "the Scottish Parliament".

**Changes to legislation:** *Scotland Act 2016, Section 58 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) The power of the Scottish Ministers under section 9 does not include power to make provision in relation to the subject-matter of sections 88 to 90 of the Energy Act 2008 (smart meters).

(5) The Scottish Ministers may not make regulations under section 9 unless—

(a) they have consulted the Secretary of State about the proposed regulations, and

(b) the Secretary of State has agreed to the regulations being made.

(6) Subsections (1) and (2) do not prevent the Secretary of State from making any provision under section 9 for the purposes of a scheme in relation to Scotland, or from varying or revoking regulations made by the Scottish Ministers under that section,—

(a) with the agreement of the Scottish Ministers, or

(b) without their agreement, if subsection (7), (9) or (11) applies.

(7) This subsection applies if—

(a) a scheme in relation to England and Wales has been made, or the Secretary of State intends to make such a scheme, and

(b) the Secretary of State is satisfied, after consulting the Scottish Ministers, that, to ensure that a scheme in relation to Scotland is made with a corresponding scheme period, it is necessary for the Secretary of State to make any provision not mentioned in subsection (1)(a) to (c).

(8) In paragraph (b) of subsection (7) a "corresponding scheme period" means a scheme period beginning and ending at the same time as that specified or to be specified in the scheme mentioned in paragraph (a).

(9) This subsection applies if it appears to the Secretary of State that a support scheme made in relation to Scotland is, alone or in conjunction with a scheme made or to be made in relation to England and Wales, likely to—

(a) cause detriment to the United Kingdom, or

(b) adversely affect the ability of the United Kingdom to comply with an international agreement or arrangement in relation to climate change or energy efficiency,

and the Scottish Ministers have failed to comply with a request made to them by the Secretary of State to make modifications specified by the Secretary of State.

(10) In determining for the purposes of subsection (9) whether detriment is likely to be caused to the United Kingdom, considerations that the Secretary of State may take into account include the costs imposed on suppliers by virtue of schemes made, or to be made, by the Secretary of State and the Scottish Ministers under section 9.

(11) This subsection applies if—

(a) the Secretary of State makes or intends to make changes to a support scheme which would result in a significant change in the costs incurred by suppliers in complying with the scheme, and

(b) the Scottish Ministers have failed to comply with a request made to them by the Secretary of State to make modifications specified by the Secretary of State.

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(12) A request by the Secretary of State to the Scottish Ministers for the purposes of subsection (9) or (11)—

(a) must be in writing;

(b) must specify only modifications that appear to the Secretary of State to be necessary to prevent the effect mentioned in subsection (9)(a) or (b), or (as the case may be) to be necessary or expedient in view of the effect mentioned in subsection (11)(a);

(c) must specify the time within which the modifications are to be made, which must not be less than 2 months from the date of the request.

(13) Section 14(5) does not apply to regulations by which the Secretary of State makes provision by virtue of subsection (6), with or without other provision under section 9."

(4) Section 31 (orders and regulations) is amended as follows.

(5) After subsection (1) insert—

"(1A) Subsection (1) does not apply to regulations made by the Scottish Ministers (see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010: functions exercisable by Scottish statutory instrument)."

(6) After subsection (4) insert—

"(4A) Regulations made by the Scottish Ministers under section 9 are subject to the affirmative procedure (see section 29 of the Interpretative and Legislative Reform (Scotland) Act 2010)."

(7) In subsection (6) after "Regulations" insert " made by the Secretary of State ".

(8) After subsection (6) insert—

"(6A) Regulations made by the Scottish Ministers may impose obligations or confer functions on a person (including the Scottish Ministers)."

(9) Where an amendment made by this section imposes a requirement to consult or to obtain consent, the requirement may be satisfied by consultation undertaken or consent obtained before this section comes into force.

**Commencement Information**

**I1** S. 58 in force at 1.12.2017 for specified purposes by S.I. 2017/1157, **reg. 3(a)**

**I2** S. 58 in force at 1.4.2018 in so far as not already in force by S.I. 2017/1157, **reg. 4**

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**Changes and effects yet to be applied to :**

– specified provision(s) amendment to earlier commencing S.I. 2017/455, reg. 3 by S.I. 2019/1438 reg. 2