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SCHEDULES

[^{F1}SCHEDULE 1

CONSTITUENCIES, REGIONS AND REGIONAL MEMBERS

Textual Amendments

- F1** Sch. 1 substituted (22.7.2004 with effect subject to transitional modifications set out in Sch. 2 of the amending Act until "the appropriate date", see s. 1(2)(3) of the amending Act) by [Scottish Parliament \(Constituencies\) Act 2004 \(c. 13\)](#), s. 1(1)-(4), **Sch. 1** (however, paras. 3-14 of Sch. 1 as so substituted or as so substituted and modified (as the case may be) have no effect until 30.6.2007, see s. 1(4))

General

- 1 (1) There are to be 73 constituencies for the purposes of this Act.
- (2) The constituencies are—
- the Orkney Islands,
 - the Shetland Islands, and
 - the parliamentary constituencies in Scotland (except the constituency of Orkney and Shetland) provided for by Article 2 of and the Schedule to the Parliamentary Constituencies (Scotland) Order 1995 (S.I. 1995/1037).
- (3) The reference to the Parliamentary Constituencies (Scotland) Order 1995 is a reference to that Order as at 11 April 1995 (the day it was made).
- 2 (1) There are to be eight regions for the purposes of this Act.
- (2) The regions are the eight European Parliamentary constituencies which were provided for by the European Parliamentary Constituencies (Scotland) Order 1996 (S.I. 1996/1926).
- (3) Seven regional members are to be returned for each region.

Reports of the Electoral Commission

- 3 (1) The Electoral Commission must keep under review the boundaries of the constituencies (other than those mentioned in paragraph 1(2)(a) and (b)).
- (2) The review must be conducted in accordance with the constituency rules.
- (3) The Electoral Commission must submit to the Secretary of State a report—
- showing the alterations they propose to the boundaries, or
 - stating that in their opinion no alteration should be made.

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- (4) The first report of the Electoral Commission under this paragraph must be submitted to the Secretary of State not later than 30 June 2010.
 - (5) Subsequent reports must be submitted not less than eight nor more than twelve years after the date of the submission of the last report.
 - (6) The Electoral Commission may also from time to time (but not before the submission of their first report) submit to the Secretary of State reports with respect to the area comprised in any two or more constituencies showing the constituencies into which they recommend the area should be divided in order to give effect to the constituency rules.
 - (7) A report under sub-paragraph (6) must recommend the same number of constituencies as that in which the area is comprised.
 - (8) A report of the Electoral Commission which recommends an alteration to the boundaries of constituencies must state as respects each constituency—
 - (a) the name by which they recommend it is to be known;
 - (b) whether they recommend that it is to be a county or a burgh constituency.
 - (9) As soon as practicable after the Electoral Commission have submitted a report to the Secretary of State under this paragraph he must lay before Parliament—
 - (a) the report, and
 - (b) the draft of an Order in Council for giving effect to the recommendations contained in the report.
 - (10) Sub-paragraph (9)(b) does not apply if the report states that no alteration is required to be made to the boundaries of the constituencies.
 - (11) The Electoral Commission must at the same time as they submit a report in accordance with sub-paragraph (3) or (6) lay any report recommending an alteration in the constituencies before the Parliament.
- 4
- (1) This paragraph applies if the Electoral Commission submit a report to the Secretary of State recommending an alteration in a constituency.
 - (2) In the report the Electoral Commission must recommend any alteration in any of the regions which they think is necessary to give effect to the regional rules.
 - (3) A report making a recommendation for an alteration in a region must recommend the name by which the Electoral Commission think the region should be known.

Review and proposed recommendations by Boundary Committee for Scotland

- 5
- (1) If the Electoral Commission intend to consider making a report under paragraph 3 the Boundary Committee for Scotland (the Boundary Committee) must carry out a review for the purpose of enabling them to submit to the Electoral Commission proposals as to the recommendations to be included in the report.
 - (2) After the Boundary Committee have carried out the review they must submit to the Electoral Commission a report containing the recommendations which the Boundary Committee propose should be included in the report under paragraph 3.
 - (3) On receipt of a report from the Boundary Committee the Electoral Commission may—

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- (a) accept in full the proposed recommendations and include them in their report under paragraph 3;
 - (b) accept the proposed recommendations subject to modifications agreed with the Boundary Committee and include them as so modified in their report;
 - (c) reject the recommendations.
- (4) If the Electoral Commission reject the proposed recommendations they may—
 - (a) require the Boundary Committee to reconsider the proposed recommendations with a view to deciding whether to submit a further report under sub-paragraph (2) containing different proposed recommendations,
 - (b) require the Boundary Committee to carry out a fresh review under sub-paragraph (1) with respect to the whole, or any specified part of the area which was the subject of the original review, or
 - (c) if, and only if, the review was carried out for the purpose of a report under paragraph 3(6), take no further action.
- (5) In the exercise of their functions under this paragraph, the Boundary Committee must comply with any directions given to them by the Electoral Commission.
- (6) But a direction under sub-paragraph (5) must not be inconsistent with the constituency rules or the regional rules.

Orders in Council

- 6 (1) The draft of an Order in Council laid before Parliament by the Secretary of State for giving effect to the recommendations contained in a report by the Electoral Commission under paragraph 3 may make provision for any matters which he thinks are incidental to or consequential on the recommendations.
- (2) If the draft is approved by resolution of each House of Parliament the Secretary of State must submit it to Her Majesty in Council.
- (3) If a motion for the approval of the draft is rejected by either House of Parliament or withdrawn by leave of the House the Secretary of State may amend the draft and lay the amended draft before Parliament.
- (4) If the draft as so amended is approved by resolution of each House of Parliament the Secretary of State must submit it to Her Majesty in Council.
- (5) If a draft of an Order in Council is submitted to Her Majesty in Council under this Schedule, Her Majesty in Council may make an order in terms of the draft.
- (6) An Order in Council made as mentioned in sub-paragraph (5) comes into force on the date specified in the Order.
- (7) The coming into force of the Order does not affect the return of any member to the Parliament or its constitution until the Parliament is dissolved.
- (8) The validity of an Order in Council purporting to be made under this Schedule and reciting that a draft of the Order has been approved by a resolution of each House of Parliament must not be called in question in any legal proceedings whatsoever.

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Notice of proposed report or recommendations

- 7 (1) If the Electoral Commission intend to consider making a report under this Schedule—
- (a) they must inform the Secretary of State by notice in writing;
 - (b) they must publish a copy of the notice in the Edinburgh Gazette.
- (2) If the Boundary Committee have provisionally determined proposed recommendations affecting a constituency which they are minded to include in a report under paragraph 5(2) they must publish in at least one newspaper circulating in the constituency a notice stating—
- (a) the effect of the proposed recommendations and (except if the effect is that no alteration should be made in respect of the constituency) that a copy of the recommendations is open to inspection at a specified place in the constituency, and
 - (b) that representations with respect to the proposed recommendations may be made to the Boundary Committee before the end of the period of one month starting the day after the notice is published.
- (3) The Boundary Committee must take into account any representations made in accordance with the notice.
- (4) If the Boundary Committee revise any proposed recommendations after publishing notice of them under sub-paragraph (2) they must comply again with sub-paragraphs (2) and (3) in relation to the revised recommendations as if no earlier notice had been published.
- (5) If the Electoral Commission are minded to exercise in relation to the Boundary Committee's proposed recommendations any of the powers conferred by paragraph 5(3)(b) or (c) or (4) they must have regard to—
- (a) any representations made with respect to the recommendations in accordance with a notice published under sub-paragraph (2) above, or
 - (b) (if they are minded to exercise any of those powers in relation to part only of the area subject to the Boundary Committee's review) any representations so made with respect to the recommendations so far as relating to that part of the area.
- (6) If the Boundary Committee's proposed recommendations affecting a constituency have been modified by the Electoral Commission under paragraph 5(3)(b) the Boundary Committee must publish in at least one newspaper circulating in the constituency a notice stating the effect of the recommendations as so modified.
- 8 (1) This paragraph applies if the Boundary Committee provisionally determine proposed recommendations which they are minded to include in a report under paragraph 5(2) which would involve any alteration in a constituency.
- (2) The Boundary Committee must consider whether any alteration within paragraph 4(2) would be required in order to give effect to the regional rules.
- (3) The Boundary Committee's report under paragraph 5(2) must include the recommendations which they propose should be included in the Electoral Commission's report under paragraph 3 in the light of the Boundary Committee's consideration as mentioned in sub-paragraph (2) above.

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- (4) Paragraph 7 applies for the purposes of the proposed recommendations as if for any reference to a constituency there is substituted a reference to a region.

Local inquiries

- 9 (1) The Boundary Committee may if they think fit cause a local inquiry to be held in respect of any constituency or constituencies.
- (2) If the Boundary Committee receive any relevant representations objecting to a proposed recommendation for the alteration of a constituency they must not make the recommendation unless since the publication of the notice under paragraph 7(2) a local inquiry has been held in respect of the constituency.
- (3) If a local inquiry was held in respect of the constituency before the publication of the notice under paragraph 7(2), sub-paragraph (2) above does not apply if the Boundary Committee after considering—
- (a) the matters discussed at the inquiry,
 - (b) the nature of the relevant representations received, and
 - (c) any other relevant circumstances,
- think that a further local inquiry is not justified.
- (4) A relevant representation is a representation made in accordance with paragraph 7(2) (b)—
- (a) by the council for an area which is wholly or partly comprised in the constituency;
 - (b) by a body of not less than 100 persons entitled to vote as electors at an election for membership of the Parliament held in the constituency.
- 10 (1) The Boundary Committee may if they think fit cause a local inquiry to be held in respect of any region or regions.
- (2) If the Boundary Committee receive any relevant representations objecting to a proposed recommendation for the alteration of a region they must not make the recommendation unless since the publication of the notice under paragraph 7(2) a local inquiry has been held in respect of the region.
- (3) If a local inquiry was held in respect of the region before the publication of the notice under paragraph 7(2), sub-paragraph (2) above does not apply if the Boundary Committee after considering—
- (a) the matters discussed at the inquiry,
 - (b) the nature of the relevant representations received, and
 - (c) any other relevant circumstances,
- think that a further local inquiry is not justified.
- (4) A relevant representation is a representation made in accordance with paragraph 7(2) (b)—
- (a) by the council for an area which is wholly or partly included in the region;
 - (b) by a body of not less than 500 persons entitled to vote as electors at an election for membership of the Parliament held in any one or more of the constituencies included in the region.

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- 11 Section 210(4) and (5) of the Local Government (Scotland) Act 1973 (c. 69) (attendance of witnesses at inquiries) applies in relation to a local inquiry held under paragraph 9 or 10.

The constituency rules

- 12 These are the constituency rules.

Rule 1

- (1) So far as is practicable, regard must be had to the boundaries of local authority areas.
- (2) “Area” and “local authority” have the same meanings as in the Local Government (Scotland) Act 1973.

Rule 2

- (1) The electorate of a constituency must be as near the electoral quota as is practicable, having regard to Rule 1.
- (2) The Electoral Commission or the Boundary Committee (as the case may be) may depart from the strict application of Rule 1 if they think that it is desirable to do so to avoid an excessive disparity between the electorate of a constituency and the electoral quota or between the electorate of a constituency and that of neighbouring constituencies.
- (3) The electoral quota is the number obtained by dividing the total electorate by 71.
- (4) The electorate of a constituency is the aggregate of the persons falling within paragraphs (5) and (6) below.
- (5) A person falls within this paragraph if his name appears on the register of local government electors in force on the enumeration date under the Representation of the People Acts for a local government area which is situated wholly in the constituency.
- (6) A person falls within this paragraph if his name appears on the register of local government electors in force on the enumeration date under the Representation of the People Acts for a local government area which is situated partly in the constituency and his qualifying address is situated in the constituency.
- (7) The total electorate is the total number of persons whose names appear on the registers of local government electors in force on the enumeration date under the Representation of the People Acts for all of the local government areas in Scotland (except the local government areas of Orkney and Shetland).
- (8) The enumeration date is, in relation to a report of the Electoral Commission (or one made by the Boundary Committee for the purposes of it), the date on which notice with respect to the report is published in the Edinburgh Gazette in accordance with paragraph 7(1) above.
- (9) “Qualifying address” and “local government area” have the same meanings as in the Representation of the People Act 1983 (c. 2).

Rule 3

The Electoral Commission or the Boundary Committee (as the case may be) may depart from the strict application of Rules 1 and 2 if they think that special geographical considerations (including in particular the size, shape and accessibility of a constituency) render it desirable to do so.

Rule 4

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The Electoral Commission or the Boundary Committee (as the case may be) need not aim at giving full effect in all circumstances to Rules 1 to 3 but they must take account (so far as they reasonably can)—

- (a) of the inconveniences attendant on alterations of constituencies other than alterations made for the purposes of Rule 1, and
- (b) of any local ties which would be broken by such alterations.

The regional rules

13 These are the regional rules.

Rule 1

A constituency must fall wholly within a region.

Rule 2

The regional electorate of a region must be as near the regional electorate of each of the other regions as is practicable, having regard (where appropriate) to special geographical considerations.

- 14 (1) This paragraph applies for the purposes of the regional rules.
- (2) For the purposes of a report of the Electoral Commission in relation to a region, the regional electorate is the number of persons—
- (a) whose names appear on the enumeration date on the registers of local government electors in the region, and
 - (b) who are registered at addresses within a constituency included in the region.
- (3) The enumeration date is the date on which notice with respect to the report is published in the Edinburgh Gazette in accordance with paragraph 7(1) above.
- (4) Sub-paragraphs (2) and (3) also apply for the purpose of construing references to the regional electorate in relation to a report of the Boundary Committee made for the purposes of a report as mentioned in sub-paragraph (2).]

SCHEDULE 2

Section 21.

SCOTTISH PARLIAMENTARY CORPORATE BODY

Membership

- 1 A person appointed under section 21(2)(b) shall hold office until another member of the Parliament is appointed in his place unless he previously resigns, ceases to be a member of the Parliament otherwise than by virtue of a dissolution or is removed from office by resolution of the Parliament.

Property

- 2 (1) The corporation may hold property.
- (2) Subordinate legislation may provide—

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- (a) for the transfer to the corporation of any property belonging to a Minister of the Crown or government department, or
 - (b) for the corporation to have such rights or interests in relation to any property belonging to a Minister of the Crown or government department as the person making the legislation considers appropriate (whether in connection with a transfer or otherwise).
- (3) Subordinate legislation under sub-paragraph (2) in relation to any property may provide for the transfer to the corporation of any liabilities relating to the property to which a Minister of the Crown or government department is subject and which subsist immediately before the subordinate legislation comes into force.
- (4) Subordinate legislation under sub-paragraph (2) may only be made if the person making the legislation considers it appropriate to do so to enable the corporation to exercise its functions or to facilitate their exercise or in connection with their exercise or proposed exercise.

Commencement Information

- II** [Sch. 1 para. 2\(2\)-\(4\)\(7\)](#) in force for certain purposes at 25.1.1999; and Sch. 1 para. 2 in force at 6.5.1999 so far as not already in force by [S.I. 1998/3178](#), [art. 2\(2\)](#)

Staff

- 3 (1) The corporation shall appoint Assistant Clerks and may appoint other staff.
- (2) The Clerk and other persons appointed by the corporation are referred to in this Act as the staff of the Parliament.
- (3) It is for the corporation to determine the terms and conditions of appointment of the staff of the Parliament, including arrangements for the payment of pensions, gratuities or allowances to, or in respect of, any person who has ceased to be a member of the staff of the Parliament.
- (4) In particular, the corporation may—
- (a) make contributions or payments towards provision for such pensions, gratuities or allowances,
 - (b) establish and administer one or more pension schemes.

Powers

- 4 (1) Subject to sub-paragraph (4), the corporation may do anything which appears to it to be necessary or expedient for the purpose of or in connection with the discharge of its functions.
- (2) That includes, in particular—
- (a) entering into contracts,
 - (b) charging for goods or services,
 - (c) investing sums not immediately required in relation to the discharge of its functions, and
 - (d) accepting gifts.

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- (3) The corporation may sell goods or provide services, and may make arrangements for the sale of goods or provision of services, to the public.
- (4) The corporation may borrow sums in sterling by way of overdraft or otherwise for the purpose of meeting a temporary excess of expenditure over sums otherwise available to meet that expenditure.
- (5) The corporation may borrow money only under sub-paragraph (4) and may borrow under that sub-paragraph only in accordance with the special or general approval of the Parliament.

Delegation

- 5 The corporation may delegate any of its functions to the Presiding Officer or the Clerk.

Proceedings and business

- 6 (1) The validity of any act of the corporation shall not be affected by any vacancy among the members, or by any defect in the appointment, or qualification for membership, of any member.
- (2) The corporation may determine its own procedure.
- (3) The Presiding Officer shall preside at meetings of the corporation, but the corporation may appoint another of its members to preside if the office of Presiding Officer is vacant or the Presiding Officer is for any reason unable to act.

Crown status

- 7 (1) Her Majesty may by Order in Council provide for the corporation to be treated to any extent as a Crown body for the purposes of any enactment.
- (2) In particular, the Order may for the purposes of any enactment provide—
 - (a) for employment under the corporation to be treated as employment under the corporation as a Crown body,
 - (b) for land held, used or managed by the corporation, or operations carried out by or on behalf of the corporation, to be treated (as the case may be) as land held, used or managed, or operations carried out by or on behalf of, the corporation as a Crown body.
- (3) For the purposes of this paragraph, “Crown body” means a body which is the servant or agent of the Crown, and includes a government department.

Commencement Information

12 Sch. 2 para. 7 in force for certain purposes at 25.1.1999 and at 6.5.1999 for all remaining purposes by S.I. 1998/3178, art. 2(2)

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SCHEDULE 3

Section 22.

STANDING ORDERS – FURTHER PROVISION

Preservation of order

- 1 (1) The standing orders shall include provision for preserving order in the proceedings of the Parliament, including provision for—
- (a) preventing conduct which would constitute a criminal offence or contempt of court, and
 - (b) a sub judice rule.
- (2) Such provision may provide for excluding a member of the Parliament from proceedings.

Withdrawal of rights and privileges

- 2 The standing orders may include provision for withdrawing from a member of the Parliament his rights and privileges as a member.

Proceedings to be in public

- 3 (1) The standing orders shall include provision requiring the proceedings of the Parliament to be held in public, except in such circumstances as the standing orders may provide.
- (2) The standing orders may include provision as to the conditions to be complied with by any member of the public attending the proceedings, including provision for excluding from the proceedings any member of the public who does not comply with those conditions.

Reporting and publishing proceedings

- 4 The standing orders shall include provision for reporting the proceedings of the Parliament and for publishing the reports.

The Presiding Officer and deputies

- 5 The standing orders shall include provision for ensuring that the Presiding Officer and deputies do not all represent the same political party.

Committees

- 6 (1) Standing orders which provide for the appointment of committees may include provision for those committees to have power to appoint sub-committees.
- (2) The standing orders shall include provision for ensuring that, in appointing members to committees and sub-committees, regard is had to the balance of political parties in the Parliament.
- (3) The standing orders may include provision for excluding from the proceedings of a committee or sub-committee a member of the Parliament who is not a member of the committee or sub-committee.

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Crown interests

- 7 The standing orders shall include provision for ensuring that a Bill containing provisions which would, if the Bill were a Bill for an Act of Parliament, require the consent of Her Majesty, the Prince and Steward of Scotland or the Duke of Cornwall shall not pass unless such consent has been signified to the Parliament.

SCHEDULE 4

Sections 29 and 53(4).

ENACTMENTS ETC. PROTECTED FROM MODIFICATION

PART I

THE PROTECTED PROVISIONS

Particular enactments

- 1 (1) An Act of the Scottish Parliament cannot modify, or confer power by subordinate legislation to modify, any of the following provisions.
- (2) The provisions are—
- (a) Articles 4 and 6 of the ^{M1}Union with Scotland Act 1706 and of the ^{M2}Union with England Act 1707 so far as they relate to freedom of trade,
 - (b) the ^{M3}Private Legislation Procedure (Scotland) Act 1936,
 - (c) the following provisions of the ^{M4}European Communities Act 1972—
 - Section 1 and Schedule 1,
 - Section 2, other than subsection (2), the words following “such Community obligation” in subsection (3) and the words “subject to Schedule 2 to this Act” in subsection (4),
 - Section 3(1) and (2),
 - Section 11(2),
 - (d) paragraphs 5(3)(b) and 15(4)(b) of Schedule 32 to the ^{M5}Local Government, Planning and Land Act 1980 (designation of enterprise zones),
 - (e) sections 140A to 140G of the ^{M6}Social Security Administration Act 1992 (rent rebate and rent allowance subsidy and council tax benefit),
 - (f) the ^{M7}Human Rights Act 1998.

Marginal Citations

M1 1706 c. 11.

M2 1707 c. 7(S).

M3 1936 c. 52.

M4 1972 c. 68.

M5 1980 c. 65.

M6 1992 c. 5.

M7 1998 c. 42.

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The law on reserved matters

- 2 (1) An Act of the Scottish Parliament cannot modify, or confer power by subordinate legislation to modify, the law on reserved matters.
- (2) In this paragraph, “the law on reserved matters” means—
- (a) any enactment the subject-matter of which is a reserved matter and which is comprised in an Act of Parliament or subordinate legislation under an Act of Parliament, and
 - (b) any rule of law which is not contained in an enactment and the subject-matter of which is a reserved matter,
- and in this sub-paragraph “Act of Parliament” does not include this Act.
- (3) Sub-paragraph (1) applies in relation to a rule of Scots private law or Scots criminal law (whether or not contained in an enactment) only to the extent that the rule in question is special to a reserved matter or the subject-matter of the rule is—
- (a) interest on sums due in respect of taxes or excise duties and refunds of such taxes or duties, or
 - (b) the obligations, in relation to occupational or personal pension schemes, of the trustees or managers [^{F2}or]
 - [^{F2}(c) the obligations under an order made by virtue of section 12A(2) or (3) of the Family Law (Scotland) Act 1985 ^{M8}(orders relating to pensions lump sums) of the person responsible for a pension arrangement other than an occupational or personal pension scheme; or
 - ^{F2}(d) the obligations under Chapter I of Part IV of the Welfare Reform and Pensions Act 1999 ^{M9}(sharing of rights under pension arrangements) of the person responsible for such a pension arrangement; or
 - ^{F2}(e) the effect of Chapter II of Part IV of that Act of 1999 (sharing of rights in state pension schemes) as read with Part II of the Social Security Contributions and Benefits Act 1992 ^{M10}(contributory benefits).]
- [^{F3}(4) In sub paragraph (3)(c) “pension arrangement” and “person responsible for a pension arrangement” have the same meaning as in section 27(1) of the Family Law (Scotland) Act 1985.]

Textual Amendments

F2 Sch. 4 Pt. I para. 2(3)(c)-(e) and the word preceding it inserted (13.7.2000) by S.I. 2000/1831, art. 2(a)

F3 Sch. 4 Pt. I para. 2(4) substituted (13.7.2000) by S.I. 2000/1831, art. 2(b)

Marginal Citations

M8 1985 c.37. Section 12A was inserted by the Pensions Act 1995 (c.26), section 167.

M9 1999 c.30.

M10 1992 c.4.

- 3 (1) Paragraph 2 does not apply to modifications which—
- (a) are incidental to, or consequential on, provision made (whether by virtue of the Act in question or another enactment) which does not relate to reserved matters, and
 - (b) do not have a greater effect on reserved matters than is necessary to give effect to the purpose of the provision.

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- (2) In determining for the purposes of sub-paragraph (1)(b) what is necessary to give effect to the purpose of a provision, any power to make laws other than the power of the Parliament is to be disregarded.

This Act

- 4 (1) An Act of the Scottish Parliament cannot modify, or confer power by subordinate legislation to modify, this Act.
- (2) This paragraph does not apply to modifying sections 1(4), 17(5), 19(7), 21(5), 24(2), 28(5), 39(7), 40 to 43, 50, 69(3), 85 [^{F4}, 93 and 97] and paragraphs 4(1) to (3) and 6(1) of Schedule 2.
- (3) This paragraph does not apply to modifying any provision of this Act (other than sections 64(7), 66(2), 71(7), 77, 78 and 119) which—
- (a) charges any sum on the Scottish Consolidated Fund,
 - (b) requires any sum to be paid out of that Fund without further approval, ^{F5} . . .
 - [^{F6}(c) requires any sum to be payable out of that Fund, or
 - (d)] requires or authorises the payment of any sum into that Fund.
- (4) This paragraph does not apply to any modifications of Part III which are necessary or expedient for the purpose or in consequence of the establishment of a new fund, in addition to the Scottish Consolidated Fund, out of which loans may be made by the Scottish Ministers.
- (5) This paragraph does not apply to—
- (a) modifying so much of any enactment as is modified by this Act,
 - (b) repealing so much of any provision of this Act as amends any enactment, if the provision ceases to have effect in consequence of any enactment comprised in or made under an Act of the Scottish Parliament.

Textual Amendments

- F4** Words in Sch. 4 Pt. I para. 4(2) substituted (1.7.1999) by S.I. 1999/1749, arts. 1, 2(1); S.I. 1998/3178, art. 3
- F5** Words in Sch. 4 Pt. I para. 4(3)(b)(c) left out (13.7.2000) by virtue of S.I. 2000/1831, art. 3
- F6** Sch. 4 Pt. I para. 4(c) and word “(d)” inserted (13.7.2000) by S.I. 2000/1831, art. 3

- [^{F7}4A (1) Paragraph 4 does not apply to prevent an Act of the Scottish Parliament modifying this Act to make provision requiring any proceedings to which this paragraph applies to be brought before the end of the relevant period.
- (2) This paragraph applies to any proceedings against the Scottish Ministers or a member of the Scottish Executive that may, by virtue of this Act, be brought in any court or tribunal by any person (other than a person mentioned in sub-paragraph (3)) on the ground that an act of the Scottish Ministers or of a member of the Scottish Executive is incompatible with the Convention rights.
- (3) This paragraph 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.

Status: Point in time view as at 01/10/2009.

Changes to legislation: Scotland Act 1998 is up to date with all changes known to be in force on or before 19 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)

- (4) In sub-paragraph (1) “relevant period” in relation to any proceedings to which this paragraph applies means—
- (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.
- (5) An Act of the Scottish Parliament may provide for the provision mentioned in sub-paragraph (1) to have effect subject to any rule imposing a stricter time limit in relation to the procedure in question.
- (6) In this paragraph “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).]

Textual Amendments

F7 Sch. 4 para. 4A inserted (S.) (11.6.2009) by [The Scotland Act 1998 \(Modification of Schedule 4\) Order 2009 \(S.I. 2009/1380\)](#), arts. 1(1), 2

Enactments modified by this Act

- 5 An Act of the Scottish Parliament cannot modify, or confer power by subordinate legislation to modify—
- (a) the effect of section 119(3) in relation to any provision of an Act of Parliament relating to judicial salaries,
 - (b) so much of any enactment as—
 - (i) is amended by paragraph 2, 7 or 32 of Schedule 8, and
 - (ii) relates to the Advocate General,
 - (c) so much of any enactment as is amended by paragraph 9(b) or 29 of Schedule 8.

Shared powers

- 6 An Act of the Scottish Parliament cannot modify, or confer power by subordinate legislation to modify, any enactment so far as the enactment relates to powers exercisable by a Minister of the Crown by virtue of section 56.

PART II

GENERAL EXCEPTIONS

Restatement, etc.

- 7 (1) Part I of this Schedule does not prevent an Act of the Scottish Parliament—
- (a) restating the law (or restating it with such modifications as are not prevented by that Part), or
 - (b) repealing any spent enactment,
- or conferring power by subordinate legislation to do so.

Status: Point in time view as at 01/10/2009.

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- (2) For the purposes of paragraph 2, the law on reserved matters includes any restatement in an Act of the Scottish Parliament, or subordinate legislation under such an Act, of the law on reserved matters if the subject-matter of the restatement is a reserved matter.

Effect of Interpretation Act 1978

- 8 Part I of this Schedule does not prevent the operation of any provision of the ^{M11}Interpretation Act 1978.

Marginal Citations

M11 1978 c. 30.

Change of title etc.

- 9 (1) Part I of this Schedule does not prevent an Act of the Scottish Parliament amending, or conferring power by subordinate legislation to amend, any enactment by changing—
- (a) any of the titles referred to in sub-paragraph (2), or
 - (b) any reference to a declarator,
- in consequence of any provision made by or under an Act of the Scottish Parliament.
- (2) The titles are those of—
- (a) any court or tribunal or any judge, chairman or officer of a court or tribunal,
 - (b) any holder of an office in the Scottish Administration which is not a ministerial office or any member of the staff of the Scottish Administration,
 - (c) any register.

Accounts and audit and maladministration

- 10 Part I of this Schedule does not prevent an Act of the Scottish Parliament modifying, or conferring power by subordinate legislation to modify, any enactment for or in connection with the purposes of section 70 or 91.

Subordinate legislation

- 11 (1) Part I of this Schedule does not prevent an Act of the Scottish Parliament modifying, or conferring power by subordinate legislation to modify, any enactment for or in connection with any of the following purposes.
- (2) Those purposes are—
- (a) making different provision in respect of the document by which a power to make subordinate legislation within sub-paragraph (3) is to be exercised,
 - (b) making different provision (or no provision) for the procedure, in relation to the Parliament, to which legislation made in the exercise of such a power (or the instrument or other document in which it is contained) is to be subject,
 - (c) applying any enactment comprised in or made under an Act of the Scottish Parliament relating to the documents by which such powers may be exercised.

Status: Point in time view as at 01/10/2009.

Changes to legislation: Scotland Act 1998 is up to date with all changes known to be in force on or before 19 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)

- (3) The power to make the subordinate legislation, or a power to confirm or approve the legislation, must be exercisable by—
- (a) a member of the Scottish Executive,
 - (b) any Scottish public authority with mixed functions or no reserved functions,
 - (c) any other person (not being a Minister of the Crown) within devolved competence.

PART III

CONSEQUENTIAL MODIFICATION OF SECTIONS 53 AND 54

- 12 (1) This paragraph applies to a function which (apart from this Schedule) would be transferred to the Scottish Ministers by virtue of section 53(2)(c).
- (2) If, because of anything in Part I of this Schedule, a provision of an Act of the Scottish Parliament modifying an enactment so as to provide for the function to be exercisable by a different person would be outside the legislative competence of the Parliament, the function is not so transferred.
- 13 (1) Paragraph 12 does not apply to any function conferred by any provision of—
- (a) the ^{M12}European Communities Act 1972,
 - (b) the ^{M13}Human Rights Act 1998, except sections 1, 5, 14 to 17 and 22 of that Act,
 - (c) the law on reserved matters (for the purposes of paragraph 2) so far as contained in an enactment.
- (2) For the purpose of determining—
- (a) whether any function under any of the provisions referred to in sub-paragraph (1) is transferred to the Scottish Ministers by virtue of section 53, and
 - (b) the extent to which any such function (other than a function of making, confirming or approving subordinate legislation) is exercisable by them,
- the references in section 54 to the legislative competence of the Parliament are to be read as if section 29(2)(c) were omitted.
- (3) Part I of this Schedule does not prevent an Act of the Scottish Parliament modifying, or conferring power by subordinate legislation to modify, any of the provisions mentioned in sub-paragraph (1) so as to provide for a function transferred to the Scottish Ministers by virtue of section 53 to be exercisable by a different person.

Marginal Citations

M12 1972 c. 68.

M13 1998 c. 42.

- 14 If any pre-commencement enactment or prerogative instrument is modified by subordinate legislation under section 105, a function under that enactment or instrument (whether as it has effect before or after the modification) is not transferred by virtue of section 53 if the subordinate legislation provides that it is not to be so transferred.

Status: Point in time view as at 01/10/2009.

Changes to legislation: Scotland Act 1998 is up to date with all changes known to be in force on or before 19 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)

SCHEDULE 5

Section 30.

RESERVED MATTERS

PART I

GENERAL RESERVATIONS

The Constitution

- 1 The following aspects of the constitution are reserved matters, that is—
- (a) the Crown, including succession to the Crown and a regency,
 - (b) the Union of the Kingdoms of Scotland and England,
 - (c) the Parliament of the United Kingdom,
 - (d) the continued existence of the High Court of Justiciary as a criminal court of first instance and of appeal,
 - (e) the continued existence of the Court of Session as a civil court of first instance and of appeal.
- 2 (1) Paragraph 1 does not reserve—
- (a) Her Majesty’s prerogative and other executive functions,
 - (b) functions exercisable by any person acting on behalf of the Crown, or
 - (c) any office in the Scottish Administration.
- (2) Sub-paragraph (1) does not affect the reservation by paragraph 1 of honours and dignities or the functions of the Lord Lyon King of Arms so far as relating to the granting of arms; but this sub-paragraph does not apply to the Lord Lyon King of Arms in his judicial capacity.
- (3) Sub-paragraph (1) does not affect the reservation by paragraph 1 of the management (in accordance with any enactment regulating the use of land) of the Crown Estate.
- (4) Sub-paragraph (1) does not affect the reservation by paragraph 1 of the functions of the Security Service, the Secret Intelligence Service and the Government Communications Headquarters.
- [^{F8}(5) Sub-paragraph (1) does not affect the reservation by paragraph 1 of the functions exercisable through the Export Credits Guarantee Department.]

Textual Amendments

F8 Sch. 5 Pt. I para. 2(5) inserted (1.7.1999) by [S.I. 1999/1749](#), [arts. 1, 3](#); [S.I. 1998/3178](#), [art. 3](#)

- 3 (1) Paragraph 1 does not reserve property belonging to Her Majesty in right of the Crown or belonging to any person acting on behalf of the Crown or held in trust for Her Majesty for the purposes of any person acting on behalf of the Crown.
- (2) Paragraph 1 does not reserve the ultimate superiority of the Crown or the superiority of the Prince and Steward of Scotland.
- (3) Sub-paragraph (1) does not affect the reservation by paragraph 1 of—

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- (a) the hereditary revenues of the Crown, other than revenues from bona vacantia, ultimus haeres and treasure trove,
 - (b) the royal arms and standard,
 - (c) the compulsory acquisition of property held or used by a Minister of the Crown or government department.
- 4 (1) Paragraph 1 does not reserve property held by Her Majesty in Her private capacity.
- (2) Sub-paragraph (1) does not affect the reservation by paragraph 1 of the subject-matter of the Crown Private Estates Acts 1800 to 1873.
- 5 Paragraph 1 does not reserve the use of the Scottish Seal.

Political parties

- 6 The registration and funding of political parties is a reserved matter [^{F9}but this paragraph does not reserve making payments to any political party for the purpose of assisting members of the Parliament who are connected with the party to perform their Parliamentary duties].

Textual Amendments

F9 Words in Sch. 5 Pt. I para. 6 inserted (1.7.1999) by [S.I. 1999/1749](#), **arts. 1, 2(2)**; [S.I. 1998/3178](#), **art. 3**

Foreign affairs etc.

- 7 (1) International relations, including relations with territories outside the United Kingdom, the European Communities (and their institutions) and other international organisations, regulation of international trade, and international development assistance and co-operation are reserved matters.
- (2) Sub-paragraph (1) does not reserve—
- (a) observing and implementing international obligations, obligations under the Human Rights Convention and obligations under Community law,
 - (b) assisting Ministers of the Crown in relation to any matter to which that sub-paragraph applies.

Public service

- 8 (1) The Civil Service of the State is a reserved matter.
- (2) Sub-paragraph (1) does not reserve the subject-matter of—
- (a) Part I of the Sheriff Courts and Legal Officers (Scotland) Act 1927 (appointment of sheriff clerks and procurators fiscal etc.),
 - (b) Part III of the Administration of Justice (Scotland) Act 1933 (officers of the High Court of Justiciary and of the Court of Session).

Defence

- 9 (1) The following are reserved matters—
- (a) the defence of the realm,

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- (b) the naval, military or air forces of the Crown, including reserve forces,
- (c) visiting forces,
- (d) international headquarters and defence organisations,
- (e) trading with the enemy and enemy property.

(2) Sub-paragraph (1) does not reserve—

- (a) the exercise of civil defence functions by any person otherwise than as a member of any force or organisation referred to in sub-paragraph (1)(b) to (d) or any other force or organisation reserved by virtue of sub-paragraph (1)(a),
- (b) the conferral of enforcement powers in relation to sea fishing.

Treason

- 10 Treason (including constructive treason), treason felony and misprision of treason are reserved matters.

PART II

SPECIFIC RESERVATIONS

Preliminary

- 1 The matters to which any of the Sections in this Part apply are reserved matters for the purposes of this Act.
- 2 A Section applies to any matter described or referred to in it when read with any illustrations, exceptions or interpretation provisions in that Section.
- 3 Any illustrations, exceptions or interpretation provisions in a Section relate only to that Section (so that an entry under the heading “exceptions” does not affect any other Section).

Reservations

Head A – Financial and Economic Matters

A1. Fiscal, economic and monetary policy

Section A1.

Fiscal, economic and monetary policy, including the issue and circulation of money, taxes and excise duties, government borrowing and lending, control over United Kingdom public expenditure, the exchange rate and the Bank of England.

Exception

Local taxes to fund local authority expenditure (for example, council tax and non-domestic rates).

A2. The currency

Section A2.

Coinage, legal tender and bank notes.

Status: Point in time view as at 01/10/2009.

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A3. Financial services

Section A3.

Financial services, including investment business, banking and deposit-taking, collective investment schemes and insurance.

Exception

The subject-matter of section 1 of the Banking and Financial Dealings Act 1971 (bank holidays).

A4. Financial markets

Section A4.

Financial markets, including listing and public offers of securities and investments, transfer of securities and insider dealing.

A5. Money laundering

Section A5.

The subject-matter of the Money Laundering Regulations 1993, but in relation to any type of business.

Head B – Home Affairs

B1. Misuse of drugs

Section B1.

The subject-matter of—

- (a) the Misuse of Drugs Act 1971,
- (b) sections 12 to 14 of the Criminal Justice (International Co-operation) Act 1990 (substances useful for manufacture of controlled drugs), and
- (c) Part V of the Criminal Law (Consolidation) (Scotland) Act 1995 (drug trafficking) and, so far as relating to drug trafficking, the Proceeds of Crime (Scotland) Act 1995.

B2. Data protection

Section B2.

The subject-matter of—

- (a) the Data Protection Act 1998, and
- (b) Council Directive [95/46/EC](#) (protection of individuals with regard to the processing of personal data and on the free movement of such data).

Interpretation

If any provision of the Data Protection Act 1998 is not in force on the principal appointed day, it is to be treated for the purposes of this reservation as if it were.

B3. Elections

Section B3.

Elections for membership of the House of Commons, the European Parliament and the Parliament, including the subject-matter of—

- (a) [^{F10}the European Parliamentary Elections Act 2002.]
- (b) the Representation of the People Act 1983 and the Representation of the People Act 1985, and
- (c) the Parliamentary Constituencies Act 1986,

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so far as those enactments apply, or may be applied, in respect of such membership.
The franchise at local government elections.

[^{F11} Interpretation

Paragraph 5(1) of Part 3 of this Schedule does not apply to the subject-matter of the European Parliamentary Elections Act 2002; and the reference to the subject-matter of that Act is to be construed as a reference to it as at the date that Act received Royal Assent.]

Textual Amendments

- F10** Sch. 5 Pt. II Section B3: para. (a) substituted (24.10.2002) by [European Parliamentary Elections Act 2002 \(c. 24\), s. 15](#) {Sch. 3 para. 7(3)}
- F11** Sch. 5 Pt. II Section B3: words added (17.12.2004) by [The Scotland Act 1998 \(Modifications of Schedule 5\) Order 2004 \(S.I. 2004/3329\)](#), arts. 1(1), 2

Textual Amendments

- F10** Sch. 5 Pt. II Section B3: para. (a) substituted (24.10.2002) by [European Parliamentary Elections Act 2002 \(c. 24\), s. 15](#) {Sch. 3 para. 7(3)}
- F11** Sch. 5 Pt. II Section B3: words added (17.12.2004) by [The Scotland Act 1998 \(Modifications of Schedule 5\) Order 2004 \(S.I. 2004/3329\)](#), arts. 1(1), 2

B4. Firearms

Section B4.

The subject-matter of the Firearms Acts 1968 to 1997.

B5. Entertainment

Section B5.

The subject-matter of—

- (a) the Video Recordings Act 1984, and
- (b) sections 1 to 3 and 5 to 16 of the Cinemas Act 1985 (control of exhibitions).

The classification of films for public exhibition by reference to their suitability for viewing by persons generally or above a particular age, with or without any advice as to the desirability of parental guidance.

B6. Immigration and nationality

Section B6.

Nationality; immigration, including asylum and the status and capacity of persons in the United Kingdom who are not British citizens; free movement of persons within the European Economic Area; issue of travel documents.

B7. Scientific procedures on live animals

Section B7.

The subject-matter of the Animals (Scientific Procedures) Act 1986.

B8. National security, interception of communications, official secrets and terrorism

Section B8.

National security.

Status: Point in time view as at 01/10/2009.

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The interception of communications; but not

- (a) ^{F12}the interception of any communication made to or by a person detained at a place of detention, if the communication-
 - (i) is a written communication and is intercepted there, or
 - (ii) is intercepted in the course of its transmission by means of a private telecommunication system running there,]
- (b) the subject matter of Part III of the Police Act 1997 (authorisation to interfere with property etc.) or surveillance not involving interference with property.

The subject-matter of—

- (a) the Official Secrets Acts 1911 and 1920, and
- (b) the Official Secrets Act 1989, except so far as relating to any information, document or other article protected against disclosure by section 4(2) (crime) and not by any other provision of sections 1 to 4.

Special powers, and other special provisions, for dealing with terrorism.

^{F13} Interpretation

“Place of detention” means a prison, young offenders institution, remand centre or legalised police cell (as those expressions are defined for the purposes of the Prisons (Scotland) Act 1989 or a hospital (within the meaning of the ^{F14} given in section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003]; and “person detained”, in relation to a hospital, means a person detained there^{F15} under—

- (a) section 24, 25 or 70 of the Mental Health (Scotland) Act 1984;
- (b) Part 6 of the Criminal Procedure (Scotland) Act 1995;
- (c) the Mental Health (Care and Treatment) (Scotland) Act 2003; or
- (d) regulations under—
 - (i) subsection (3) of section 116B of the Army Act 1955;
 - (ii) subsection (3) of section 116B of the Air Force Act 1955; or
 - (iii) section 63B of the Naval Discipline Act 1957.]

^{F16}“Private telecommunication system” has the meaning given in section 2(1) of the Regulation of Investigatory Powers Act 2000.]]

Textual Amendments

- F12** Sch. 5 Pt. II Section B8: words inserted (1.7.1999) by S.I. 1999/1749, **arts. 1, 4(1)**; S.I. 1998/3178, **art. 3**
- F13** Sch. 5 Pt. II Section B8: words inserted (1.7.1999) by The Scotland Act 1998 (Modifications of Schedules 4 and 5) Order 1999 (S.I. 1999/1749), **arts. 1, 4(1)**; S.I. 1998/3178, **art. 3**
- F14** Sch. 5 Pt. II Section B8: words in definition of "Place of detention" substituted (23.3.2005) by The Scotland Act 1998 (Modifications of Schedule 5) (No. 2) Order 2005 (S.I. 2005/866), **art. 2(2)**
- F15** Sch. 5 Pt. II Section B8: words in definition of "person detained" substituted (23.3.2005) by The Scotland Act 1998 (Modifications of Schedule 5) (No. 2) Order 2005 (S.I. 2005/866), **art. 2(3)**
- F16** Sch. 5 Pt. II Section B8: definition of "Private telecommunication system" substituted (23.3.2005) by The Scotland Act 1998 (Modifications of Schedule 5) (No. 2) Order 2005 (S.I. 2005/866), **art. 2(4)**

Textual Amendments

- F12** Sch. 5 Pt. II Section B8: words inserted (1.7.1999) by S.I. 1999/1749, **arts. 1, 4(1)**; S.I. 1998/3178, **art. 3**
- F13** Sch. 5 Pt. II Section B8: words inserted (1.7.1999) by The Scotland Act 1998 (Modifications of Schedules 4 and 5) Order 1999 (S.I. 1999/1749), **arts. 1, 4(1)**; S.I. 1998/3178, **art. 3**

Status: Point in time view as at 01/10/2009.

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- F14** Sch. 5 Pt. II Section B8: words in definition of "Place of detention" substituted (23.3.2005) by [The Scotland Act 1998 \(Modifications of Schedule 5\) \(No. 2\) Order 2005 \(S.I. 2005/866\)](#), [art. 2\(2\)](#)
- F15** Sch. 5 Pt. II Section B8: words in definition of "person detained" substituted (23.3.2005) by [The Scotland Act 1998 \(Modifications of Schedule 5\) \(No. 2\) Order 2005 \(S.I. 2005/866\)](#), [art. 2\(3\)](#)
- F16** Sch. 5 Pt. II Section B8: definition of "Private telecommunication system" substituted (23.3.2005) by [The Scotland Act 1998 \(Modifications of Schedule 5\) \(No. 2\) Order 2005 \(S.I. 2005/866\)](#), [art. 2\(4\)](#)

B9. Betting, gaming and lotteries

Section B9.

Betting, gaming and lotteries.

B10. Emergency powers

Section B10.

Emergency powers.

B11. Extradition

Section B11.

Extradition.

B12. Lieutenancies

Section B12.

The subject-matter of the Lieutenancies Act 1997.

Access to information

- [^{F17}B13 Public access to information held by public bodies or holders of public offices (including government departments and persons acting on behalf of the Crown).

Exception

Information held by–

- (a) the Parliament,
- (b) any part of the Scottish Administration,
- (c) the Parliamentary corporation,
- (d) any Scottish public authority with mixed functions or no reserved functions,

unless supplied by a Minister of the Crown or government department and held in confidence.]

Textual Amendments

- F17** Sch. 5 Pt. II Section B13 inserted (1.7.1999) by [S.I. 1999/1749](#), [arts. 1, 5](#); [S.I. 1998/3178](#), [art. 3](#)

Head C – Trade and Industry

C1. Business associations

Section C1.

The creation, operation, regulation and dissolution of types of business association.

Exceptions

Status: Point in time view as at 01/10/2009.

Changes to legislation: Scotland Act 1998 is up to date with all changes known to be in force on or before 19 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)

The creation, operation, regulation and dissolution of—

- (a) particular public bodies, or public bodies of a particular type, established by or under any enactment, and
- (b) charities.

Interpretation

“Business association” means any person (other than an individual) established for the purpose of carrying on any kind of business, whether or not for profit; and “business” includes the provision of benefits to the members of an association.

C2. Insolvency

Section C2.

In relation to business associations—

- (a) the modes of, the grounds for and the general legal effect of winding up, and the persons who may initiate winding up,
- (b) liability to contribute to assets on winding up,
- (c) powers of courts in relation to proceedings for winding up, other than the power to sist proceedings,
- (d) arrangements with creditors, and
- (e) procedures giving protection from creditors.

Preferred or preferential debts for the purposes of the Bankruptcy (Scotland) Act 1985, the Insolvency Act 1986, and any other enactment relating to the sequestration of the estate of any person or to the winding up of business associations, the preference of such debts against other such debts and the extent of their preference over other types of debt.

Regulation of insolvency practitioners.

Co-operation of insolvency courts.

Exceptions

In relation to business associations—

- (a) the process of winding up, including the person having responsibility for the conduct of a winding up or any part of it, and his conduct of it or of that part,
- (b) the effect of winding up on diligence, and
- (c) avoidance and adjustment of prior transactions on winding up.

[^{F18}In relation to business associations which are social landlords, the following additional exceptions—

- (a) the general legal effect of winding up,
- (b) procedures for the initiation of winding up,
- (c) powers of courts in relation to proceedings for winding up, and
- (d) procedures giving protection from creditors,

but only in so far as they relate to a moratorium on the disposal of property held by a social landlord and the management and disposal of such property.]

Floating charges and receivers, except in relation to preferential debts, regulation of insolvency practitioners and co-operation of insolvency courts.

Interpretation

“Business association” has the meaning given in Section C1 of this Part of this Schedule, but does not include any person whose estate may be sequestrated under the Bankruptcy (Scotland) Act 1985 or any public body established by or under an enactment.

[^{F19}“Social landlord” means a body which is—

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- (a) a society registered under the Industrial and Provident Societies Act 1965 which has its registered office for the purposes of that Act in Scotland and satisfies the relevant conditions, or
- (b) a company registered under the Companies Act 1985 which has its registered office for the purposes of that Act in Scotland and satisfies the relevant conditions.

“The relevant conditions” are that the body does not trade for profit and is established for the purpose of, or has among its objects and powers, the provision, construction, improvement or management of—

- (a) houses to be kept available for letting,
- (b) houses for occupation by members of the body, where the rules of the body restrict membership to persons entitled or prospectively entitled (as tenants or otherwise) to occupy a house provided or managed by the body, or
- (c) hostels,

“house” and “hostel” having the meanings given in section 338(1) of the Housing (Scotland) Act 1987.]

“Winding up”, in relation to business associations, includes winding up of solvent, as well as insolvent, business associations.

Textual Amendments

F18 Words in Sch. 5 Pt. 2 Section C2 inserted (12.4.2001) by [S.I. 2001/1456](#), [art. 2\(1\)](#)

F19 Definitions of "Social landlord", "The relevant conditions", "house" and "hostel" in Sch. 5 Pt. II Section C2 inserted (12.4.2001) by [S.I. 2001/1456](#), [art. 2\(2\)](#)

Textual Amendments

F18 Words in Sch. 5 Pt. 2 Section C2 inserted (12.4.2001) by [S.I. 2001/1456](#), [art. 2\(1\)](#)

F19 Definitions of "Social landlord", "The relevant conditions", "house" and "hostel" in Sch. 5 Pt. II Section C2 inserted (12.4.2001) by [S.I. 2001/1456](#), [art. 2\(2\)](#)

C3. Competition

Section C3.

Regulation of anti-competitive practices and agreements; abuse of dominant position; monopolies and mergers.

Exception

Regulation of particular practices in the legal profession for the purpose of regulating that profession or the provision of legal services.

Interpretation

“The legal profession” means advocates, solicitors and qualified conveyancers and executry practitioners within the meaning of Part II of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

C4. Intellectual property

Section C4.

Intellectual property.

Exception

Status: Point in time view as at 01/10/2009.

Changes to legislation: Scotland Act 1998 is up to date with all changes known to be in force on or before 19 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)

The subject-matter of Parts I and II of the Plant Varieties Act 1997 (plant varieties and the Plant Varieties and Seeds Tribunal).

C5. Import and export control

Section C5.

The subject-matter of the Import, Export and Customs Powers (Defence) Act 1939.

Prohibition and regulation of the import and export of endangered species of animals and plants.

Exceptions

Prohibition and regulation of movement into and out of Scotland of—

- (a) food, animals, animal products, plants and plant products for the purposes of protecting human, animal or plant health, animal welfare or the environment or observing or implementing obligations under the Common Agricultural Policy, and
- (b) animal feeding stuffs, fertilisers and pesticides [^{F20}(including anything treated as if it were a pesticide by virtue of section 16(16) of the Food and Environment Protection Act 1985)] for the purposes of protecting human, animal or plant health or the environment.

Textual Amendments

F20 Words in Sch. 5 Pt. 2 Section C5 inserted (14.12.2000) by [S.I. 2000/3252](#), **art. 4**

Textual Amendments

F20 Words in Sch. 5 Pt. 2 Section C5 inserted (14.12.2000) by [S.I. 2000/3252](#), **art. 4**

C6. Sea fishing

Section C6.

Regulation of sea fishing outside the Scottish zone (except in relation to Scottish fishing boats).

Interpretation

“Scottish fishing boat” means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Scotland as the port to which the vessel is to be treated as belonging.

C7. Consumer protection

Section C7.

Regulation of—

- (a) the sale and supply of goods and services to consumers,
- (b) guarantees in relation to such goods and services,
- (c) hire-purchase, including the subject-matter of Part III of the Hire-Purchase Act 1964,
- (d) trade descriptions, except in relation to food,
- (e) misleading and comparative advertising, except regulation specifically in relation to food, tobacco and tobacco products,
- (f) price indications,
- (g) trading stamps,
- (h) auctions and mock auctions of goods and services, and
- (i) hallmarking and gun barrel proofing.

Status: Point in time view as at 01/10/2009.

Changes to legislation: Scotland Act 1998 is up to date with all changes known to be in force on or before 19 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)

Safety of, and liability for, services supplied to consumers.

The subject-matter of—

- (a) the Hearing Aid Council Act 1968,
- (b) the Unsolicited Goods and Services Acts 1971 and 1975,
- (c) Parts I to III and XI of the Fair Trading Act 1973,
- (d) the Consumer Credit Act 1974,
- (e) the Estate Agents Act 1979,
- (f) the Timeshare Act 1992,
- (g) the Package Travel, Package Holidays and Package Tours Regulations 1992, and
- (h) the Commercial Agents (Council Directive) Regulations 1993.

Exception

The subject-matter of section 16 of the Food Safety Act 1990 (food safety and consumer protection).

C8. Product standards, safety and liability

Section C8.

Technical standards and requirements in relation to products in pursuance of an obligation under Community law.

[^{F21}The national accreditation body and the accreditation of bodies which certify or assess conformity to technical standards in relation to products or environmental management systems.]

Product safety and liability.

Product labelling.

Exceptions

Food, agricultural and horticultural produce, fish and fish products, seeds, animal feeding stuffs, fertilisers and pesticides [^{F22}(including anything treated as if it were a pesticide by virtue of section 16(16) of the Food and Environment Protection Act 1985)].

In relation to food safety, materials which come into contact with food.

Textual Amendments

F21 Words in Sch. 5 Pt. 2 s. C8 inserted (14.12.2000) by [S.I. 2000/3252](#), [art. 5](#)

F22 Words in Sch. 5 Pt. 2 Section C8 inserted (14.12.2000) by [S.I. 2000/3252](#), [art. 4](#)

Textual Amendments

F21 Words in Sch. 5 Pt. 2 s. C8 inserted (14.12.2000) by [S.I. 2000/3252](#), [art. 5](#)

F22 Words in Sch. 5 Pt. 2 Section C8 inserted (14.12.2000) by [S.I. 2000/3252](#), [art. 4](#)

C9. Weights and measures

Section C9.

Units and standards of weight and measurement.

Regulation of trade so far as involving weighing, measuring and quantities.

C10. Telecommunications and wireless telegraphy

Section C10.

Telecommunications and wireless telegraphy.

Status: Point in time view as at 01/10/2009.

Changes to legislation: Scotland Act 1998 is up to date with all changes known to be in force on or before 19 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)

Internet services.

Electronic encryption.

The subject-matter of Part II of the Wireless Telegraphy Act 1949 (electromagnetic disturbance).

Exception

The subject-matter of Part III of the Police Act 1997 (authorisation to interfere with property etc.).

[^{F23}C11 Posts

The subject matter of the Postal Services Act 2000. *Exception*

Financial assistance for the provision of services (other than postal services and services relating to money or postal orders) to be provided from public post offices. *Interpretation* Paragraph 5(1) of Part III of this Schedule does not apply to this Section.

The reference to the subject matter of the Postal Services Act 2000 is to be read as a reference to the subject matter of that Act as at the date when it received Royal Assent. “postal services” and “public post offices” have the same meaning as in the Postal Services Act 2000.]

Textual Amendments

F23 Sch. 5 Pt. 2 Section C11 substituted (14.12.2000) by [S.I. 2000/3252](#) , **art. 2(1)**

C12. Research Councils

Section C12.

Research Councils within the meaning of the Science and Technology Act 1965.

The subject-matter of section 5 of that Act (funding of scientific research) so far as relating to Research Councils.

[^{F24}The Arts and Humanities Research Council within the meaning of Part 1 of the Higher Education Act 2004.

The subject-matter of section 10 of that Act (research in arts and humanities) so far as relating to that Council.

Interpretation

Paragraph 5(1) of Part 3 of this Schedule does not apply to the subject-matter of section 10 of the Higher Education Act 2004; and the reference to the subject-matter of that section is to be construed as a reference to it as at the date that Act received Royal Assent.]

Textual Amendments

F24 Sch. 5 Pt. 2 Section C12: words added (17.12.2004) by [The Scotland Act 1998 \(Modifications of Schedule 5\) Order 2004 \(S.I. 2004/3329\)](#) , **arts. 1(1) , 3**

Textual Amendments

F24 Sch. 5 Pt. 2 Section C12: words added (17.12.2004) by [The Scotland Act 1998 \(Modifications of Schedule 5\) Order 2004 \(S.I. 2004/3329\)](#) , **arts. 1(1) , 3**

Status: Point in time view as at 01/10/2009.

Changes to legislation: Scotland Act 1998 is up to date with all changes known to be in force on or before 19 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)

C13. Designation of assisted areas

Section C13.

The subject-matter of section 1 of the Industrial Development Act 1982.

C14. Industrial Development Advisory Board

Section C14.

The Industrial Development Advisory Board.

C15. Protection of trading and economic interests

Section C15.

The subject-matter of—

- (a) section 2 of the Emergency Laws (Re-enactments and Repeals) Act 1964 (Treasury power in relation to action damaging to economic position of United Kingdom),
- (b) Part II of the Industry Act 1975 (powers in relation to transfer of control of important manufacturing undertakings), and
- (c) the Protection of Trading Interests Act 1980.

Head D – Energy

D1. Electricity

Section D1.

Generation, transmission, distribution and supply of electricity.

The subject-matter of Part II of the Electricity Act 1989.

Exception

The subject-matter of Part I of the Environmental Protection Act 1990.

D2. Oil and gas

Section

Oil and gas, including—

- (a) the ownership of, exploration for and exploitation of deposits of oil and natural gas,
- (b) the subject-matter of section 1 of the Mineral Exploration and Investment Grants Act 1972 (contributions in connection with mineral exploration) so far as relating to exploration for oil and gas,
- (c) offshore installations and pipelines,
- (d) the subject-matter of the Pipe-lines Act 1962 (including section 5 (deemed planning permission)) so far as relating to pipelines within the meaning of section 65 of that Act,
- (e) the application of Scots law and the jurisdiction of the Scottish courts in relation to offshore activities,
- (f) pollution relating to oil and gas exploration and exploitation, but only outside controlled waters (within the meaning of section 30A(1) of the Control of Pollution Act 1974),
- (g) the subject-matter of Part II of the Food and Environment Protection Act 1985 so far as relating to oil and gas exploration and exploitation, but only in relation to activities outside such controlled waters,
- (h) restrictions on navigation, fishing and other activities in connection with offshore activities,
- (i) liquefaction of natural gas, and
- (j) the conveyance, shipping and supply of gas through pipes.

Status: Point in time view as at 01/10/2009.

Changes to legislation: Scotland Act 1998 is up to date with all changes known to be in force on or before 19 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)

Exceptions

The subject-matter of—

- (a) sections 10 to 12 of the Industry Act 1972 (credits and grants for construction of ships and offshore installations),
- (b) the Offshore Petroleum Development (Scotland) Act 1975, other than sections 3 to 7, and
- (c) Part I of the Environmental Protection Act 1990.

The manufacture of gas.

The conveyance, shipping and supply of gas other than through pipes.

D3. Coal

Section D3.

Coal, including its ownership and exploitation, deep and opencast coal mining and coal mining subsidence.

Exceptions

The subject-matter of—

- (a) Part I of the Environmental Protection Act 1990, and
- (b) sections 53 (environmental duties in connection with planning) and 54 (obligation to restore land affected by coal-mining operations) of the Coal Industry Act 1994.

D4. Nuclear energy

Section D4.

Nuclear energy and nuclear installations, including—

- (a) nuclear safety, security and safeguards, and
- (b) liability for nuclear occurrences.

Exceptions

The subject-matter of—

- (a) Part I of the Environmental Protection Act 1990, and
- (b) the Radioactive Substances Act 1993.

D5. Energy conservation

Section D5.

The subject-matter of the Energy Act 1976, other than section 9.

Exception

The encouragement of energy efficiency other than by prohibition or regulation.

Head E – Transport

E1. Road transport

Section E1.

The subject-matter of—

- (a) the Motor Vehicles (International Circulation) Act 1952,
- (b) the Public Passenger Vehicles Act 1981 and the Transport Act 1985, so far as relating to public service vehicle operator licensing,

Status: Point in time view as at 01/10/2009.

Changes to legislation: Scotland Act 1998 is up to date with all changes known to be in force on or before 19 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)

- (c) section 17 (traffic regulation on special roads), section 25 (pedestrian crossings), Part V (traffic signs) and Part VI (speed limits) of the Road Traffic Regulation Act 1984,
- (d) the Road Traffic Act 1988 and the Road Traffic Offenders Act 1988,
- (e) the Vehicle Excise and Registration Act 1994,
- (f) the Road Traffic (New Drivers) Act 1995, and
- (g) the Goods Vehicles (Licensing of Operators) Act 1995.

Regulation of proper hours or periods of work by persons engaged in the carriage of passengers or goods by road.

The conditions under which international road transport services for passengers or goods may be undertaken.

Regulation of the instruction of drivers of motor vehicles.

Exceptions

The subject-matter of sections 39 and 40 (road safety information and training) and 157 to 159 (payments for treatment of traffic casualties) of the Road Traffic Act 1988.

E2. Rail transport

Section E2.

Provision and regulation of railway services.

Rail transport security.

The subject-matter of the Channel Tunnel Act 1987.

The subject-matter of the Railway Heritage Act 1996.

Exceptions

Grants so far as relating to railway services; but this exception does not apply in relation to—

- (a) the subject-matter of section 63 of the Railways Act 1993 (government financial assistance where railway administration orders made),
- (b) “railway services” as defined in section 82(1)(b) of the Railways Act 1993 (carriage of goods by railway), or
- (c) the subject-matter of section 136 of the Railways Act 1993 (grants and subsidies).

[^{F25}Imposing requirements about the preparation and submission of strategies relating to the provision of rail services on Scottish public authorities with mixed functions relating to such services.]

[^{F26}The transfer of functions of passenger transport executives or passenger transport authorities relating to the provision and regulation of rail services conferred by Part II of the Transport Act 1968 and sections 32 to 36 of the Railways Act 1993 to, and the allocation of such functions among, [^{F27}relevant authorities].]

[^{F28}The promotion and construction of railways which start, end and remain in Scotland.]

Textual Amendments

F25 Sch. 5 Pt. II Section E2: paragraph inserted (14.12.2000) by [S.I. 2000/3252](#), [art. 3\(1\)](#)

F26 Sch. 5 Pt. II Section E2: paragraph inserted (14.12.2000) by [S.I. 2000/3252](#), [art. 3\(2\)](#)

F27 Sch. 5 Pt. II Section E2: words in third exception substituted (17.12.2004) by [The Scotland Act 1998 \(Modifications of Schedule 5\) Order 2004 \(S.I. 2004/3329\)](#), [arts. 1\(1\)](#), [4\(a\)](#)

Status: Point in time view as at 01/10/2009.

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F28 Sch. 5 Pt. II Section E2: paragraph inserted (27.6.2002) by [The Scotland Act 1998 \(Modifications of Schedule 5\) Order 2002 \(S.I. 2002/1629\)](#) , [art. 2\(a\)](#)

Interpretation

[^{F29}“railway” has the meaning given by section 67(1) of the Transport and Works Act 1992.]

“Railway services” has the meaning given by section 82 of the Railways Act 1993 (excluding the wider meaning of “railway” given by section 81(2) of that Act).

[^{F30}“relevant authority” means—

- (a) the Scottish Ministers; or
- (b) any Scottish public authority (not being a cross-border public authority or an authority exercising functions solely in relation to a reserved matter) which is set up wholly or mainly to exercise functions relating to transport.]

Textual Amendments

F29 Sch. 5 Pt. II Section E2: definition of "railway" inserted (27.6.2002) by [The Scotland Act 1998 \(Modifications of Schedule 5\) Order 2002 \(S.I. 2002/1629\)](#) , [art. 2\(b\)](#)

F30 Sch. 5 Pt. II Section E2: definition of "relevant authority" added (18.12.2004) by [The Scotland Act 1998 \(Modifications of Schedule 5\) Order 2004 \(S.I. 2004/3329\)](#) , [arts. 1\(1\)](#) , [4\(b\)](#)

Textual Amendments

F25 Sch. 5 Pt. II Section E2: paragraph inserted (14.12.2000) by [S.I. 2000/3252](#) , [art. 3\(1\)](#)

F26 Sch. 5 Pt. II Section E2: paragraph inserted (14.12.2000) by [S.I. 2000/3252](#) , [art. 3\(2\)](#)

F27 Sch. 5 Pt. II Section E2: words in third exception substituted (17.12.2004) by [The Scotland Act 1998 \(Modifications of Schedule 5\) Order 2004 \(S.I. 2004/3329\)](#) , [arts. 1\(1\)](#) , [4\(a\)](#)

F28 Sch. 5 Pt. II Section E2: paragraph inserted (27.6.2002) by [The Scotland Act 1998 \(Modifications of Schedule 5\) Order 2002 \(S.I. 2002/1629\)](#) , [art. 2\(a\)](#)

F29 Sch. 5 Pt. II Section E2: definition of "railway" inserted (27.6.2002) by [The Scotland Act 1998 \(Modifications of Schedule 5\) Order 2002 \(S.I. 2002/1629\)](#) , [art. 2\(b\)](#)

F30 Sch. 5 Pt. II Section E2: definition of "relevant authority" added (18.12.2004) by [The Scotland Act 1998 \(Modifications of Schedule 5\) Order 2004 \(S.I. 2004/3329\)](#) , [arts. 1\(1\)](#) , [4\(b\)](#)

E3. Marine transport

Section E3.

The subject-matter of—

- (a) the Coastguard Act 1925,
- (b) the Hovercraft Act 1968, except so far as relating to the regulation of noise and vibration caused by hovercraft,
- (c) the Carriage of Goods by Sea Act 1971,
- (d) section 2 of the Protection of Wrecks Act 1973 (prohibition on approaching dangerous wrecks),
- (e) the Merchant Shipping (Liner Conferences) Act 1982,
- (f) the Dangerous Vessels Act 1985,
- (g) the Aviation and Maritime Security Act 1990, other than Part I (aviation security),
- (h) the Carriage of Goods by Sea Act 1992,
- (i) the Merchant Shipping Act 1995,

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- (j) the Shipping and Trading Interests (Protection) Act 1995, and
- (k) sections 24 (implementation of international agreements relating to protection of wrecks), 26 (piracy) and 27 and 28 (international bodies concerned with maritime matters) of the Merchant Shipping and Maritime Security Act 1997.

Navigational rights and freedoms.

Financial assistance for shipping services which start or finish or both outside Scotland.

Exceptions

Ports, harbours, piers and boatslips, except in relation to the matters reserved by virtue of paragraph (d), (f), (g) or (i).

Regulation of works which may obstruct or endanger navigation.

The subject-matter of the Highlands and Islands Shipping Services Act 1960 in relation to financial assistance for bulk freight services.

E4. Air transport

Section E4.

Regulation of aviation and air transport, including the subject-matter of—

- (a) the Carriage by Air Act 1961,
- (b) the Carriage by Air (Supplementary Provisions) Act 1962,
- (c) the Carriage by Air and Road Act 1979 so far as relating to carriage by air,
- (d) the Civil Aviation Act 1982,
- (e) the Aviation Security Act 1982,
- (f) the Airports Act 1986, and
- (g) sections 1 (endangering safety at aerodromes) and 48 (powers in relation to certain aircraft) of the Aviation and Maritime Security Act 1990,

and arrangements to compensate or repatriate passengers in the event of an air transport operator's insolvency.

Exceptions

The subject-matter of the following sections of the Civil Aviation Act 1982—

- (a) section 25 (Secretary of State's power to provide aerodromes),
- (b) section 30 (provision of aerodromes and facilities at aerodromes by local authorities),
- (c) section 31 (power to carry on ancillary business in connection with local authority aerodromes),
- (d) section 34 (financial assistance for certain aerodromes),
- (e) section 35 (facilities for consultation at certain aerodromes),
- (f) section 36 (health control at Secretary of State's aerodromes and aerodromes of Civil Aviation Authority), and
- (g) sections 41 to 43 and 50 (powers in relation to land exercisable in connection with civil aviation) where land is to be or was acquired for the purpose of airport development or expansion.

The subject-matter of Part II (transfer of airport undertakings of local authorities), sections 63 and 64 (airport byelaws) and 66 (functions of operators of designated airports as respects abandoned vehicles) of the Airports Act 1986.

The subject-matter of sections 59 (acquisition of land and rights over land) and 60 (disposal of compulsorily acquired land) of the Airports Act 1986 where land is to be or was acquired for the purpose of airport development or expansion.

Status: Point in time view as at 01/10/2009.

Changes to legislation: Scotland Act 1998 is up to date with all changes known to be in force on or before 19 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)

[^{F31}Imposing requirements about the preparation and submission of strategies relating to the provision of air services on Scottish public authorities with mixed functions relating to such services.]

Textual Amendments

F31 Paragraph in Sch. 5 Pt. II Section E4 inserted (14.12.2000) by [S.I. 2000/3252](#) , **art. 3(3)**

Textual Amendments

F31 Paragraph in Sch. 5 Pt. II Section E4 inserted (14.12.2000) by [S.I. 2000/3252](#) , **art. 3(3)**

E5. Other matters

Section E5.

Transport of radioactive material.

Technical specifications for public passenger transport for disabled persons, including the subject-matter of—

- (a) section 125(7) and (8) of the Transport Act 1985 (Secretary of State’s guidance and consultation with the Disabled Persons Transport Advisory Committee), and
- (b) Part V of the Disability Discrimination Act 1995 (public transport).

Regulation of the carriage of dangerous goods.

Interpretation

“Radioactive material” has the same meaning as in section 1(1) of the Radioactive Material (Road Transport) Act 1991.

Head F – Social Security

F1. Social security schemes

Section F1.

Schemes supported from central or local funds which provide assistance for social security purposes to or in respect of individuals by way of benefits.

Requiring persons to—

- (a) establish and administer schemes providing assistance for social security purposes to or in respect of individuals, or
- (b) make payments to or in respect of such schemes,

and to keep records and supply information in connection with such schemes.

The circumstances in which a person is liable to maintain himself or another for the purposes of the enactments relating to social security and the Child Support Acts 1991 and 1995.

The subject-matter of the Vaccine Damage Payment Scheme.

Illustrations

National Insurance; Social Fund; administration and funding of housing benefit and council tax benefit; recovery of benefits for accident, injury or disease from persons paying damages; deductions from benefits for the purpose of meeting an individual’s debts; sharing information between government departments for the purposes of the enactments relating to social security;

Status: Point in time view as at 01/10/2009.

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making decisions for the purposes of schemes mentioned in the reservation and appeals against such decisions.

Exceptions

The subject-matter of Part II of the Social Work (Scotland) Act 1968 (social welfare services), section 2 of the Chronically Sick and Disabled Persons Act 1970 (provision of welfare services), section 50 of the Children Act 1975 (payments towards maintenance of children), section 15 of the Enterprise and New Towns (Scotland) Act 1990 (industrial injuries benefit), and sections 22 (promotion of welfare of children in need), 29 and 30 (advice and assistance for young persons formerly looked after by local authorities) of the Children (Scotland) Act 1995.

Interpretation

“Benefits” includes pensions, allowances, grants, loans and any other form of financial assistance.

Providing assistance for social security purposes to or in respect of individuals includes (among other things) providing assistance to or in respect of individuals—

- (a) who qualify by reason of old age, survivorship, disability, sickness, incapacity, injury, unemployment, maternity or the care of children or others needing care,
- (b) who qualify by reason of low income, or
- (c) in relation to their housing costs or liabilities for local taxes.

F2. Child support

Section F2.

The subject-matter of the Child Support Acts 1991 and 1995.

Exception

The subject-matter of sections 1 to 7 of the Family Law (Scotland) Act 1985 (aliment).

Interpretation

If section 30(2) of the Child Support Act 1991 (collection of payments other than child support maintenance) is not in force on the principal appointed day, it is to be treated for the purposes of this reservation as if it were.

F3. Occupational and personal pensions

Section F3.

The regulation of occupational pension schemes and personal pension schemes, including the obligations of the trustees or managers of such schemes.

Provision about pensions payable to, or in respect of, any persons, except—

- (a) the persons referred to in section 81(3),
- (b) in relation to a Scottish public authority with mixed functions or no reserved functions, persons who are or have been a member of the public body, the holder of the public office, or a member of the staff of the body, holder or office.

The subject-matter of the Pensions (Increase) Act 1971.

Schemes for the payment of pensions which are listed in Schedule 2 to that Act, except those mentioned in paragraphs 38A and 38AB.

Where pension payable to or in respect of any class of persons under a public service pension scheme is covered by this reservation, so is making provision in their case—

- (a) for compensation for loss of office or employment, for their office or employment being affected by constitutional changes, or circumstances arising from such changes, in any territory or territories or for loss or diminution of emoluments, or
- (b) for benefits in respect of death or incapacity resulting from injury or disease.

Status: Point in time view as at 01/10/2009.

Changes to legislation: Scotland Act 1998 is up to date with all changes known to be in force on or before 19 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)

Interpretation

“Pension” includes gratuities and allowances.

F4. War pensions

Section F4.

Schemes for the payment of pensions for or in respect of persons who have a disablement or have died in consequence of service as members of the armed forces of the Crown.

The subject-matter of any scheme under the Personal Injuries (Emergency Provisions) Act 1939, sections 3 to 5 and 7 of the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 or section 1 of the Polish Resettlement Act 1947

Illustration

The provision of pensions under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983.

Interpretation

“Pension” includes grants, allowances, supplements and gratuities.

Head G – Regulation of the Professions

G1. Architects

Section G1.

Regulation of the profession of architect.

G2. Health professions

Section G2.

Regulation of the health professions.

Exceptions

The subject-matter of—

- (a) section 21 of the National Health Service (Scotland) Act 1978 (requirement of suitable experience for medical practitioners), and
- (b) section 25 of that Act (arrangements for the provision of general dental services), so far as it relates to vocational training and disciplinary proceedings.

Interpretation

“The health professions” means the professions regulated by—

- (a) the Pharmacy Act 1954,
- (b) the Professions Supplementary to Medicine Act 1960,
- (c) the Veterinary Surgeons Act 1966,
- (d) the Medical Act 1983,
- (e) the Dentists Act 1984,
- (f) the Opticians Act 1989,
- (g) the Osteopaths Act 1993,
- (h) the Chiropractors Act 1994, and
- (i) the Nurses, Midwives and Health Visitors Act 1997.

G3. Auditors

Section G3.

Status: Point in time view as at 01/10/2009.

Changes to legislation: Scotland Act 1998 is up to date with all changes known to be in force on or before 19 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)

Regulation of the profession of auditor.

Head H – Employment

H1. Employment and industrial relations

Section H1.

Employment rights and duties and industrial relations, including the subject-matter of—

- (a) the Employers' Liability (Compulsory Insurance) Act 1969,
- (b) the Employment Agencies Act 1973,
- (c) the Pneumoconiosis etc. (Workers' Compensation) Act 1979,
- (d) the Transfer of Undertakings (Protection of Employment) Regulations 1981,
- (e) the Trade Union and Labour Relations (Consolidation) Act 1992,
- (f) [^{F32}the Employment Tribunals Act 1996],
- (g) the Employment Rights Act 1996, and
- (h) the National Minimum Wage Act 1998.

Exception

The subject-matter of the Agricultural Wages (Scotland) Act 1949.

Textual Amendments

F32 Words in Sch. 5 Pt. II Section H1 substituted (E.W.S.) (1.8.1998) by 1998 c. 8, s. 1(2)(c) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

Textual Amendments

F32 Words in Sch. 5 Pt. II Section H1 substituted (E.W.S.) (1.8.1998) by 1998 c. 8, s. 1(2)(c) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

H2. Health and safety

Section H2.

The subject-matter of

[^{F33}Part I of the Health and Safety at Work etc. Act 1974

The Health and Safety Commission, the Health and Safety Executive and the Employment Medical Advisory Service

Interpretation

For the purposes of the reservation of the subject-matter of Part I of the Health and Safety at Work etc. Act 1974—

- (a) “work” and “at work” in that Part are to be taken to have the meaning they have on the principal appointed day;
- (b) that subject-matter includes—
 - (i) process fire precautions;
 - (ii) fire precautions in relation to petroleum and petroleum spirit; [^{F34} and]
 - (iii) fire safety on ^{F35} . . . ships and hovercraft, in mines and on offshore installations;

^{F36}
. . .

Status: Point in time view as at 01/10/2009.

Changes to legislation: Scotland Act 1998 is up to date with all changes known to be in force on or before 19 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)

(iv) ^{F36}

but does not include any other aspect of fire safety.]

Textual Amendments

- F33** Sch. 5 Pt II Section H2: words substituted (1.7.1999) by S.I. 1999/1749, arts. 1, 6(1); S.I. 1998/3178, art. 3
- F34** Sch. 5 Pt. 2 Section H2: word in para. (b)(ii) inserted (23.3.2005) by The Scotland Act 1998 (Modifications of Schedule 5) Order 2005 (S.I. 2005/865), arts. 1, 2(a)
- F35** Sch. 5 Pt. 2 Section H2: words in para. (b)(iii) repealed (23.3.2005) by The Scotland Act 1998 (Modifications of Schedule 5) Order 2005 (S.I. 2005/865), arts. 1, 2(b)
- F36** Sch. 5 Pt. 2 Section H2: para. (b)(iv) and preceding word repealed (23.3.2005) by The Scotland Act 1998 (Modifications of Schedule 5) Order 2005 (S.I. 2005/865), arts. 1, 2(c)

Textual Amendments

- F33** Sch. 5 Pt II Section H2: words substituted (1.7.1999) by S.I. 1999/1749, arts. 1, 6(1); S.I. 1998/3178, art. 3
- F34** Sch. 5 Pt. 2 Section H2: word in para. (b)(ii) inserted (23.3.2005) by The Scotland Act 1998 (Modifications of Schedule 5) Order 2005 (S.I. 2005/865), arts. 1, 2(a)
- F35** Sch. 5 Pt. 2 Section H2: words in para. (b)(iii) repealed (23.3.2005) by The Scotland Act 1998 (Modifications of Schedule 5) Order 2005 (S.I. 2005/865), arts. 1, 2(b)
- F36** Sch. 5 Pt. 2 Section H2: para. (b)(iv) and preceding word repealed (23.3.2005) by The Scotland Act 1998 (Modifications of Schedule 5) Order 2005 (S.I. 2005/865), arts. 1, 2(c)

H3. Job search and support

Section H3.

The subject-matter of—

- (a) the Disabled Persons (Employment) Act 1944, and
- (b) the Employment and Training Act 1973, except so far as relating to training for employment.

Exception

The subject-matter of—

- (a) sections 8 to 10A of the Employment and Training Act 1973 (careers services), and
- (b) the following sections of Part I of the Enterprise and New Towns (Scotland) Act 1990 (Scottish Enterprise and Highlands and Islands Enterprise)—
 - (i) section 2(3)(c) (arrangements for the purpose of assisting persons to establish themselves as self-employed persons), and
 - (ii) section 12 (disclosure of information).

Head J – Health and Medicines

J1. Abortion

Section J1.

Abortion.

J2. Xenotransplantation

Section J2.

Status: Point in time view as at 01/10/2009.

Changes to legislation: Scotland Act 1998 is up to date with all changes known to be in force on or before 19 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)

Xenotransplantation.

J3. Embryology, surrogacy and genetics

Section J3.

Surrogacy arrangements, within the meaning of the Surrogacy Arrangements Act 1985, including the subject-matter of that Act.

The subject-matter of the Human Fertilisation and Embryology Act 1990.

Human genetics.

J4. Medicines, medical supplies and poisons

Section J4.

The subject-matter of—

(a) the Medicines Act 1968, the Marketing Authorisations for Veterinary Medicinal Products Regulations 1994 and the Medicines for Human Use (Marketing Authorisations Etc.) Regulations 1994,

(b) the Poisons Act 1972, and

(c) the Biological Standards Act 1975.

Regulation of prices charged for medical supplies or medicinal products which (in either case) are supplied for the purposes of the health service established under section 1 of the National Health Service (Scotland) Act 1978.

Interpretation

“Medical supplies” has the same meaning as in section 49(3) of the National Health Service (Scotland) Act 1978.

“Medicinal products” has the same meaning as in section 130(1) of the Medicines Act 1968.

J5. Welfare foods

Section J5.

Schemes made by regulations under section 13 of the Social Security Act 1988 (schemes for distribution of welfare foods).

Head K – Media and Culture

K1. Broadcasting

Section K1.

The subject-matter of the Broadcasting Act 1990 and the Broadcasting Act 1996.

The British Broadcasting Corporation.

K2. Public lending right

Section K2.

The subject-matter of the Public Lending Right Act 1979.

K3. Government Indemnity Scheme

Section K3.

The subject-matter of sections 16 and 16A of the National Heritage Act 1980 (public indemnities for objects on loan to museums, art galleries, etc.).

K4. Property accepted in satisfaction of tax

Section K4.

Status: Point in time view as at 01/10/2009.

Changes to legislation: Scotland Act 1998 is up to date with all changes known to be in force on or before 19 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)

The subject-matter of sections 8 and 9 of the National Heritage Act 1980 (payments to Inland Revenue in respect of property accepted in satisfaction of tax, and disposal of such property).

Head L – Miscellaneous

L1. Judicial remuneration

Section L1.

Determination of the remuneration of—

- (a) judges of the Court of Session,
- (b) sheriffs principal and sheriffs,
- (c) members of the Lands Tribunal for Scotland, and
- (d) the Chairman of the Scottish Land Court.

L2. Equal opportunities

Section L2.

Equal opportunities, including the subject-matter of—

- (a) the Equal Pay Act 1970,
- (b) the Sex Discrimination Act 1975,
- (c) the Race Relations Act 1976, and
- (d) the Disability Discrimination Act 1995.

Exceptions

The encouragement (other than by prohibition or regulation) of equal opportunities, and in particular of the observance of the equal opportunity requirements.

Imposing duties on—

- (a) any office-holder in the Scottish Administration, or any Scottish public authority with mixed functions or no reserved functions, to make arrangements with a view to securing that the functions of the office-holder or authority are carried out with due regard to the need to meet the equal opportunity requirements, or
- (b) any cross-border public authority to make arrangements with a view to securing that its Scottish functions are carried out with due regard to the need to meet the equal opportunity requirements.

Interpretation

“Equal opportunities” means the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.

“Equal opportunity requirements” means the requirements of the law for the time being relating to equal opportunities.

“Scottish functions” means functions which are exercisable in or as regards Scotland and which do not relate to reserved matters.

L3. Control of weapons

Section L3.

Control of nuclear, biological and chemical weapons and other weapons of mass destruction.

L4. Ordnance survey

Section L4.

Status: Point in time view as at 01/10/2009.

Changes to legislation: Scotland Act 1998 is up to date with all changes known to be in force on or before 19 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)

The subject-matter of the Ordnance Survey Act 1841.

L5. Time

Section L5.

Timescales, time zones and the subject-matter of the Summer Time Act 1972.

The calendar; units of time; the date of Easter.

Exceptions

The computation of periods of time.

The subject-matter of—

- (a) section 1 of the Banking and Financial Dealings Act 1971 (bank holidays), and
- (b) the Term and Quarter Days (Scotland) Act 1990.

L6. Outer space

Section L6.

Regulation of activities in outer space.

PART III

GENERAL PROVISIONS

Scottish public authorities

- 1 (1) This Schedule does not reserve any Scottish public authority if some of its functions relate to reserved matters and some do not, unless it is a cross-border public authority.
- (2) Sub-paragraph (1) has effect as regards—
 - (a) the constitution of the authority, including its establishment and dissolution, its assets and liabilities and its funding and receipts,
 - (b) conferring or removing any functions specifically exercisable in relation to the authority.
- (3) Sub-paragraph (2)(b) does not apply to any function which is specifically exercisable in relation to a particular function of the authority if the particular function relates to reserved matters.
- (4) An authority to which this paragraph applies is referred to in this Act as a Scottish public authority with mixed functions.

Modifications etc. (not altering text)

C1 Sch. 5 Pt. III para. 1(4) applied (S.) (30.9.2002) by Freedom of Information (Scotland) Act 2002 (asp 13), s. 4; S.S.I. 2002/437, art. 2

- 2 Paragraph 1 of Part I of this Schedule does not reserve any Scottish public authority with functions none of which relate to reserved matters (referred to in this Act as a Scottish public authority with no reserved functions).

Status: Point in time view as at 01/10/2009.

Changes to legislation: Scotland Act 1998 is up to date with all changes known to be in force on or before 19 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)

Modifications etc. (not altering text)

- C2** Sch. 5 Pt. III para. 2 applied (S.) (30.9.2002) by Freedom of Information (Scotland) Act 2002 (asp 13), s. 4; S.S.I. 2002/437, art. 2

Reserved bodies

- 3 (1) The reservation of any body to which this paragraph applies has effect to reserve—
- (a) its constitution, including its establishment and dissolution, its assets and liabilities and its funding and receipts,
 - (b) conferring functions on it or removing functions from it,
 - (c) conferring or removing any functions specifically exercisable in relation to it.
- (2) This paragraph applies to—
- (a) a body reserved by name by Part II of this Schedule,
 - (b) each of the councils reserved by Section C12 of that Part,
 - (c) the Commission for Racial Equality, the Equal Opportunities Commission and [^{F37}the Disability Rights Commission].
 - [^{F38}(d) the Commission for Equality and Human Rights.]

Textual Amendments

- F37** Words in Sch. 5 Pt. III para. 3(2)(c) substituted (6.8.1999) by 1999 c. 17, s. 14(1), Sch. 4 para. 4 (with s. 15); S.I. 1999/2210, art. 2(4)(7)
- F38** Sch. 5 Pt. III para. 3(2)(d) inserted (1.5.2006) by The Scotland Act 1998 (Modifications of Schedule 5) Order 2006 (S.I. 2006/609), art. 2

Modifications etc. (not altering text)

- C3** Sch. 5 Pt. III para. 3 applied (28.7.1999) (*temp.*) by S.I. 1999/2210, art. 3

Financial assistance to industry

- 4 (1) This Schedule does not reserve giving financial assistance to commercial activities for the purpose of promoting or sustaining economic development or employment.
- (2) Sub-paragraph (1)—
- (a) does not apply to giving financial assistance to any activities in pursuance of a power exercisable only in relation to activities which are reserved,
 - (b) does not apply to Part I of this Schedule, except paragraph 9, or to a body to which paragraph 3 of this Part of this Schedule applies,
 - (c) is without prejudice to the exceptions from the reservations in Sections [^{F39}C11,] E2 and E3 of Part II of this Schedule.
- (3) Sub-paragraph (1) does not affect the question whether any matter other than financial assistance to which that sub-paragraph applies is reserved.

Status: Point in time view as at 01/10/2009.

Changes to legislation: Scotland Act 1998 is up to date with all changes known to be in force on or before 19 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)

Textual Amendments

F39 Words in [Sch. 5 Pt. III para. 4\(2\)\(c\)](#) inserted (14.12.2000) by [S.I. 2000/3252](#), [art. 2\(2\)](#)

Interpretation

- 5 (1) References in this Schedule to the subject-matter of any enactment are to be read as references to the subject-matter of that enactment as it has effect on the principal appointed day or, if it ceased to have effect at any time within the period ending with that day and beginning with the day on which this Act is passed, as it had effect immediately before that time.
- (2) Subordinate legislation under section 129(1) may, in relation to the operation of this Schedule at any time before the principal appointed day, modify the references to that day in sub-paragraph (1).

SCHEDULE 6

Section 98.

DEVOLUTION ISSUES

PART I

PRELIMINARY

- 1 In this Schedule “devolution issue” means—
- (a) a question whether an Act of the Scottish Parliament or any provision of an Act of the Scottish Parliament is within the legislative competence of the Parliament,
 - (b) a question whether any function (being a function which any person has purported, or is proposing, to exercise) is a function of the Scottish Ministers, the First Minister or the Lord Advocate,
 - (c) a question whether the purported or proposed exercise of a function by a member of the Scottish Executive is, or would be, within devolved competence,
 - (d) a question whether a purported or proposed exercise of a function by a member of the Scottish Executive is, or would be, incompatible with any of the Convention rights or with Community law,
 - (e) a question whether a failure to act by a member of the Scottish Executive is incompatible with any of the Convention rights or with Community law,
 - (f) any other question about whether a function is exercisable within devolved competence or in or as regards Scotland and any other question arising by virtue of this Act about reserved matters.
- 2 A devolution issue shall not be taken to arise in any proceedings merely because of any contention of a party to the proceedings which appears to the court or tribunal before which the proceedings take place to be frivolous or vexatious.

Status: Point in time view as at 01/10/2009.

Changes to legislation: Scotland Act 1998 is up to date with all changes known to be in force on or before 19 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)

PART II

PROCEEDINGS IN SCOTLAND

Application of Part II

- 3 This Part of this Schedule applies in relation to devolution issues in proceedings in Scotland.

Institution of proceedings

- 4 (1) Proceedings for the determination of a devolution issue may be instituted by the Advocate General or the Lord Advocate.
- (2) The Lord Advocate may defend any such proceedings instituted by the Advocate General.
- (3) This paragraph is without prejudice to any power to institute or defend proceedings exercisable apart from this paragraph by any person.

Intimation of devolution issue

- 5 Intimation of any devolution issue which arises in any proceedings before a court or tribunal shall be given to the Advocate General and the Lord Advocate (unless the person to whom the intimation would be given is a party to the proceedings).
- 6 A person to whom intimation is given in pursuance of paragraph 5 may take part as a party in the proceedings, so far as they relate to a devolution issue.

Reference of devolution issue to higher court

- 7 A court, other than the [^{F40}Supreme Court] or any court consisting of three or more judges of the Court of Session, may refer any devolution issue which arises in proceedings (other than criminal proceedings) before it to the Inner House of the Court of Session.

Textual Amendments

F40 Words in [Sch. 6 para. 7](#) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\)](#), [Sch. 9 para. 103\(2\)](#); S.I. 2009/1604, [art. 2](#)

- 8 A tribunal from which there is no appeal shall refer any devolution issue which arises in proceedings before it to the Inner House of the Court of Session; and any other tribunal may make such a reference.
- 9 A court, other than any court consisting of two or more judges of the High Court of Justiciary, may refer any devolution issue which arises in criminal proceedings before it to the High Court of Justiciary.

Status: Point in time view as at 01/10/2009.

Changes to legislation: Scotland Act 1998 is up to date with all changes known to be in force on or before 19 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)

References from superior courts to [F41]Supreme Court]

Textual Amendments

F41 Words in heading before Sch. 6 para. 10 substituted (1.10.2009) by [Constitutional Reform Act 2005](#) (c. 4), ss. 40(4), 148(1), [Sch. 9 para. 103\(3\)](#); S.I. 2009/1604, [art. 2](#)

- 10 Any court consisting of three or more judges of the Court of Session may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 7 or 8) to the [F42]Supreme Court].

Textual Amendments

F42 Words in [Sch. 6 para. 10](#) substituted (1.10.2009) by [Constitutional Reform Act 2005](#) (c. 4), ss. 40(4), 148(1), [Sch. 9 para. 103\(4\)](#); S.I. 2009/1604, [art. 2](#)

- 11 Any court consisting of two or more judges of the High Court of Justiciary may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 9) to the [F43]Supreme Court].

Textual Amendments

F43 Words in [Sch. 6 para. 11](#) substituted (1.10.2009) by [Constitutional Reform Act 2005](#) (c. 4), ss. 40(4), 148(1), [Sch. 9 para. 103\(5\)](#); S.I. 2009/1604, [art. 2](#)

Appeals from superior courts to [F44]Supreme Court]

Textual Amendments

F44 Words in heading before Sch. 6 para. 12 substituted (1.10.2009) by [Constitutional Reform Act 2005](#) (c. 4), ss. 40(4), 148(1), [Sch. 9 para. 103\(6\)](#); S.I. 2009/1604, [art. 2](#)

- 12 An appeal against a determination of a devolution issue by the Inner House of the Court of Session on a reference under paragraph 7 or 8 shall lie to the [F45]Supreme Court].

Textual Amendments

F45 Words in [Sch. 6 para. 12](#) substituted (1.10.2009) by [Constitutional Reform Act 2005](#) (c. 4), ss. 40(4), 148(1), [Sch. 9 para. 103\(7\)](#); S.I. 2009/1604, [art. 2](#)

- 13 An appeal against a determination of a devolution issue by—
- (a) a court of two or more judges of the High Court of Justiciary (whether in the ordinary course of proceedings or on a reference under paragraph 9), or
 - (b) a court of three or more judges of the Court of Session from which there is no appeal to the [F46]Supreme Court apart from this paragraph],

Status: Point in time view as at 01/10/2009.

Changes to legislation: Scotland Act 1998 is up to date with all changes known to be in force on or before 19 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)

shall lie to the [^{F47}Supreme Court], but only with [^{F48}permission] of the court [^{F49}from which the appeal lies] or, failing such [^{F48}permission], with [^{F50}permission] of the [^{F47}Supreme Court].

Textual Amendments

- F46** Words in Sch. 6 para. 13 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 103\(8\)\(a\)](#); S.I. 2009/1604, [art. 2](#)
- F47** Words in Sch. 6 para. 13 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 103\(8\)\(b\)](#); S.I. 2009/1604, [art. 2](#)
- F48** Words in Sch. 6 para. 13 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 103\(8\)\(c\)](#); S.I. 2009/1604, [art. 2](#)
- F49** Words in Sch. 6 para. 13 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 103\(8\)\(d\)](#); S.I. 2009/1604, [art. 2](#)
- F50** Words in Sch. 6 para. 13 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 103\(8\)\(e\)](#); S.I. 2009/1604, [art. 2](#)

PART III

PROCEEDINGS IN ENGLAND AND WALES

Application of Part III

- 14 This Part of this Schedule applies in relation to devolution issues in proceedings in England and Wales.

Institution of proceedings

- 15 (1) Proceedings for the determination of a devolution issue may be instituted by the Attorney General.
- (2) The Lord Advocate may defend any such proceedings.
- (3) This paragraph is without prejudice to any power to institute or defend proceedings exercisable apart from this paragraph by any person.

Notice of devolution issue

- 16 A court or tribunal shall order notice of any devolution issue which arises in any proceedings before it to be given to the Attorney General and the Lord Advocate (unless the person to whom the notice would be given is a party to the proceedings).
- 17 A person to whom notice is given in pursuance of paragraph 16 may take part as a party in the proceedings, so far as they relate to a devolution issue.

Reference of devolution issue to High Court or Court of Appeal

- 18 A magistrates' court may refer any devolution issue which arises in proceedings (other than criminal proceedings) before it to the High Court.
- 19 (1) A court may refer any devolution issue which arises in proceedings (other than criminal proceedings) before it to the Court of Appeal.

Status: Point in time view as at 01/10/2009.

Changes to legislation: Scotland Act 1998 is up to date with all changes known to be in force on or before 19 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)

- (2) Sub-paragraph (1) does not apply to—
- (a) a magistrates' court, the Court of Appeal or the ^{F51}Supreme Court], or
 - (b) the High Court if the devolution issue arises in proceedings on a reference under paragraph 18.

Textual Amendments

F51 Words in Sch. 6 para. 19(2)(a) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), Sch. 9 para. 104(2); S.I. 2009/1604, art. 2

- 20 A tribunal from which there is no appeal shall refer any devolution issue which arises in proceedings before it to the Court of Appeal; and any other tribunal may make such a reference.
- 21 A court, other than the ^{F52}Supreme Court] or the Court of Appeal, may refer any devolution issue which arises in criminal proceedings before it to—
- (a) the High Court (if the proceedings are summary proceedings), or
 - (b) the Court of Appeal (if the proceedings are proceedings on indictment).

Textual Amendments

F52 Words in Sch. 6 para. 21 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), Sch. 9 para. 104(3); S.I. 2009/1604, art. 2

References from Court of Appeal to ^{F53}Supreme Court]

Textual Amendments

F53 Words in heading before Sch. 6 para. 22 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), Sch. 9 para. 104(4); S.I. 2009/1604, art. 2

- 22 The Court of Appeal may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 19, 20 or 21) to the ^{F54}Supreme Court].

Textual Amendments

F54 Words in Sch. 6 para. 22 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), Sch. 9 para. 104(5); S.I. 2009/1604, art. 2

Appeals from superior courts to ^{F55}Supreme Court]

Textual Amendments

F55 Words in heading before Sch. 6 para. 23 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), Sch. 9 para. 104(6); S.I. 2009/1604, art. 2

Status: Point in time view as at 01/10/2009.

Changes to legislation: Scotland Act 1998 is up to date with all changes known to be in force on or before 19 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)

- 23 An appeal against a determination of a devolution issue by the High Court or the Court of Appeal on a reference under paragraph 18, 19, 20 or 21 shall lie to the [^{F56}Supreme Court], but only with [^{F57}permission] of the High Court or (as the case may be) the Court of Appeal or, failing such [^{F57}permission], with [^{F58}permission] of the [^{F56}Supreme Court].

Textual Amendments

- F56** Words in Sch. 6 para. 23 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 104\(7\)\(a\)](#); S.I. 2009/1604, [art. 2](#)
- F57** Words in Sch. 6 para. 23 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 104\(7\)\(b\)](#); S.I. 2009/1604, [art. 2](#)
- F58** Words in Sch. 6 para. 23 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 104\(7\)\(c\)](#); S.I. 2009/1604, [art. 2](#)

PART IV

PROCEEDINGS IN NORTHERN IRELAND

Application of Part IV

- 24 This Part of this Schedule applies in relation to devolution issues in proceedings in Northern Ireland.

Institution of proceedings

- 25 (1) Proceedings for the determination of a devolution issue may be instituted by the Attorney General for Northern Ireland.
- (2) The Lord Advocate may defend any such proceedings.
- (3) This paragraph is without prejudice to any power to institute or defend proceedings exercisable apart from this paragraph by any person.

Notice of devolution issue

- 26 A court or tribunal shall order notice of any devolution issue which arises in any proceedings before it to be given to the Attorney General for Northern Ireland and the Lord Advocate (unless the person to whom the notice would be given is a party to the proceedings).
- 27 A person to whom notice is given in pursuance of paragraph 26 may take part as a party in the proceedings, so far as they relate to a devolution issue.

Reference of devolution issue to Court of Appeal

- 28 A court, other than the [^{F59}Supreme Court] or the Court of Appeal in Northern Ireland, may refer any devolution issue which arises in any proceedings before it to the Court of Appeal in Northern Ireland.

Status: Point in time view as at 01/10/2009.

Changes to legislation: Scotland Act 1998 is up to date with all changes known to be in force on or before 19 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)

Textual Amendments

F59 Words in Sch. 6 para. 28 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 105\(2\)](#); S.I. 2009/1604, [art. 2](#)

- 29 A tribunal from which there is no appeal shall refer any devolution issue which arises in any proceedings before it to the Court of Appeal in Northern Ireland; and any other tribunal may make such a reference.

References from Court of Appeal to [^{F60}Supreme Court]

Textual Amendments

F60 Words in heading before Sch. 6 para. 30 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 105\(3\)](#); S.I. 2009/1604, [art. 2](#)

- 30 The Court of Appeal in Northern Ireland may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 28 or 29) to the [^{F61}Supreme Court].

Textual Amendments

F61 Words in Sch. 6 para. 30 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 105\(4\)](#); S.I. 2009/1604, [art. 2](#)

Appeals from Court of Appeal to [^{F62}Supreme Court]

Textual Amendments

F62 Words in heading before Sch. 6 para. 31 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 105\(5\)](#); S.I. 2009/1604, [art. 2](#)

- 31 An appeal against a determination of a devolution issue by the Court of Appeal in Northern Ireland on a reference under paragraph 28 or 29 shall lie to the [^{F63}Supreme Court], but only with [^{F64}permission] of the Court of Appeal in Northern Ireland or, failing such [^{F64}permission], with [^{F65}permission] of the [^{F63}Supreme Court].

Textual Amendments

- F63** Words in Sch. 6 para. 31 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 105\(6\)\(a\)](#); S.I. 2009/1604, [art. 2](#)
- F64** Words in Sch. 6 para. 31 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 105\(6\)\(b\)](#); S.I. 2009/1604, [art. 2](#)
- F65** Words in Sch. 6 para. 31 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 105\(6\)\(c\)](#); S.I. 2009/1604, [art. 2](#)

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PART V

GENERAL

F66

Textual Amendments

F66 Sch. 6 para. 32 and preceding heading repealed (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 146, 148(1), Sch. 9 para. 106(2), **Sch. 18 Pt. 5**; S.I. 2009/1604, **art. 2**

32

F67

Textual Amendments

F67 Sch. 6 para. 32 and preceding heading repealed (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 146, 148(1), Sch. 9 para. 106(2), **Sch. 18 Pt. 5**; S.I. 2009/1604, **art. 2**

Direct references to [^{F68}Supreme Court]

Textual Amendments

F68 Words in heading before Sch. 6 para. 33 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), **Sch. 9 para. 106(3)**; S.I. 2009/1604, **art. 2**

33

The Lord Advocate, the Advocate General, the Attorney General or the Attorney General for Northern Ireland may require any court or tribunal to refer to the [^{F69}Supreme Court] any devolution issue which has arisen in proceedings before it to which he is a party.

Textual Amendments

F69 Words in Sch. 6 para. 33 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), **Sch. 9 para. 106(4)**; S.I. 2009/1604, **art. 2**

34

The Lord Advocate, the Attorney General, the Advocate General or the Attorney General for Northern Ireland may refer to the [^{F70}Supreme Court] any devolution issue which is not the subject of proceedings.

Textual Amendments

F70 Words in Sch. 6 para. 34 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), **Sch. 9 para. 106(5)**; S.I. 2009/1604, **art. 2**

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- 35
- (1) This paragraph applies where a reference is made under paragraph 34 in relation to a devolution issue which relates to the proposed exercise of a function by a member of the Scottish Executive.
 - (2) The person making the reference shall notify a member of the Scottish Executive of that fact.
 - (3) No member of the Scottish Executive shall exercise the function in the manner proposed during the period beginning with the receipt of the notification under sub-paragraph (2) and ending with the reference being decided or otherwise disposed of.
 - (4) Proceedings relating to any possible failure by a member of the Scottish Executive to comply with sub-paragraph (3) may be instituted by the Advocate General.
 - (5) Sub-paragraph (4) is without prejudice to any power to institute proceedings exercisable apart from that sub-paragraph by any person.

Expenses

- 36
- (1) A court or tribunal before which any proceedings take place may take account of any additional expense of the kind mentioned in sub-paragraph (3) in deciding any question as to costs or expenses.
 - (2) In deciding any such question, the court or tribunal may award the whole or part of the additional expense as costs or (as the case may be) expenses to the party who incurred it (whatever the decision on the devolution issue).
 - (3) The additional expense is any additional expense which the court or tribunal considers that any party to the proceedings has incurred as a result of the participation of any person in pursuance of paragraph 6, 17 or 27.

Procedure of courts and tribunals

- 37
- Any power to make provision for regulating the procedure before any court or tribunal shall include power to make provision for the purposes of this Schedule including, in particular, provision—
- (a) for prescribing the stage in the proceedings at which a devolution issue is to be raised or referred,
 - (b) for the sisting or staying of proceedings for the purpose of any proceedings under this Schedule, and
 - (c) for determining the manner in which and the time within which any intimation or notice is to be given.

Interpretation

- 38
- Any duty or power conferred by this Schedule to refer a devolution issue to a court shall be construed as a duty or (as the case may be) power to refer the issue to the court for decision.

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SCHEDULE 7

Section 115.

PROCEDURE FOR SUBORDINATE LEGISLATION

General provision

- 1 (1) Subordinate legislation (or a statutory instrument containing it) under a provision listed in the left-hand column is subject to the type of procedure in the right-hand column.
- (2) This paragraph is subject to paragraphs 3 and 4.

<i>Provision of the Act</i>	<i>Type of procedure</i>
Section 2(1)	Type C
Section 12(1)	Type C
Section 15	Type D
Section 18(5)	Type J
Section 30	Type A
Section 35	Type I
Section 38	Type J
Section 56(2)	Type G
Section 58	Type I
Section 60	Type G
Section 62	Type G
Section 63	Type A
Section 64(5)	Type K
Section 67(3)	Type E
Section 71(6)	Type K
Section 79	Type E
Section 88	Type I
Section 89	Type F
Section 90	Type F
Section 93	Type H
Section 97	Type A
F71	F71
...	...
Section 104	Type G
Section 105	Type G
Section 106	Type G

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Section 107	Type G
Section 108	Type A
Section 109	Type H
Section 110(1)	Type C
Section 110(2)	Type I
Section 111	Type A
Section 116(9)	Type G
Section 124(1)	Type G
Section 126(2)	Type B
Section 126(8)	Type H
Section 129(1)	Type G
Schedule 2, paragraph 2	Type G
Schedule 2, paragraph 7	Type H

Notes

The entry for section 58 does not apply to an instrument containing an order merely revoking an order under subsection (1) of that section.

The entry for section 79, in relation to an instrument containing an order which makes only such provision as is mentioned in section 79(3), is to be read as referring to type K instead of type E.

Textual Amendments

- F71** Sch. 7 para. 1(2) table: entry relating to section 103(3)(a) and (b) repealed (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40(4), 146, 148(1), Sch. 9 para. 107, [Sch. 18 Pt. 5](#); S.I. 2009/1604, [art. 2](#)

Types of procedure

- 2 The types of procedure referred to in this Schedule are—
- Type A:** No recommendation to make the legislation is to be made to Her Majesty in Council unless a draft of the instrument —
- (a) has been laid before, and approved by resolution of, each House of Parliament, and
 - (b) has been laid before, and approved by resolution of, the Parliament.
- Type B:** No recommendation to make the legislation is to be made to Her Majesty in Council unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.
- Type C:** No Minister of the Crown is to make the legislation unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.
- Type D:** No recommendation to make the legislation is to be made to Her Majesty in Council unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

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Type E: No Minister of the Crown is to make the legislation unless a draft of the instrument has been laid before, and approved by resolution of, the House of Commons.

Type F: The instrument containing the legislation, if made without a draft having been approved by resolution of each House of Parliament and of the Parliament, shall be subject to annulment in pursuance of—

- (a) a resolution of either House, or
- (b) a resolution of the Parliament.

Type G: The instrument containing the legislation, if made without a draft having been approved by resolution of each House of Parliament, shall be subject to annulment in pursuance of a resolution of either House.

Type H: The instrument containing the legislation shall be subject to annulment in pursuance of—

- (a) a resolution of either House of Parliament, or
- (b) a resolution of the Parliament.

Type I: The instrument containing the legislation shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Type J: The instrument containing the legislation shall be subject to annulment in pursuance of a resolution of the Parliament.

Type K: The instrument containing the legislation shall be subject to annulment in pursuance of a resolution of the House of Commons.

Special cases

- 3 (1) This paragraph applies if—
 - (a) the instrument containing the legislation would, apart from this paragraph, be subject to the type F, G, H, I or K procedure, and
 - (b) the legislation contains provisions which add to, replace or omit any part of the text of an Act.
- (2) Where this paragraph applies—
 - (a) instead of the type F procedure, the type A procedure shall apply,
 - (b) instead of the type G procedure, the type B or (as the case may be) C procedure shall apply,
 - (c) instead of the type H procedure, the type A procedure shall apply,
 - (d) instead of the type I procedure, the type B or (as the case may be) C procedure shall apply,
 - (e) instead of the type K procedure, the type E procedure shall apply.
- 4 If legislation under section 129(1) makes provision as mentioned in section 112(2) then, instead of the type G procedure, the type D procedure shall apply.
- 5 (1) An instrument containing an Order in Council or order under an open power which revokes, amends or re-enacts subordinate legislation under an open power may (in spite of section 14 of the ^{M14}Interpretation Act 1978) be subject to a different procedure under this Schedule from the procedure to which the instrument containing the original legislation was subject.

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- (2) An instrument containing an Order in Council under section 89 or 90 which revokes, amends or re-enacts an Order under either section may (in spite of section 14 of the ^{M15}Interpretation Act 1978) be subject to a different procedure under this Schedule from the procedure to which the instrument containing the original Order was subject.

Marginal Citations

M14 1978 c. 30.

M15 1978 c. 30.

SCHEDULE 8

Section 125.

MODIFICATIONS OF ENACTMENTS

Commencement Information

- I3** Sch. 8 wholly in force at 1.4.2000; Sch. 8 partly in force at Royal Assent see s. 130(1); specified provisions of Sch. 8 in force at 6.5.1999, 20.5.1999, 1.7.1999 and 1.4.2000 by S.I. 1998/3178, arts. 2(2), 3.

Public Revenue (Scotland) Act 1833 (c.13)

- 1 In section 2 of the Public Revenue (Scotland) Act 1833 (regulation of Queen's and Lord Treasurer's Remembrancer), for "Treasury" in both places there is substituted "Scottish Ministers".

Crown Suits (Scotland) Act 1857 (c.44)

- 2 (1) The Crown Suits (Scotland) Act 1857 is amended as follows.
- (2) In section 1 (Crown suits may be brought by or against Lord Advocate)—
- (a) after "Crown" there is inserted " (including the Scottish Administration) ", and
- (b) for "Her Majesty's Advocate for the time being" there is substituted " the appropriate Law Officer ".
- (3) In section 2 (authority of Crown required)—
- (a) for "Her Majesty's Advocate" there is substituted " the appropriate Law Officer ", and
- (b) after "Majesty" there is inserted " of the part of the Scottish Administration ".
- (4) In section 3 (absence of authority cannot be founded upon), for "Her Majesty's Advocate" there is substituted " the appropriate Law Officer ".
- (5) After section 4 there is inserted—

"4A Meaning of "the appropriate Law Officer".

In this Act "the appropriate Law Officer" means—

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- (a) the Lord Advocate, where the action, suit or proceeding is on behalf of or against any part of the Scottish Administration, and
 - (b) the Advocate General for Scotland, in any other case.”
- (6) In section 5 (change of Lord Advocate not to affect proceedings)—
- (a) for “Her Majesty’s Advocate” there is substituted “ the Lord Advocate or the Advocate General for Scotland ”, and
 - (b) for “the office of Her Majesty’s Advocate” there is substituted “ that office ”.

Sheriff Courts and Legal Officers (Scotland) Act 1927 (c.35)

- 3 (1) The Sheriff Courts and Legal Officers (Scotland) Act 1927 is amended as follows.
- (2) In section 1(2) (appointment etc. of procurator fiscal), “with the consent of the Treasury” is omitted.
 - (3) In section 2 (appointment of sheriff clerk and procurator fiscal deputes), “with the consent of the Treasury as to numbers and salaries” is omitted.
 - (4) In section 3 (whole-time sheriff clerks and procurators fiscal and deputes), “and in either case with the consent of the Treasury” is omitted.
 - (5) In section 5 (whole-time clerks), “with the consent of the Treasury as to numbers and salaries” is omitted.
 - (6) In section 12 (prosecutions at instance of procurator fiscal), “after consultation with the Treasury” is omitted.

Administration of Justice (Scotland) Act 1933 (c.41)

- 4 In the Administration of Justice (Scotland) Act 1933, in sections 24(7) and 25 (officers of Court of Session etc.), “and shall be exercised on nomination by the Lord Advocate” is omitted.

Private Legislation Procedure (Scotland) Act 1936 (c.52)

- 5 In section 1 of the Private Legislation Procedure (Scotland) Act 1936 (application for provisional order: notices), after subsection (4) there is added—
- “(5) This section shall not apply where any public authority or any persons desire to obtain parliamentary powers the conferring of which is wholly within the legislative competence of the Scottish Parliament.”

Modifications etc. (not altering text)

C4 Sch. 8 para. 5 restricted (19.5.1999) by S.I. 1999/1334, art. 4

United Nations Act 1946 (c.45)

- 6 In section 1 of the United Nations Act 1946 (measures to give effect to decisions of Security Council), in subsection (4), for the words following “shall” there is substituted “forthwith after it is made be laid—
- (a) before Parliament; and

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- (b) if any provision made by the Order would, if it were included in an Act of the Scottish Parliament, be within the legislative competence of that Parliament, before that Parliament.”

Crown Proceedings Act 1947 (c.44)

- 7 (1) The Crown Proceedings Act 1947 is amended as follows.
- (2) In section 38(2) (interpretation)—
- (a) in the definition of “His Majesty’s aircraft”, after “Kingdom” there is inserted “ or the Scottish Administration ”,
 - (b) in the definition of “His Majesty’s ships”, after “Kingdom” there is inserted “ or the Scottish Administration ” and after “said Government” there is inserted “ or Administration ”, and
 - (c) in the definition of “officer”, after “Minister of the Crown” there is inserted “ and a member of the Scottish Executive ”.
- (3) In section 40 (savings)—
- (a) in subsection (2), after “in the United Kingdom”, in each place where those words appear, there is inserted “ or the Scottish Administration ”, and
 - (b) after subsection (3) there is inserted—
 - “(3A) A certificate of the Scottish Ministers to the effect that—
 - (a) any alleged liability of the Crown arises otherwise than in respect of the Scottish Administration,
 - (b) any proceedings by the Crown are proceedings otherwise than in right of the Scottish Administration,shall, for the purposes of this Act, be conclusive as to that matter.”
- (4) In the proviso to section 44 (remit from sheriff court to Court of Session on Lord Advocate’s certificate)—
- (a) for “Lord Advocate” there is substituted “ appropriate Law Officer ”, and
 - (b) at the end there is inserted—
 - “In this proviso, “the appropriate Law Officer” means—
 - (a) the Lord Advocate, where the proceedings are against any part of the Scottish Administration, and
 - (b) the Advocate General for Scotland, in any other case.”
- (5) In section 50 (application to Scotland of section 35), subsection (2) of section 35 as substituted for Scotland is amended as follows—
- (a) in paragraph (d)—
 - (i) after “Crown” there is inserted “ in right of Her Majesty’s Government in the United Kingdom ”,
 - (ii) for “Lord Advocate” there is substituted “ Advocate General for Scotland ”, and
 - (iii) after “department”, in the second place where it appears, there is inserted—
 - “(i) shall not be entitled to avail itself of any set-off or counterclaim if the subject

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matter thereof relates to the Scottish Administration, and

(ii)”,
and

(b) after that paragraph there is inserted—

“(e) a part of the Scottish Administration, in any proceedings against that part or against the Lord Advocate on its behalf, shall not be entitled to avail itself of any set-off or counterclaim if the subject matter thereof relates to another part of the Scottish Administration or to the Crown in right of Her Majesty’s Government in the United Kingdom.”

(6) In section 51(2) (application to Scotland of section 38), in paragraph (ii), after “Lord Advocate” there is inserted “ or the Advocate General for Scotland ”.

Public Registers and Records (Scotland) Act 1948 (c.57)

8 In section 1(1) of the Public Registers and Records (Scotland) Act 1948 (appointment etc. of Keeper of the Registers and Keeper of the Records), for “Secretary of State” there is substituted “ Scottish Ministers ”.

Lands Tribunal Act 1949 (c.42)

9 In section 2 of the Lands Tribunal Act 1949 (members etc. of Lands Tribunal for Scotland)—

(a) ^{F72}

(b) after that subsection there is inserted—

“(10) The remuneration of members of the Lands Tribunal for Scotland shall be charged on the Scottish Consolidated Fund.”

Textual Amendments

F72 Sch. 8 para. 9(a) repealed (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 5(5), [Sch. 4](#)

Defamation Act 1952 (c.66)

10 In section 10 of the Defamation Act 1952 (limitation on privilege at elections), after “local government authority” there is inserted “ to the Scottish Parliament ”.

Defamation Act (Northern Ireland) 1955 (c.11 (N.I.))

11 In section 10(2) of the Defamation Act (Northern Ireland) 1955 (limitation on privilege at elections), after “Parliament of the United Kingdom” there is inserted “ or to the Scottish Parliament ”.

Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c.49)

12 In section 1(1) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (power of Secretary of State to appoint Registrar General), for “Secretary of State” there is substituted “ Scottish Ministers ”.

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Pensions (Increase) Act 1971 (c.56)

- 13 In Part II of Schedule 2 to the Pensions (Increase) Act 1971 (official pensions out of local funds), before paragraph 39 there is inserted—

“ Scottish Parliament and Scottish Executive

- 38AB A pension payable under a scheme established by virtue of section 81(4) (b) of, or paragraph 3(4)(b) of Schedule 2 to, the Scotland Act 1998.”

Superannuation Act 1972 (c.11)

- 14 In section 1(6) of the Superannuation Act 1972 (superannuation as respects civil servants etc.), for “or the Consolidated Fund” there is substituted “ the Consolidated Fund or the Scottish Consolidated Fund ”.

European Communities Act 1972 (c.68)

- 15 (1) The European Communities Act 1972 is amended as follows.
- (2) In section 2 (general implementation of Treaties)—
- (a) references to a statutory power or duty include a power or duty conferred by an Act of the Scottish Parliament or an instrument made under such an Act, and
 - (b) references to an enactment include an enactment within the meaning of this Act.
- (3) In relation to [^{F73}any order, rules, regulations or scheme] made by the Scottish Ministers, or an Order in Council made on the recommendation of the First Minister, under section 2—
- (a) in subsection (2), “designated” in the first sentence, and the second sentence, shall be disregarded,
 - (b) references to an Act of Parliament shall be read as references to an Act of the Scottish Parliament, and
 - (c) paragraph 2(2) of Schedule 2 shall have effect as if the references to each, or either, House of Parliament were to the Scottish Parliament.
- (4) In section 3(4) (evidence), references to a government department include any part of the Scottish Administration.

Textual Amendments

F73 Words in Sch. 8 para. 15(3) substituted (8.1.2007) by [Legislative and Regulatory Reform Act 2006 \(c. 51\)](#), ss. 27(4), 33

Modifications etc. (not altering text)

C5 Sch. 8 para. 15(3)(c) applied (18.11.2004) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 260(5)(b), 263(10)(a)

Interpretation Act 1978 (c.30)

- 16 (1) The Interpretation Act 1978 is amended as follows.
- (2) After section 23 there is inserted—

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“23A Acts of the Scottish Parliament etc.

- (1) This Act applies in relation to an Act of the Scottish Parliament and an instrument made under such an Act only to the extent provided in this section.
 - (2) Except as provided in subsection (3) below, sections 15 to 18 apply to—
 - (a) an Act of the Scottish Parliament as they apply to an Act,
 - (b) an instrument made under an Act of the Scottish Parliament as they apply to subordinate legislation.
 - (3) In the application of those sections to an Act and to subordinate legislation—
 - (a) references to an enactment include an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and
 - (b) the reference in section 17(2)(b) to subordinate legislation includes an instrument made under an Act of the Scottish Parliament.
 - (4) In the application of section 20 to an Act and to subordinate legislation, references to an enactment include an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.”
- (3) In Schedule 1 (words and expressions defined), the following definitions are inserted in the appropriate places—
- ““Act” means an Act of Parliament.”
- ““Enactment” does not include an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.”

Education (Scotland) Act 1980 (c.44)

- 17 In section 135(1) of the Education (Scotland) Act 1980 (interpretation), in the definition of “Her Majesty’s inspectors”, “on the recommendation of the Secretary of State” is omitted.

Civil Jurisdiction and Judgments Act 1982 (c.27)

- 18 (1) Section 46 of the Civil Jurisdiction and Judgments Act 1982 (domicile and seat of the Crown) is amended as follows.
- (2) In subsection (3), after paragraph (a) there is inserted—
- “(aa) the Crown in right of the Scottish Administration has its seat in, and in every place in, Scotland.”.
- (3) In subsection (7), after “Kingdom” there is inserted “, the Scottish Administration”.

Mental Health Act 1983 (c.20)

- 19 In section 141 of the Mental Health Act 1983 (members of the House of Commons suffering from mental illness), after subsection (7), there is added—
- “(8) This section also has effect in relation to members of the Scottish Parliament but as if—

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- (a) any references to the House of Commons or the Speaker were references to the Scottish Parliament or (as the case may be) the Presiding Officer, and
- (b) subsection (7) were omitted.”

National Audit Act 1983 (c.44)

- 20 Sections 6 and 7 of the National Audit Act 1983 (value for money studies) shall not apply in relation to—
- (a) the Scottish Administration or any part of it, or
 - (b) any Scottish public authority with mixed functions or no reserved functions.

Tourism (Overseas Promotion) (Scotland) Act 1984 (c.4)

- 21 In section 1 of the Tourism (Overseas Promotion) (Scotland) Act 1984 (power of Scottish Tourist Board to promote tourism in Scotland outside UK), subsection (2) is omitted.

Bankruptcy (Scotland) Act 1985 (c.66)

- 22 For section 1 of the Bankruptcy (Scotland) Act 1985 there is substituted—

“1 Accountant in Bankruptcy.

- (1) The Accountant in Bankruptcy shall be appointed by the Scottish Ministers.
- (2) The Scottish Ministers may appoint a member of the staff of the Accountant in Bankruptcy to be Depute Accountant in Bankruptcy to exercise all of the functions of the Accountant in Bankruptcy at any time when the Accountant in Bankruptcy is unable to do so.”

Insolvency Act 1986 (c.45)

- 23 (1) The Insolvency Act 1986 is amended as follows.
- [^{F74}(2) Anything directed to be done, or which may be done, to or by the registrar of companies in Scotland by virtue of any of the provisions mentioned in sub-paragraph (3), shall, or (as the case may be) may, also be done to or by the Accountant in Bankruptcy.
- (2A) In the case of a building society, friendly society or industrial and provident society which has its registered office in Scotland, anything directed to be done, or which may be done, to or by the Financial Services Authority by virtue of any of the provisions mentioned in sub-paragraph (3) as applied (with or without modifications) in relation to the society shall, or (as the case may be) may, also be done to or by the Accountant in Bankruptcy.]
- (3) Those provisions are: sections 53(1), 54(3), 61(6), 62(5) (so far as relating to the giving of notice), 67(1), 69(2), 84(3), 94(3), 106(3) and (5), 112(3), 130(1), 147(3), 170(2) and 172(8).
- [^{F75}(4) Anything directed to be done, or which may be done, to or by the registrar of companies in Scotland by virtue of any of the provisions mentioned in sub-

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paragraph (5), shall, or (as the case may be) shall instead be done to or by the Accountant in Bankruptcy.

(4A) In the case of a building society, friendly society or industrial and provident society which has its registered office in Scotland, anything directed to be done, or which may be done, to or by the Financial Services Authority by virtue of any of those provisions as applied (with or without modifications) in relation to the society shall, or (as the case may be) shall instead be done to or by the Accountant in Bankruptcy.]

(5) Those provisions are: sections 89(3), 109(1), 171(5) and (6), 173(2)(a) and 192(1).

(6) In section 427 (members of the House of Commons whose estates are sequestrated etc.), after subsection (6) there is inserted—

“(6A) Subsections (4) to (6) have effect in relation to a member of the Scottish Parliament but as if—

- (a) references to the House of Commons were to the Parliament and references to the Speaker were to the Presiding Officer, and
- (b) in subsection (4), for “under this section” there were substituted “under section 15(1)(b) of the Scotland Act 1998 by virtue of this section”.

Textual Amendments

F74 Sch. 8 para. 23(2)(2A) substituted (1.12.2001) for Sch. 8 para. 23(2) by S.I. 2001/3649, arts. 1, 360(2)

F75 Sch. 8 para. 23(4)(4A) substituted (1.12.2001) for Sch. 8 para. 23(4) by S.I. 2001/3649, arts. 1, 360(3)

Commencement Information

I4 Sch. 8 para. 23 wholly in force at 1.7.1999; Sch. 8 para. 23(1)(6) in force at Royal Assent see s. 130(1); Sch. 8 para. 23(2)-(5) in force at 1.7.1999 by S.I. 1998/3178, art. 3.

Public Order Act 1986 (c.64)

24 In section 26(1) of the Public Order Act 1986 (savings for reports of parliamentary proceedings), after “Parliament” there is inserted “ or in the Scottish Parliament ”.

Copyright, Designs and Patents Act 1988 (c.48)

- 25 (1) The Copyright, Designs and Patents Act 1988 is amended as follows.
- (2) In section 12(9) (duration of copyright in literary, dramatic, musical or artistic works), for “166” there is substituted “ 166A ”.
 - (3) In section 153(2) (qualification for copyright protection), for “166” there is substituted “ 166A ”.
 - (4) In section 163(6) (Crown copyright), for “and 166” there is substituted “ to 166A ”.
 - (5) In section 164(1) (Crown copyright in Acts of Parliament etc.), after “Parliament” there is inserted “ Act of the Scottish Parliament ”.
 - (6) After section 166 there is inserted—

Status: Point in time view as at 01/10/2009.

Changes to legislation: Scotland Act 1998 is up to date with all changes known to be in force on or before 19 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)

“166A Copyright in Bills of the Scottish Parliament.

- (1) Copyright in every Bill introduced into the Scottish Parliament belongs to the Scottish Parliamentary Corporate Body.
- (2) Copyright under this section subsists from the time when the text of the Bill is handed in to the Parliament for introduction—
 - (a) until the Bill receives Royal Assent, or
 - (b) if the Bill does not receive Royal Assent, until it is withdrawn or rejected or no further parliamentary proceedings may be taken in respect of it.
- (3) References in this Part to Parliamentary copyright (except in section 165) include copyright under this section; and, except as mentioned above, the provisions of this Part apply in relation to copyright under this section as to other Parliamentary copyright.
- (4) No other copyright, or right in the nature of copyright, subsists in a Bill after copyright has once subsisted under this section; but without prejudice to the subsequent operation of this section in relation to a Bill which, not having received Royal Assent, is later reintroduced into the Parliament.”
- (7) In section 178 (minor definitions)—
 - (a) in the definition of “the Crown”, after “of” there is inserted “ the Scottish Administration or of ”, and
 - (b) in the definition of “parliamentary proceedings”, after “Assembly” there is inserted “ of the Scottish Parliament ”.
- (8) In section 179 (index of defined expressions), in column 2 of the entry for “Parliamentary copyright”, for “and 166(6)” there is substituted “ 166(6) and 166A(3) ”.

Official Secrets Act 1989 (c.6)

- 26
- (1) Section 12 of the Official Secrets Act 1989 (meaning of “Crown servant” and “government contractor” for the purposes of that Act) is amended as follows.
 - (2) In subsection (1), after paragraph (a) there is inserted—

“(aa) a member of the Scottish Executive or a junior Scottish Minister;”.
 - (3) In subsection (2)(a), after “above,” there is inserted “ of any office-holder in the Scottish Administration, ”.
 - (4) After subsection (3) there is inserted—

“(4) In this section “office-holder in the Scottish Administration” has the same meaning as in section 126(7)(a) of the Scotland Act 1998.”.

Prisons (Scotland) Act 1989 (c.45)

- 27
- (1) The Prisons (Scotland) Act 1989 is amended as follows.
 - (2) Section 2 of that Act (appointment of officers etc.) is omitted.

Status: Point in time view as at 01/10/2009.

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(3) In section 3(1) (prison officers), for the words following “Secretary of State” there is substituted—

“(1A) Every prison shall have a governor and such other officers as may be necessary.”

(4) In section 3A (medical services)—

(a) in subsection (2), for “appointing” there is substituted “ providing ” and for “appointment” there is substituted “ provision ”, and

(b) in subsection (4), for “appointed” there is substituted “ provided ”.

European Communities (Amendment) Act 1993 (c.32)

28 In section 6 of the European Communities (Amendment) Act 1993 (persons who may be proposed for membership of the Committee of the Regions), after “he is” there is inserted “ a member of the Scottish Parliament ”.

Scottish Land Court Act 1993 (c.45)

29 In section 1 of the Scottish Land Court Act 1993 (the Scottish Land Court)—

(a) in subsection (2), for “Secretary of State” there is substituted “ First Minister ”, and

(b) after subsection (2) there is inserted—

“(2A) Before recommending the appointment of a person as Chairman, the First Minister shall consult the Lord President of the Court of Session.”

Value Added Tax Act 1994 (c.23)

30 In section 41 of the Value Added Tax Act 1994 (application to the Crown), in subsection (6), after “includes” there is inserted “ the Scottish Administration ”.

Requirements of Writing (Scotland) Act 1995 (c.7)

31 In section 12(1) of the Requirements of Writing (Scotland) Act 1995 (interpretation)

(a) in the definition of “Minister”, after “1975” there is inserted “ and also includes a member of the Scottish Executive ”, and

(b) in paragraph (a) of the definition of “officer”, after “Department” there is inserted “ or, as the case may be, as a member of the staff of the Scottish Ministers or the Lord Advocate ”.

Criminal Procedure (Scotland) Act 1995 (c.46)

32 (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

(2) After section 288 there is inserted—

Status: Point in time view as at 01/10/2009.

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“ Devolution issues

288A Rights of appeal for Advocate General: devolution issues.

- (1) This section applies where—
 - (a) a person is acquitted or convicted of a charge (whether on indictment or in summary proceedings), and
 - (b) the Advocate General for Scotland was a party to the proceedings in pursuance of paragraph 6 of Schedule 6 to the Scotland Act 1998 (devolution issues).
- (2) The Advocate General for Scotland may refer any devolution issue which has arisen in the proceedings to the High Court for their opinion; and the Clerk of Justiciary shall send to the person acquitted or convicted and to any solicitor who acted for that person at the trial, a copy of the reference and intimation of the date fixed by the Court for a hearing.
- (3) The person may, not later than seven days before the date so fixed, intimate in writing to the Clerk of Justiciary and to the Advocate General for Scotland either—
 - (a) that he elects to appear personally at the hearing, or
 - (b) that he elects to be represented by counsel at the hearing,but, except by leave of the Court on cause shown, and without prejudice to his right to attend, he shall not appear or be represented at the hearing other than by and in conformity with an election under this subsection.
- (4) Where there is no intimation under subsection (3)(b), the High Court shall appoint counsel to act at the hearing as *amicus curiae*.
- (5) The costs of representation elected under subsection (3)(b) or of an appointment under subsection (4) shall, after being taxed by the Auditor of the Court of Session, be paid by the Advocate General for Scotland out of money provided by Parliament.
- (6) The opinion on the point referred under subsection (2) shall not affect the acquittal or (as the case may be) conviction in the trial.

288B Appeals to Judicial Committee of the Privy Council.

- (1) This section applies where the Judicial Committee of the Privy Council determines an appeal under paragraph 13(a) of Schedule 6 to the Scotland Act 1998 against a determination of a devolution issue by the High Court in the ordinary course of proceedings.
 - (2) The determination of the appeal shall not affect any earlier acquittal or earlier quashing of any conviction in the proceedings.
 - (3) Subject to subsection (2) above, the High Court shall have the same powers in relation to the proceedings when remitted to it by the Judicial Committee as it would have if it were considering the proceedings otherwise than as a trial court.”
- (3) In section 307(1) (interpretation), after the definition of “crime” there is inserted—

Status: Point in time view as at 01/10/2009.

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““devolution issue” has the same meaning as in Schedule 6 to the Scotland Act 1998;”.

Defamation Act 1996 (c.31)

- 33 (1) The Defamation Act 1996 is amended as follows.
- (2) In section 17(1) (interpretation), in the definition of “statutory provision”, after “1978” there is inserted—
- “(aa) a provision contained in an Act of the Scottish Parliament or in an instrument made under such an Act.”.
- (3) In paragraph 11(1)(c) of Schedule 1 (qualified privilege), after “Minister of the Crown” there is inserted “ a member of the Scottish Executive ”.

Damages Act 1996 (c.48)

- 34 In section 6 of the Damages Act 1996 (guarantees for public sector settlements), after subsection (8) there is inserted—
- “(8A) In the application of subsection (3) above to Scotland, for the words from “guidelines” to the end there shall be substituted “the Minister”.”

SCHEDULE 9

Section 125.

REPEALS

Commencement Information

I5 [Sch. 9](#) in force for certain purposes at 20.5.1999 and for all remaining purposes at 1.7.1999 by [S.I. 1998/3178](#), [arts. 2\(2\), 3](#)

Chapter	Short title	Extent of repeal
1927 c. 35.	The Sheriff Courts and Legal Officers (Scotland) Act 1927.	In section 1(2), “with the consent of the Treasury”. In section 2, “with the consent of the Treasury as to numbers and salaries”. In section 3, “and in either case with the consent of the Treasury”. In section 5, “with the consent of the Treasury as to numbers and salaries”. In section 12, “after consultation with the Treasury”.

Status: Point in time view as at 01/10/2009.

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1933 c. 41.	The Administration of Justice (Scotland) Act 1933.	In sections 24(7) and 25, “and shall be exercised on nomination by the Lord Advocate”.
1975 c. 24.	The House of Commons Disqualification Act 1975.	In Schedule 2, the entries for the Lord Advocate and the Solicitor General for Scotland.
1975 c. 27.	The Ministerial and other Salaries Act 1975.	In Part III of Schedule 1, the entries for the Lord Advocate and the Solicitor General for Scotland.
1980 c. 44.	The Education (Scotland) Act 1980.	In section 135(1), in the definition of “Her Majesty’s inspectors”, “on the recommendation of the Secretary of State”.
1984 c. 4.	The Tourism (Overseas Promotion) (Scotland) Act 1984.	Section 1(2).
1986 c. 56.	The Parliamentary Constituencies Act 1986.	In Schedule 2, rule 1(2).
1989 c. 45.	The Prisons (Scotland) Act 1989.	Section 2.

Status:

Point in time view as at 01/10/2009.

Changes to legislation:

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