



# Scotland Act 1998

## 1998 CHAPTER 46

### PART III

#### FINANCIAL PROVISIONS

#### **64 Scottish Consolidated Fund.**

- (1) There shall be a Scottish Consolidated Fund.
- (2) The Secretary of State shall from time to time make payments into the Fund out of money provided by Parliament of such amounts as he may determine.
- [<sup>F1</sup>(2A) The Secretary of State shall in accordance with section 64A pay into the Fund out of money provided by Parliament any amounts payable under that section.]
- (3) Sums received by an office-holder in the Scottish Administration shall be paid into the Fund.
- (4) Subsection (3) is subject to any provision made by or under an Act of the Scottish Parliament for the disposal of or accounting for such sums.
- (5) The Treasury may, after consulting with the Scottish Ministers, by order designate receipts of any description specified in the order which are payable into the Fund (or would be but for any provision made by or under an Act of the Scottish Parliament).
- (6) The Scottish Ministers shall make payments to the Secretary of State, at such times and by such methods as the Treasury may from time to time determine, of sums equal to the total amount outstanding in respect of designated receipts.
- (7) Amounts required for the payment of sums under subsection (6) shall be charged on the Fund.
- (8) The Fund shall be held with the Paymaster General.

*Status: Point in time view as at 26/06/2018.*

*Changes to legislation: There are currently no known outstanding effects for the Scotland Act 1998, Part III. (See end of Document for details)*

#### Textual Amendments

**F1** S. 64(2A) inserted (23.5.2016) by [Scotland Act 2016 \(c. 11\)](#), **ss. 16(2)**, 72(3)

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

**C1** S. 64(4) modified (1.7.1999) (*temp.*) by [S.I. 1999/441](#), **arts. 1(5)**, 7

**C2** S. 64(5)-(7) amended (1.4.2000) by [S.I. 2000/687](#), **art. 2**

**C3** S. 64(5) restricted (12.3.2009) by [Dormant Bank and Building Society Accounts Act 2008 \(c. 31\)](#), **ss. 26(9)**, 31; [S.I. 2009/490](#), **art. 2** (with **art. 3**)

#### Commencement Information

**I1** S. 64(1)(2)(8) in force at 1.4.1999, s. 64(3)-(7) in force at 1.7.1999 by [S.I. 1998/3178](#), **arts. 2(2)**, 3

### [<sup>F2</sup>64A Assignment of VAT

- (1) Where there is an agreement between the Treasury and the Scottish Ministers for identifying an amount agreed to represent the standard rate VAT attributable to Scotland for any period (“the agreed standard rate amount”), the amount described in subsection (3) is payable under this section in respect of that period.
- (2) Where there is an agreement between the Treasury and the Scottish Ministers for identifying an amount agreed to represent the reduced rate VAT attributable to Scotland for that period (“the agreed reduced rate amount”), the amount described in subsection (4) is payable under this section in respect of that period.
- (3) The amount payable in accordance with subsection (1) is the amount obtained by multiplying the agreed standard rate amount by—
 

10 SR

where SR is the number of percentage points in the rate at which value added tax is charged under section 2(1) of the Value Added Tax Act 1994 for the period.
- (4) The amount payable in accordance with subsection (2) is the amount obtained by multiplying the agreed reduced rate amount by—
 

2.5 RR

where RR is the number of percentage points in the rate at which value added tax is charged under section 29A(1) of the Value Added Tax Act 1994 for the period.
- (5) The payment of those amounts under section 64(2A) is to be made in accordance with any agreement between the Treasury and the Scottish Ministers as to the time of the payment or otherwise.]

#### Textual Amendments

**F2** S. 64A inserted (23.5.2016) by [Scotland Act 2016 \(c. 11\)](#), **ss. 16(3)**, 72(3)

### 65 Payments out of the Fund.

- (1) A sum may only be paid out of the Scottish Consolidated Fund if—
  - (a) it has been charged on the Fund by any enactment,

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- (b) it is payable out of the Fund without further approval by virtue of this Act, or
  - (c) it is paid out for or in connection with any of the purposes mentioned in subsection (2) in accordance with rules made by or under an Act of the Scottish Parliament.
- (2) Those purposes are—
- (a) meeting expenditure of the Scottish Administration,
  - (b) meeting expenditure payable out of the Fund under any enactment.
- (3) A sum paid out of the Fund shall not be applied for any purpose other than that for which it was charged or (as the case may be) paid out.

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

C4 S. 65(1)(c) modified (1.7.1999) (*temp.* until 1.4.2000) by S.I. 1999/441, arts. 1(5), 10

**[<sup>F3</sup>65A Destination of fines, forfeitures and fixed penalties**

Where an Act of Parliament or subordinate legislation under an Act of Parliament requires or authorises a sum to be paid into the Consolidated Fund, and the sum appears to the Secretary of State to be a fine, forfeiture or fixed penalty, the Secretary of State may with the consent of the Treasury by regulations modify the Act or subordinate legislation so as to require or authorise the sum to be paid instead into the Scottish Consolidated Fund.]

**Textual Amendments**

F3 S. 65A inserted (1.4.2017) by Scotland Act 2016 (c. 11), ss. 67(2), 72(5); S.I. 2016/1178, reg. 2(c)

**66 Borrowing by the Scottish Ministers etc.**

- [<sup>F4</sup>(1) The Scottish Ministers may borrow from the Secretary of State—
- (a) any sums required by them for the purpose of meeting a temporary excess of sums paid out of the Scottish Consolidated Fund over sums paid into that Fund,
  - (b) any sums required by them for the purpose of providing a working balance in the Scottish Consolidated Fund, <sup>F5</sup>...
  - (c) any sums which in accordance with rules determined by the Treasury are required by them to meet current expenditure because of a shortfall in receipts from devolved taxes, <sup>F6</sup>... from income tax charged by virtue of a Scottish rate resolution, [<sup>F7</sup> or from amounts payable under section 64A,] against forecast receipts.
  - [<sup>F8</sup>(d) any sums which in accordance with rules determined by the Treasury are required by them to meet current expenditure because of an excess of welfare payments over forecast welfare payments, and
  - (e) any sums which in accordance with rules made by the Treasury are required by them to meet current expenditure because of a Scotland-specific negative economic shock.]

[<sup>F9</sup>(1ZA) In subsection (1)(d) “welfare payments” means—

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- (a) payments under any provision relating to matters within exceptions 1 to 10 in Section F1 of Part 2 of Schedule 5 or exception 1 in Section H3 of that Part, and
  - (b) payments attributable to regulations made by the Scottish Ministers by virtue of section 29 or 30 of the Scotland Act 2016 (powers in relation to universal credit).]
- (1A) The Scottish Ministers may, with the approval of the Treasury, borrow by way of loan [<sup>F10</sup>or by the issue of bonds (but not bonds transferable by delivery)] any sums required by them for the purpose of meeting capital expenditure.
- (1B) A sum is required for the purpose of meeting capital expenditure if the expenditure would be capital expenditure for the purposes of accounts under section 70.]
- (2) Amounts required for the repayment of, or the payment of interest on, sums borrowed under this section shall be charged on the Fund.
- (3) Sums borrowed under this section [<sup>F11</sup>from the Secretary of State] shall be repaid to the Secretary of State at such times and by such methods, and interest on them shall be paid to him at such rates and at such times, as the Treasury may from time to time determine.
- (4) A member of the [<sup>F12</sup>Scottish Government] may borrow money only under this section or under any power conferred by any other Act of Parliament.
- [<sup>F13</sup>(5) The Secretary of State may by order made with the consent of the Treasury amend subsection (1A) so as to vary the means by which the Scottish Ministers may borrow money.]

#### Textual Amendments

- F4** S. 66(1)-(1B) substituted for s. 66(1) (12.12.2014) by [Scotland Act 2012 \(c. 11\), ss. 32\(3\), 44\(4\)\(b\); S.I. 2014/3250, art. 2](#)
- F5** Word in s. 66(1)(b) omitted (1.4.2017) by virtue of [Scotland Act 2016 \(c. 11\), ss. 20\(3\), 72\(5\); S.I. 2016/1178, reg. 2\(a\)](#)
- F6** Word in s. 66(1)(c) omitted (1.4.2017) by virtue of [Scotland Act 2016 \(c. 11\), ss. 20\(4\)\(a\), 72\(5\); S.I. 2016/1178, reg. 2\(a\)](#)
- F7** Words in s. 66(1)(c) inserted (1.4.2017) by [Scotland Act 2016 \(c. 11\), ss. 20\(4\)\(b\), 72\(5\); S.I. 2016/1178, reg. 2\(a\)](#)
- F8** S. 66(1)(d)(e) inserted (1.4.2017) by [Scotland Act 2016 \(c. 11\), ss. 20\(5\), 72\(5\); S.I. 2016/1178, reg. 2\(a\)](#)
- F9** S. 66(1ZA) inserted (1.4.2017) by [Scotland Act 2016 \(c. 11\), ss. 20\(6\), 72\(5\); S.I. 2016/1178, reg. 2\(a\)](#)
- F10** Words in s. 66(1A) inserted (1.4.2015) by [The Scotland Act 1998 \(Variation of Borrowing Power\) Order 2015 \(S.I. 2015/932\), arts. 1, 2](#)
- F11** Words in s. 66(3) inserted (12.12.2014) by [Scotland Act 2012 \(c. 11\), ss. 32\(4\), 44\(4\)\(b\); S.I. 2014/3250, art. 2](#)
- F12** Words in Act substituted (3.7.2012) by [Scotland Act 2012 \(c. 11\), ss. 12\(2\)\(a\), 44\(5\) \(with s. 12\(3\)\); S.I. 2012/1710, art. 2\(f\)](#)
- F13** S. 66(5) inserted (12.12.2014) by [Scotland Act 2012 \(c. 11\), ss. 32\(5\), 44\(4\)\(b\); S.I. 2014/3250, art. 2](#)

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## **67 Lending by the Secretary of State.**

- (1) The Treasury may issue to the Secretary of State out of the National Loans Fund such sums as are required by him for making loans under section 66.
- (2) The aggregate at any time outstanding in respect of the principal of sums borrowed under <sup>F14</sup>section 66(1)] shall not exceed <sup>F15</sup>£1.75 billion] .
- (3) The Secretary of State may by order made with the consent of the Treasury substitute for the amount (or substituted amount) specified in subsection (2) such <sup>F16</sup>... amount as may be specified in the order.

<sup>F17</sup>(3A) An amount substituted under subsection (3) may be more or less than the amount for which it is substituted but may not be less than <sup>F18</sup>£1.75 billion] .]

- (4) Sums received by the Secretary of State under section 66(3) shall be paid into the National Loans Fund.

### **Textual Amendments**

- F14** Words in s. 67(2) substituted (12.12.2014) by [Scotland Act 2012 \(c. 11\)](#), **ss. 32(7)**, 44(4)(b); S.I. 2014/3250, art. 2
- F15** Words in s. 67(2) substituted (1.4.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 20(7)**, 72(5); S.I. 2016/1178, reg. 2(a)
- F16** Word in s. 67(3) omitted (12.12.2014) by virtue of [Scotland Act 2012 \(c. 11\)](#), **ss. 32(8)**, 44(4)(b); S.I. 2014/3250, art. 2
- F17** S. 67(3A) inserted (12.12.2014) by [Scotland Act 2012 \(c. 11\)](#), **ss. 32(9)**, 44(4)(b); S.I. 2014/3250, art. 2
- F18** Words in s. 67(3A) substituted (1.4.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 20(7)**, 72(5); S.I. 2016/1178, reg. 2(a)

## **<sup>F19</sup>67A Lending for capital expenditure**

- (1) The aggregate at any time outstanding in respect of the principal of sums borrowed under section 66(1A) shall not exceed <sup>F20</sup>£3 billion] .
- (2) The Secretary of State may by order made with the consent of the Treasury substitute for the amount (or substituted amount) specified in subsection (1) such amount as may be specified in the order.
- (3) An amount substituted under subsection (2) may be more or less than the amount for which it is substituted but may not be less than <sup>F21</sup>£3 billion] .
- (4) A person lending money to a member of the Scottish Government is not bound to enquire whether the member of the Scottish Government has power to borrow the money and is not to be prejudiced by the absence of any such power.
- (5) The Scottish Ministers may not mortgage or charge any of their property as security for money which they have borrowed under section 66(1A).  
This is subject to section 66(2).
- (6) Security given in breach of subsection (5) is unenforceable.]

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#### Textual Amendments

- F19** S. 67A inserted (12.12.2014) by [Scotland Act 2012 \(c. 11\)](#), **ss. 32(10)**, 44(4)(b); S.I. 2014/3250, art. 2
- F20** Words in s. 67A(1) substituted (1.4.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 20(8)**, 72(5); S.I. 2016/1178, reg. 2(a)
- F21** Words in s. 67A(3) substituted (1.4.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 20(8)**, 72(5); S.I. 2016/1178, reg. 2(a)

### 68 Borrowing by statutory bodies.

- (1) If a member of the [<sup>F12</sup>Scottish Government] lends money to a body established under any enactment, the rate of interest on the loan shall not be less than the lowest rate determined by the Treasury under section 5 of the <sup>M1</sup>National Loans Act 1968 in respect of similar loans made out of the National Loans Fund on the day the loan is made.
- (2) A body established under any enactment shall not, in pursuance of a power conferred by virtue of an Act of the Scottish Parliament, borrow money in a currency other than sterling except with the consent of the Scottish Ministers given with the approval of the Treasury.

#### Textual Amendments

- F12** Words in Act substituted (3.7.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 12(2)(a)**, 44(5) (with s. 12(3)); S.I. 2012/1710, art. 2(f)

#### Marginal Citations

- M1** 1968 c. 13.

### 69 The Auditor General for Scotland.

- (1) There shall be an Auditor General for Scotland who shall be an individual appointed by Her Majesty on the nomination of the Parliament.
- (2) A recommendation shall not be made to Her Majesty for the removal from office of the Auditor General for Scotland unless the Parliament so resolves and, if the resolution is passed on a division, the number of members voting in favour is not less than two-thirds of the total number of seats for members of the Parliament.
- (3) The validity of any act of the Auditor General for Scotland is not affected by any defect in his nomination by the Parliament.
- (4) The Auditor General for Scotland shall not, in the exercise of any of his functions, be subject to the direction or control of any member of the [<sup>F12</sup>Scottish Government] or of the Parliament.
- (5) Subsection (4) does not apply in relation to any function conferred on him of preparing accounts.

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### Textual Amendments

**F12** Words in Act substituted (3.7.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 12(2)(a)**, 44(5) (with s. 12(3)); S.I. 2012/1710, art. 2(f)

## 70 Financial control, accounts and audit.

- (1) Scottish legislation shall provide—
  - (a) for proper accounts to be prepared by the Scottish Ministers, by the Lord Advocate and by other persons to whom sums are paid out of the Scottish Consolidated Fund, of their expenditure and receipts,
  - (b) for the Scottish Ministers to prepare an account of payments into and out of the Fund,
  - (c) for the Auditor General for Scotland to exercise, or ensure the exercise by other persons of, the functions mentioned in subsection (2),
  - (d) for access by persons exercising those functions to such documents as they may reasonably require,
  - (e) for members of the staff of the Scottish Administration designated for the purpose to be answerable to the Parliament in respect of the expenditure and receipts of each part of the Scottish Administration, and
  - (f) for the publication of parliamentary accounts and of reports on such accounts and for the laying of such accounts and reports before the Parliament.
- (2) The functions referred to in subsection (1)(c) are—
  - (a) issuing credits for the payment of sums out of the Fund,
  - (b) examining parliamentary accounts (which includes determining whether sums paid out of the Fund have been paid out and applied in accordance with section 65), and certifying and reporting on them,
  - (c) carrying out examinations into the economy, efficiency and effectiveness with which the Scottish Ministers and the Lord Advocate have used their resources in discharging their functions, and
  - (d) carrying out examinations into the economy, efficiency and effectiveness with which other persons determined under Scottish legislation to whom sums are paid out of the Fund have used those sums in discharging their functions.
- (3) Standing orders shall provide for the consideration by the Parliament of accounts and reports laid before it in pursuance of subsection (1)(f).
- (4) Scottish legislation may make further provision for the purpose of ensuring that persons who receive sums derived from the Fund are accountable including, in particular, provision for any person to whom subsection (1)(a) does not apply to be accountable for his expenditure and receipts in respect of functions for which he receives sums derived from the Fund.
- (5) Persons (other than the Auditor General for Scotland) charged with the exercise of any function mentioned in subsection (2) or other like function conferred by Scottish legislation shall not, in the exercise of that or any ancillary function, be subject to the direction or control of any member of the [<sup>F12</sup>Scottish Government] or of the Parliament.

*Status: Point in time view as at 26/06/2018.*

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- (6) Scottish legislation may not require any cross-border public authority to prepare accounts if any other legislation requires—
- (a) the authority to prepare accounts of its expenditure and receipts, and
  - (b) the accounts to be examined, certified and reported on by the Auditor General for Scotland, the Comptroller and Auditor General or a person appointed by either of them.
- (7) Subsection (2)(b) does not apply to accounts prepared by the Auditor General for Scotland.
- (8) This section does not require Scottish legislation to impose any requirement which is imposed by any other legislation.
- (9) In this section—
- “parliamentary accounts” means—
- (a) any accounts prepared in pursuance of subsection (1)(a) or (b), and
  - (b) any accounts referred to in subsection (6) which are required to be examined, certified and reported on by the Auditor General for Scotland or any person appointed by him,
- “Scottish legislation” means provision made by or under an Act of the Scottish Parliament and “other legislation” means provision made by any other enactment.

#### Textual Amendments

- F12** Words in Act substituted (3.7.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 12(2)(a)**, 44(5) (with s. 12(3)); S.I. 2012/1710, **art. 2(f)**

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

- C5** S. 70(6) extended (1.4.2000) by [1999 c. 28, s. 35\(1\)\(b\)](#) (with s. 38); S.I. 2000/1066, **art. 2**
- C6** S. 70(6) modified (1.12.2002) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#), s. 25(4), **Sch. 7 para. 2**; S.I. 2002/2202, **art. 2(2)**
- C7** S. 70(6) modified (27.7.2004) by [Energy Act 2004 \(c. 20\)](#), ss. 2(10), 198(2), **Sch. 1 para. 17(b)**; S.I. 2004/1973, **art. 2**, **Sch.**
- C8** S. 70(6) modified by [Private Security Industry Act 2001 \(c. 12\)](#), s. 2A (as inserted (E.W.S) (30.6.2006 for S. and 6.7.2006 for E.W.) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 171(1), 178(6), **Sch. 15 para. 3**; S.S.I. 2006/381, **art. 2**)
- C9** S. 70(6) extended (26.11.2008) by [Climate Change Act 2008 \(c. 27\)](#), ss. 32(2), 100(1), **Sch. 1 para. 27(2)(b)**

## 71 Existing debt.

- (1) Subsections (2) to (4) apply where—
- (a) power to lend money under a provision of a pre-commencement enactment was exercised by the Secretary of State,
  - (b) the sums required by him for the exercise of the power were issued by the Treasury out of the National Loans Fund, and
  - (c) the power is exercisable by the Scottish Ministers by virtue of section 53, or would have been so exercisable but for the repeal of the pre-commencement enactment.



*Status: Point in time view as at 26/06/2018.*

*Changes to legislation: There are currently no known outstanding effects for the Scotland Act 1998, Part III. (See end of Document for details)*

- (2) Any amount payable by way of repayment of or interest on the loan shall be paid to the Scottish Ministers and into the Scottish Consolidated Fund (instead of to the Secretary of State and into the National Loans Fund).
- (3) Amounts equal to those which are to be received by the Scottish Ministers in repayment of principal shall be treated as being amounts of advances made on the commencement of this section to the Scottish Ministers by the Secretary of State.
- (4) Such advances shall be repaid to the Secretary of State at such times and by such methods, and interest on them shall be paid to him at such rates and at such times, as the Treasury may from time to time determine.
- (5) Subsection (6) applies to any amount outstanding immediately before the commencement of this subsection in respect of the principal of the sum treated by virtue of section 2(3) of the <sup>M2</sup>Government Trading Funds Act 1973 as issued to the Registers of Scotland Executive Agency Trading Fund on the day on which the order establishing that fund came into force (“the issue date”).
- (6) The Secretary of State may, with the agreement of the Treasury, by order provide—
  - (a) for the amount to be treated as an advance made by him to the Scottish Ministers on the issue date, and
  - (b) for the advance to be repaid to him at such times and by such methods, and for interest on the advance to be paid to him at such rates and at such times, as were determined by the Treasury under section 2B(3) of that Act in respect of the sum referred to in subsection (5).
- (7) Sums required to be paid under subsection (4) or (6) shall be charged on the Scottish Consolidated Fund.
- (8) Sums received under subsection (4) or (6) shall be paid into the National Loans Fund.

#### **Commencement Information**

**I2** S. 71 wholly in force at 1.7.1999; s. 71 not in force at Royal Assent see s. 130; s. 71(6) in force at 25.1.1999 by [S.I. 1998/3178](#), [art. 2\(2\)](#), [Sch. 1](#); s. 71 in force at 1.7.1999 in so far as not already in force by [S.I. 1998/3178](#), [art. 2\(1\)](#)

#### **Marginal Citations**

**M2** 1973 c. 63.

## **72 Accounts of loans to the Scottish Ministers.**

The Secretary of State shall, for each financial year—

- (a) prepare, in such form and manner as the Treasury may direct, an account of sums paid and received by him under sections 66, 67 and 71, and
- (b) send the account to the Comptroller and Auditor General not later than the end of November in the following financial year,

and the Comptroller and Auditor General shall examine, certify and report on the account and shall lay copies of it and of his report before each House of Parliament.

**Status:**

Point in time view as at 26/06/2018.

**Changes to legislation:**

There are currently no known outstanding effects for the Scotland Act 1998, Part III.