



# Scotland Act 1998

## 1998 CHAPTER 46

### PART V

#### MISCELLANEOUS AND GENERAL

##### *Remuneration of members of the Parliament and [<sup>F1</sup>Government]*

###### **Textual Amendments**

- F1** Pt. V: word in crossheading substituted (3.7.2012) by [Scotland Act 2012 \(c. 11\)](#), [ss. 12\(2\)\(b\)](#), [44\(5\)](#) (with [s. 12\(3\)](#)); [S.I. 2012/1710](#), [art. 2\(f\)](#)

#### **81 Remuneration of members of the Parliament and [<sup>F2</sup>Government].**

- (1) The Parliament shall make provision for the payment of salaries to members of the Parliament and members of the [<sup>F3</sup>Scottish Government].
- (2) The Parliament may make provision for the payment of allowances to members of the Parliament or members of the [<sup>F3</sup>Scottish Government].
- (3) The Parliament may make provision for the payment of pensions, gratuities or allowances to, or in respect of, any person who—
  - (a) has ceased to be a member of the Parliament or the [<sup>F3</sup>Scottish Government],  
or
  - (b) has ceased to hold such office, employment or other post in connection with the Parliament or the [<sup>F3</sup>Scottish Government] as the Parliament may determine but continues to be a member of the Parliament or the [<sup>F3</sup>Scottish Government].
- (4) Such provision may, in particular, include provision for—
  - (a) contributions or payments towards provision for such pensions, gratuities or allowances,

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- (b) the establishment and administration (whether by the Parliamentary corporation or otherwise) of one or more pension schemes.
- (5) In this section “provision” includes provision—
- (a) by an Act of the Scottish Parliament, or
  - (b) by a resolution of the Parliament conferring functions on the Parliamentary corporation;
- and references to a member of the [<sup>F3</sup>Scottish Government] include a junior Scottish Minister.

#### Textual Amendments

- F2** Word in s. 81 heading substituted (3.7.2012) by Scotland Act 2012 (c. 11), ss. 12(2)(b), 44(5) (with s. 12(3)); S.I. 2012/1710, art. 2(f)
- F3** 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)

- C1** S. 81(3) extended (6.5.1999) by S.I. 1999/1081, art. 8

## 82 Limits on salaries of members of the Parliament.

- (1) The Parliament shall ensure that the amount of salary payable to a member of the Parliament in accordance with section 81 is reduced if any salary is payable to him—
- [<sup>F4</sup>(za) under section 4 of the Parliamentary Standards Act 2009 (salaries of members of the House of Commons),]
- (a) pursuant to a resolution (or combination of resolutions) of [<sup>F5</sup>the House of Lords] relating to the remuneration of members of that House, or
  - (b) under section 1 of the <sup>M1</sup>European Parliament (Pay and Pensions) Act 1979 (remuneration of United Kingdom MEPs).
- (2) The Parliament shall ensure that the amount of salary is reduced—
- (a) to a particular proportion of what it would otherwise be or to a particular amount, or
  - (b) by the amount of any salary payable to the member as mentioned in subsection ([<sup>F6</sup>(1)(za), (a)] or (b)), by a particular proportion of that amount or by some other particular amount.

#### Textual Amendments

- F4** S. 82(1)(za) inserted (24.5.2011) by Constitutional Reform and Governance Act 2010 (c. 25), ss. 38, 52(2), Sch. 5 para. 11(2)(a); S.I. 2011/1274, art. 2(b)
- F5** Words in s. 82(1)(a) substituted (24.5.2011) by Constitutional Reform and Governance Act 2010 (c. 25), ss. 38, 52(2), Sch. 5 para. 11(2)(b); S.I. 2011/1274, art. 2(b)
- F6** Words in s. 82(2)(b) substituted (24.5.2011) by Constitutional Reform and Governance Act 2010 (c. 25), ss. 38, 52(2), Sch. 5 para. 11(3); S.I. 2011/1274, art. 2(b)

#### Marginal Citations

- M1** 1979 c. 50.

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### **83 Remuneration: supplementary.**

- (1) The Parliament shall ensure that information concerning sums paid as salaries, allowances, pensions or gratuities of the kind mentioned in section 81 is published for each financial year.
- (2) No payment of salary or allowances of the kind mentioned in section 81(1) or (2) shall be made to a person who is required by section 84 to take an oath unless he has done so.
- (3) Subsection (2) does not affect any entitlement to payments in respect of the period before the person concerned took the oath once he has done so.
- (4) For the purposes of sections 81 and 82, a person who is a member of the Parliament immediately before the Parliament is dissolved shall be treated—
  - (a) if he continues to hold office by virtue of section 19(2) or paragraph 1 of Schedule 2, as if he were such a member until the end of the day on which he ceases to hold such office, and
  - (b) if he does not fall within paragraph (a) but is nominated as a candidate at the subsequent general election, as if he were such a member until the end of the day on which the election is held.
- (5) Different provision may be made under section 81 or 82 for different cases.

*Other provision about members of the Parliament etc.*

### **84 Oaths.**

- (1) A person who is returned as a member of the Parliament shall take the oath of allegiance (whether or not he has taken the oath after being returned on a previous occasion or otherwise than as a member of the Parliament).
- (2) He shall do so at a meeting of the Parliament and shall not take part in any other proceedings of the Parliament until he has done so.
- (3) If he has not done so within the period of two months beginning with the day on which he was returned, or such longer period as the Parliament may have allowed before the end of that period, he shall cease to be a member of the Parliament (so that his seat is vacant).
- (4) Each member of the [F<sup>3</sup>Scottish Government] shall on appointment—
  - (a) take the official oath in the form provided by the M<sup>2</sup>Promissory Oaths Act 1868, and
  - (b) take the oath of allegiance.
- (5) Each junior Scottish Minister shall on appointment take the oath of allegiance.
- (6) Subsections (4) and (5) do not require a member of the Parliament to take the oath of allegiance again if he has already done so in compliance with his duty as a member.
- (7) In this section, references to taking the oath of allegiance are to taking it in the form provided by the Promissory Oaths Act 1868.

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#### Textual Amendments

**F3** 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

**M2** [1868 c. 72](#).

### 85 Exemption from jury service.

- (1) <sup>F7</sup> .....
- (2) In Part III of Schedule 1 to the <sup>M3</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (persons excusable as of right from jury service), after the entries in Group A there is inserted—

#### “GROUP AB

*Scottish Parliament and [<sup>F3</sup>Scottish Government]*

- (a) members of the Scottish Parliament;  
(b) members of the [<sup>F3</sup>Scottish Government]; and  
(c) junior Scottish Ministers.”

#### Textual Amendments

**F3** 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)

**F7** S. 85(1) repealed (5.4.2004) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 332, 336(3), **Sch. 37 Pt. 10**; [S.I. 2004/829](#), **art. 2(1)(2)** (subject to art. 2(3)-(6))

#### Marginal Citations

**M3** [1980 c. 55](#).

#### *Arrangements at Westminster*

### 86 Scottish representation at Westminster.

<sup>F8</sup> .....

#### Textual Amendments

**F8** S. 86 repealed (16.2.2011) by [Parliamentary Voting System and Constituencies Act 2011 \(c. 1\)](#), ss. 16, 19(2), **Sch. 12 Pt. 2**

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## **87 The Advocate General for Scotland.**

(1) In Schedule 2 to the <sup>M4</sup>House of Commons Disqualification Act 1975 (Ministerial offices) and Part III of Schedule 1 to the <sup>M5</sup>Ministerial and other Salaries Act 1975 (salaries of the Law Officers), after the entry for the Solicitor General there is inserted—

“Advocate General for Scotland”.

(2) The validity of anything done in relation to the Advocate General is not affected by a vacancy in that office.

(3) If that office is vacant or the Advocate General is for any reason unable to act, his functions shall be exercisable by such other Minister of the Crown as the Prime Minister may determine in writing.

### **Marginal Citations**

**M4** 1975 c. 24.

**M5** 1975 c. 27.

### *Cross-border public authorities*

## **88 Cross-border public authorities: initial status.**

(1) Sections 53 and 118 to 121 shall not apply in relation to any function which is specifically exercisable in relation to a cross-border public authority; and section 118 shall not apply in relation to any function of such an authority.

(2) A Minister of the Crown shall consult the Scottish Ministers before he exercises, in relation to a cross-border public authority, any specific function—

(a) which relates to any appointment or removal of the cross-border public authority concerned or of any members or office-holders of the cross-border public authority concerned, or

(b) whose exercise might affect Scotland otherwise than wholly in relation to reserved matters.

(3) Any cross-border public authority or other person which is required by a pre-commencement enactment or a prerogative instrument to lay any report relating to a cross-border public authority before Parliament or either House of Parliament shall also lay the report before the Scottish Parliament.

(4) Subsections (1) to (3) are subject to any Order in Council made under section 89.

(5) In this Act “cross-border public authority” means any body, government department, office or office-holder specified in an Order in Council made by Her Majesty under this section.

(6) Such an Order may only specify a body, government department, office or office-holder which (at the time when the Order is made) has, in addition to other functions, functions which are exercisable in or as regards Scotland and do not relate to reserved matters.

(7) In this section—

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“office-holder” includes employee or other post-holder,  
“report” includes accounts and any statement.

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

- C2** S. 88(1) restricted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 23 Pt. II para. 2(1)**; S.I. 1998/3178, **art. 3**
- C3** S. 88(2) restricted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 4 Pt. II para. 3(3)**; S.I. 1998/3178, **art. 3**
- S. 88(2) restricted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 2 Pt. II para. 3(3)**; S.I. 1998/3178, **art. 3**
- S. 88(2) restricted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 5 Pt. II para. 3(3)**; S.I. 1998/3178, **art. 3**
- S. 88(2) restricted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 7 Pt. II para. 3(3)**; S.I. 1998/3178, **art. 3**
- S. 88(2) restricted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, Sch. 8 Pt. II paras. 3(3), 4(2); S.I. 1998/3178, **art. 3**
- S. 88(2) restricted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 11 Pt. II para. 4(3)**; S.I. 1998/3178, **art. 3**
- S. 88(2) restricted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 13 Pt. II para. 3(3)**; S.I. 1998/3178, **art. 3**
- S. 88(2) restricted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 14 Pt. II para. 3(3)**; S.I. 1998/3178, **art. 3**
- S. 88(2) restricted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 16 Pt. II para. 3(3)**; S.I. 1998/3178, **art. 3**
- S. 88(2) restricted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 17 Pt. II para. 3(3)**; S.I. 1998/3178, **art. 3**
- S. 88(2)(a)(b) restricted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 23 Pt. II para. 2(2)(3)**; S.I. 1998/3178, **art. 3**
- C4** S. 88(2)(a) excluded (20.4.2000) by S.I. 2000/1102, **art. 5** (with art. 6(1))
- C5** S. 88(3) restricted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 23 Pt. II para. 2(4)**; S.I. 1998/3178, **art. 3**
- C6** S. 88(3) modified (23.5.2016) by Scotland Act 2016 (c. 11), **ss. 46(2), 72(7)**

#### Commencement Information

- II** S. 88 in force for certain purposes at 25.1.1999 and for all remaining purposes at 1.7.1999 by S.I. 1998/3178, **art. 2(2), 3**

## 89 Power to adapt etc. cross-border public authorities.

- (1) Her Majesty may by Order in Council make such provision in relation to a cross-border public authority as She considers necessary or expedient in consequence of this Act.
- (2) Such provision may, in particular, include provision—
  - (a) modifying any function of a cross-border public authority or of a Minister of the Crown in relation to such an authority,
  - (b) conferring any function on a cross-border public authority or on a Minister of the Crown or the Scottish Ministers in relation to such an authority,
  - (c) modifying the constitution of a cross-border public authority,
  - (d) modifying the application of section 56(4) or 88(1), (2) or (3),

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- (e) for any function to be exercisable by the Scottish Ministers instead of by a Minister of the Crown, or by the one concurrently with the other, or by both jointly or by either with the agreement of or after consultation with the other,
  - (f) apportioning any assets or liabilities,
  - (g) imposing, or enabling the imposition of, any limits or other restrictions in addition to or in substitution for existing limits or restrictions,
  - (h) providing for sums to be charged on or payable out of, or paid into, the Scottish Consolidated Fund (instead of or in addition to payments into or out of the Consolidated Fund or the National Loans Fund or out of money provided by Parliament),
  - (i) requiring payments, with or without interest, to a Minister of the Crown or into the Consolidated Fund or National Loans Fund.
- (3) No recommendation shall be made to Her Majesty in Council to make an Order under this section unless the cross-border public authority concerned has been consulted.

#### **Commencement Information**

**12** S. 89 in force at 6.5.1999 and at 1.7.1999 for all remaining purposes by [S.I. 1998/3178](#), [arts. 2\(2\), 3](#)

## **90 Power to transfer property of cross-border public authorities.**

- (1) This section applies if an Act of the Scottish Parliament provides for any functions of a cross-border public authority to be no longer exercisable in or as regards Scotland.
- (2) Her Majesty may by Order in Council provide—
- (a) for the transfer of any property to which this section applies, or
  - (b) for any person to have such rights or interests in relation to any property to which this section applies as Her Majesty considers appropriate (whether in connection with a transfer or otherwise).
- (3) This section applies to property belonging to the cross-border public authority concerned which appears to Her Majesty—
- (a) to be held or used wholly or partly for or in connection with the exercise of any of the functions concerned, or
  - (b) not to be within paragraph (a) but, when last held or used for or in connection with the exercise of any function, to have been so held or used for or in connection with the exercise of any of the functions concerned.
- (4) Her Majesty may by Order in Council provide for the transfer of any liabilities—
- (a) to which the cross-border public authority concerned is subject, and
  - (b) which appear to Her Majesty to have been incurred wholly or partly for or in connection with the exercise of any of the functions concerned.
- (5) No recommendation shall be made to Her Majesty in Council to make an Order under this section unless the cross-border public authority concerned has been consulted.

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## *f<sup>F9</sup> The BBC*

### Textual Amendments

- F9** S. 90A and cross-heading inserted (3.7.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 16, 44(5)**; S.I. 2012/1710, art. 2(i)

## **90A BBC Trust member for Scotland**

- (1) A Minister of the Crown must not exercise without the agreement of the Scottish Ministers functions relating to selection for a particular appointment by which—
  - (a) a person is to become a member of the BBC Trust and hold a Scottish post, or
  - (b) an existing member of the Trust is to hold a Scottish post.
- (2) “ Scottish post ” means a position, held as a member of the Trust, with specific reference to Scotland. ]

## *f<sup>F10</sup> The Crown Estate*

### Textual Amendments

- F10** S. 90B and cross-heading inserted (23.3.2016) by [Scotland Act 2016 \(c. 11\)](#), **ss. 36(1), 72(1)(b)**

## **90B The Crown Estate**

- (1) The Treasury may make a scheme transferring on the transfer date all the existing Scottish functions of the Crown Estate Commissioners (“ the Commissioners ”) to the Scottish Ministers or a person nominated by the Scottish Ministers (“ the transferee ”).
- (2) The existing Scottish functions are the Commissioners' functions relating to the part of the Crown Estate that, immediately before the transfer date, consists of—
  - (a) property, rights or interests in land in Scotland, excluding property, rights or interests mentioned in subsection (3), and
  - (b) rights in relation to the Scottish zone.
- (3) Where immediately before the transfer date part of the Crown Estate consists of property, rights or interests held by a limited partnership registered under the Limited Partnerships Act 1907, subsection (2)(a) excludes—
  - (a) the property, rights or interests, and
  - (b) any property, rights or interests in, or in a member of, a partner in the limited partnership.
- (4) Functions relating to rights within subsection (2)(b) are to be treated for the purposes of this Act as exercisable in or as regards Scotland.
- (5) The property, rights and interests to which the existing Scottish functions relate must continue to be managed on behalf of the Crown.
- (6) That does not prevent the disposal of property, rights or interests for the purposes of that management.



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- (7) Subsection (5) also applies to property, rights or interests acquired in the course of that management (except revenues to which section 1(2) of the Civil List Act 1952 applies).
- (8) The property, rights and interests to which subsection (5) applies must be maintained as an estate in land or as estates in land managed separately (with any proportion of cash or investments that seems to the person managing the estate to be required for the discharge of functions relating to its management).
- (9) The scheme may specify any property, rights or interests that appear to the Treasury to fall within subsection (2)(a) or (b), without prejudice to the functions transferred by the scheme.
- (10) The scheme must provide for the transfer to the transferee of designated rights and liabilities of the Commissioners in connection with the functions transferred.
- (11) The scheme must include provision to secure that the employment of any person in Crown employment (within the meaning of section 191 of the Employment Rights Act 1996) is not adversely affected by the transfer.
- (12) The scheme must include such provision as the Treasury consider necessary or expedient—
  - (a) in the interests of defence or national security,
  - (b) in connection with access to land for the purposes of telecommunications, or with other matters falling within Section C10 in Part 2 of Schedule 5,
  - (c) for securing that the management of property, rights or interests to which subsection (5) applies does not conflict with the exploitation of resources falling within Section D2 in Part 2 of Schedule 5, or with other reserved matters in connection with their exploitation, and
  - (d) for securing consistency, in the interests of consumers, in the management of property, rights or interests to which subsection (5) applies and of property, rights or interests to which the Commissioners' functions other than the existing Scottish functions relate, so far as it affects the transmission or distribution of electricity or the provision or use of electricity interconnectors.
- (13) Any transfer by the scheme is subject to any provision under subsection (12).
- (14) The scheme may include—
  - (a) incidental, supplemental and transitional provision;
  - (b) consequential provision, including provision amending an enactment, instrument or other document;
  - (c) provision conferring or imposing a function on any person including any successor of the transferee;
  - (d) provision for the creation of new rights or liabilities in relation to the functions transferred.
- (15) On the transfer date, the existing Scottish functions and the designated rights and liabilities are transferred and vest in accordance with the scheme.
- (16) A certificate by the Treasury that anything specified in the certificate has vested in any person by virtue of the scheme is conclusive evidence for all purposes.
- (17) The Treasury may make a scheme under this section only with the agreement of the Scottish Ministers.

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- (18) The power to make a scheme under this section is exercisable by statutory instrument.
- (19) The power to amend the scheme is exercisable so as to provide for an amendment to have effect from the transfer date.
- (20) In this section—
- “ designated ” means specified in or determined in accordance with the scheme;
- “ the transfer date ” means a date specified by the scheme as the date on which the scheme is to have effect. ]

### *F11 Renewable electricity incentive schemes*

#### **Textual Amendments**

**F11** S. 90C and cross-heading inserted (23.5.2016) by [Scotland Act 2016 \(c. 11\), ss. 61, 72\(7\)](#)

#### **90C Renewable electricity incentive schemes: consultation**

- (1) The Secretary of State must consult the Scottish Ministers before—
- (a) establishing a renewable electricity incentive scheme that applies in Scotland, or
  - (b) amending such a scheme as it relates to Scotland.
- (2) Subsection (1) does not apply to amendments that appear to the Secretary of State to be minor or made only for technical or administrative reasons; and the Secretary of State is not to be taken to establish or amend a scheme by exercising a power under a scheme, other than a power that is exercisable subject to any parliamentary procedure.
- (3) Subsection (1) does not require the Secretary of State to consult the Scottish Ministers about any levy in connection with a renewable electricity incentive scheme.
- (4) In this section a “renewable electricity incentive scheme” means any scheme, whether statutory or otherwise, that provides an incentive to generate, or facilitate the generation of, electricity from sources of energy other than fossil fuel or nuclear fuel. This includes provision made by or under the following so far as they relate to the generation of electricity from sources of energy other than fossil fuel or nuclear fuel—
- (a) sections 6 to 26 of the Energy Act 2013 (contracts for difference);
  - (b) sections 41 to 43 of the Energy Act 2008 (feed-in tariffs for small-scale generation of electricity);
  - (c) sections 32 to 32Z2 of the Electricity Act 1989 (renewables obligations or certificate purchase obligations).
- (5) Where, before the commencement of this section, the Secretary of State has consulted, or is consulting, the Scottish Ministers regarding a renewable electricity incentive scheme, that consultation is to be treated as fulfilling the obligation in subsection (1).]

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

## Miscellaneous

### 91 Maladministration.

- (1) The Parliament shall make provision for the investigation of relevant complaints made to its members in respect of any action taken by or on behalf of—
  - (a) a member of the [<sup>F3</sup>Scottish Government] in the exercise of functions conferred on the Scottish Ministers, or
  - (b) any other office-holder in the Scottish Administration.
- (2) For the purposes of subsection (1), a complaint is a relevant complaint if it is a complaint of a kind which could be investigated under the <sup>M6</sup>Parliamentary Commissioner Act 1967 if it were made to a member of the House of Commons in respect of a government department or other authority to which that Act applies.
- (3) The Parliament may make provision for the investigation of complaints in respect of—
  - (a) any action taken by or on behalf of an office-holder in the Scottish Administration,
  - (b) any action taken by or on behalf of the Parliamentary corporation,
  - (c) any action taken by or on behalf of a Scottish public authority with mixed functions or no reserved functions, or
  - (d) any action concerning Scotland and not relating to reserved matters which is taken by or on behalf of a cross-border public authority.
- (4) In making provision of the kind required by subsection (1), the Parliament shall have regard (among other things) to the Act of 1967.
- (5) Sections 53 and 117 to 121 shall not apply in relation to functions conferred by or under the Act of 1967.
- (6) In this section—

“action” includes failure to act (and related expressions shall be read accordingly),

“provision” means provision by an Act of the Scottish Parliament;

and the references to the Act of 1967 are to that Act as it has effect on the commencement of this section.

#### Textual Amendments

- F3** 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)

- C7** S. 91(3)(d) modified (27.7.2004) by [Energy Act 2004 \(c. 20\)](#), **ss. 2(10), 198(2)**, **Sch. 1 para. 17(c)**; [S.I. 2004/1973](#), **art. 2**, **Sch.**
- C8** S. 91(3)(d) 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**)

#### Marginal Citations

- M6** 1967 c. 13.

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## 92 Queen's Printer for Scotland.

- (1) There shall be a Queen's Printer for Scotland who shall—
- (a) exercise the Queen's Printer functions in relation to Acts of the Scottish Parliament and subordinate legislation [<sup>F12</sup>(other than Scottish statutory instruments)] to which this section applies, and
  - (b) exercise any other functions conferred on her by this Act or any other enactment.
- (2) In subsection (1), “the Queen's Printer functions” means the printing functions in relation to Acts of Parliament and subordinate legislation of the Queen's Printer of Acts of Parliament.
- (3) The Queen's Printer for Scotland shall also on behalf of Her Majesty exercise Her rights and privileges in connection with—
- (a) Crown copyright in Acts of the Scottish Parliament,
  - (b) Crown copyright in subordinate legislation to which this section applies,
  - (c) Crown copyright in any existing or future works (other than subordinate legislation) made in the exercise of a function which is exercisable by any office-holder in, or member of the staff of, the Scottish Administration (or would be so exercisable if the function had not ceased to exist),
  - (d) other copyright assigned to Her Majesty in works made in connection with the exercise of functions by any such office-holder or member.
- (4) This section applies to subordinate legislation made, confirmed or approved—
- (a) by a member of the [<sup>F3</sup>Scottish Government],
  - (b) by a Scottish public authority with mixed functions or no reserved functions, or
  - (c) within devolved competence by a person other than a Minister of the Crown or such a member or authority.
- [<sup>F13</sup>(4A) For the purposes of subsection (4)(c), the function of Her Majesty of making an Order in Council under section 15(1) or (2) (power to specify persons disqualified from membership of the Parliament) is to be regarded as being exercisable within devolved competence.]
- [<sup>F14</sup>(4B) If, following an alteration such as is mentioned in section 30(5)—
- (a) subordinate legislation is made, confirmed or approved under a provision which continues to have effect by virtue of section 30(6), and
  - (b) the making, confirmation or approval would be within devolved competence but for the alteration,
- the subordinate legislation is to be regarded for the purposes of this section as being made, confirmed or approved within devolved competence.]
- (5) The Queen's Printer of Acts of Parliament shall hold the office of Queen's Printer for Scotland.
- (6) References in this Act to a Scottish public authority include the Queen's Printer for Scotland.

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

#### Textual Amendments

- F3** 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)**
- F12** Words in s. 92(1)(a) inserted (S.) (4.6.2010) by [Interpretation and Legislative Reform \(Scotland\) Act 2010 \(asp 10\)](#), **ss. 45**, 58(2)
- F13** S. 92(4A) inserted (31.10.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 13(3)**, 44(5); [S.I. 2012/2516](#), **art. 2(b)**
- F14** S. 92(4B) inserted (3.7.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 9(3)**, 44(5); [S.I. 2012/1710](#), **art. 2(d)**

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

- C9** S. 92(4)(c) modified (23.3.2016) by [Scotland Act 2016 \(c. 11\)](#), **ss. 36(12)(a)**, 72(1)(b)

### 93 Agency arrangements.

- (1) A Minister of the Crown may make arrangements for any of his specified functions to be exercised on his behalf by the Scottish Ministers; and the Scottish Ministers may make arrangements for any of their specified functions to be exercised on their behalf by a Minister of the Crown.
- (2) An arrangement under this section does not affect a person's responsibility for the exercise of his functions.

[<sup>F15</sup>(2A) The collection and management of a devolved tax is a specified function of the Scottish Ministers.]

- (3) In this section—  
“functions” does not include a function of making, confirming or approving subordinate legislation,  
“Minister of the Crown” includes government department,  
“specified” [<sup>F16</sup>(subject to subsection (2A))] means specified in an Order in Council made by Her Majesty under this subsection;  
and this section applies to the Lord Advocate as it applies to the Scottish Ministers.

#### Textual Amendments

- F15** S. 93(2A) inserted (1.7.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 23(3)(a)**, 44(2)(b)
- F16** Words in s. 93(3) inserted (1.7.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 23(3)(b)**, 44(2)(b)

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

- C10** S. 93 modified (7.4.2005 at 5:45 pm) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), **ss. 15(1)**, 53(1); [S.I. 2005/1126](#), **art. 2(1)**

#### Commencement Information

- I3** S. 93 in force for certain purposes at 6.5.1999 and at 1.7.1999 for all remaining purposes by [S.I. 1998/3178](#), **arts. 2(2)**, 3

### 94 Private legislation.

- (1) This section applies where a pre-commencement enactment makes provision which has the effect of—

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- (a) requiring any order to be confirmed by Act of Parliament, or
  - (b) requiring any order (within the meaning of the <sup>M7</sup>Statutory Orders (Special Procedure) Act 1945) to be subject to special parliamentary procedure,
- and power to make, confirm or approve the order in question is exercisable by the Scottish Ministers by virtue of section 53.
- (2) The provision shall have effect, so far as it relates to the exercise of the power to make, confirm or approve the order by virtue of section 53, as if it required the order—
- (a) to be confirmed by an Act of the Scottish Parliament, or
  - (b) (as the case may be) to be subject to such special procedure as may be provided by or under such an Act.

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

- C11** S. 94 applied (with modifications) (1.7.1999) by S.I. 1999/1750, arts. 1(1), 6(2)(a), **Sch. 5**; S.I. 1998/3178, **art. 3**
- S.94 applied (14.12.2000) by S.I. 2000/3251, **art. 3** (with art. 4)
- C12** S. 94(2)(b) applied (1.7.1999) (*temp.*) by S.I. 1999/1593, **arts. 1, 2, 3**; S.I. 1998/3178, **art. 2(1)**

#### Marginal Citations

- M7** 1945 c. 18.

## 95 Appointment and removal of judges.

- (1) It shall continue to be for the Prime Minister to recommend to Her Majesty the appointment of a person as Lord President of the Court of Session or Lord Justice Clerk.
- (2) The Prime Minister shall not recommend to Her Majesty the appointment of any person who has not been nominated by the First Minister for such appointment.
- (3) Before nominating persons for such appointment the First Minister shall consult the Lord President and the Lord Justice Clerk (unless, in either case, the office is vacant).
- (4) It is for the First Minister, after consulting the Lord President, to recommend to Her Majesty the appointment of a person as—
- (a) a judge of the Court of Session (other than the Lord President or the Lord Justice Clerk), or
  - (b) a sheriff principal or a sheriff.
- (5) The First Minister shall comply with any requirement in relation to—
- (a) a nomination under subsection (2), or
  - (b) a recommendation under subsection (4),
- imposed by virtue of any enactment.
- (6) A judge of the Court of Session and the Chairman of the Scottish Land Court may be removed from office only by Her Majesty; and any recommendation to Her Majesty for such removal shall be made by the First Minister.
- (7) The First Minister shall make such a recommendation if (and only if) the Parliament, on a motion made by the First Minister, resolves that such a recommendation should be made.

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- (8) Provision shall be made for a tribunal constituted by the First Minister to investigate and report on whether a judge of the Court of Session or the Chairman of the Scottish Land Court is unfit for office by reason of inability, neglect of duty or misbehaviour and for the report to be laid before the Parliament.
- (9) Such provision shall include provision—
- (a) for the constitution of the tribunal by the First Minister when requested by the Lord President to do so and in such other circumstances as the First Minister thinks fit, and
  - [<sup>F17</sup>(b) for the appointment to chair the tribunal of a member of the Judicial Committee of the Privy Council who holds or has held high judicial office,] and may include provision for suspension from office.
- (10) The First Minister may make a motion under subsection (7) only if—
- (a) he has received from a tribunal constituted in pursuance of subsection (8) a written report concluding that the person in question is unfit for office by reason of inability, neglect of duty or misbehaviour and giving reasons for that conclusion,
  - (b) where the person in question is the Lord President or the Lord Justice Clerk, he has consulted the Prime Minister, and
  - (c) he has complied with any other requirement imposed by virtue of any enactment.
- (11) In subsections (8) to (10)—
- [<sup>F18</sup> “ high judicial office ” has the meaning given by section 60 of the Constitutional Reform Act 2005, ]
  - “provision” means provision by or under an Act of the Scottish Parliament,
  - “tribunal” means a tribunal of at least three persons.

#### Textual Amendments

- F17** S. 95(9)(b) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 100\(a\)](#); S.I. 2009/1604, [art. 2](#)
- F18** S. 95(11): definition of "high judicial office" inserted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 100\(b\)](#); S.I. 2009/1604, [art. 2](#)

## 96 Provision of information to the Treasury.

- (1) The Treasury may require the Scottish Ministers to provide, within such period as the Treasury may reasonably specify, such information, in such form and prepared in such manner, as the Treasury may reasonably specify.
- (2) If the information is not in their possession or under their control, their duty under subsection (1) is to take all reasonable steps to comply with the requirement.

## 97 Assistance for opposition parties.

- (1) Her Majesty may by Order in Council provide for the Parliamentary corporation to make payments to registered political parties for the purpose of assisting members of the Parliament who are connected with such parties to perform their Parliamentary duties.

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- (2) The corporation shall not make any payment to a party in pursuance of such an Order if any of the members of the Parliament who are connected with the party are also members of the [F<sup>3</sup>Scottish Government] or junior Scottish Ministers.
- (3) But such an Order may, in any circumstances specified in the Order, require the fact that any members who are connected with a party are also members of the [F<sup>3</sup>Scottish Government] or junior Scottish Ministers to be disregarded.
- (4) Such an Order may determine the circumstances in which a member of the Parliament and a registered political party are to be regarded for the purposes of this section as connected.

#### Textual Amendments

- F3** 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)**

#### Commencement Information

- I4** S. 97 in force for certain purposes at 25.1.1999 and at 6.5.1999 for all remaining purposes by [S.I. 1998/3178](#), **arts. 2(2)**, 3

### *Juridical*

#### **98 Devolution issues.**

Schedule 6 (which makes provision in relation to devolution issues) shall have effect.

#### **99 Rights and liabilities of the Crown in different capacities.**

- (1) Rights and liabilities may arise between the Crown in right of Her Majesty's Government in the United Kingdom and the Crown in right of the Scottish Administration by virtue of a contract, by operation of law or by virtue of an enactment as they may arise between subjects.
- (2) Property and liabilities may be transferred between the Crown in one of those capacities and the Crown in the other capacity as they may be transferred between subjects; and they may together create, vary or extinguish any property or liability as subjects may.
- (3) Proceedings in respect of—
  - (a) any property or liabilities to which the Crown in one of those capacities is entitled or subject under subsection (1) or (2), or
  - (b) the exercise of, or failure to exercise, any function exercisable by an office-holder of the Crown in one of those capacities,
 may be instituted by the Crown in either capacity; and the Crown in the other capacity may be a separate party in the proceedings.
- (4) This section applies to a unilateral obligation as it applies to a contract.
- (5) In this section—
 

“office-holder”, in relation to the Crown in right of Her Majesty's Government in the United Kingdom, means any Minister of the Crown or



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other office-holder under the Crown in that capacity and, in relation to the Crown in right of the Scottish Administration, means any office-holder in the Scottish Administration,

“subject” means a person not acting on behalf of the Crown.

**100 Human rights.**

- (1) This Act does not enable a person—
  - (a) to bring any proceedings in a court or tribunal on the ground that an act is incompatible with the Convention rights, or
  - (b) to rely on any of the Convention rights in any such proceedings,unless he would be a victim for the purposes of Article 34 of the Convention (within the meaning of the <sup>M8</sup>Human Rights Act 1998) if proceedings in respect of the act were brought in the European Court of Human Rights.
- (2) Subsection (1) does not apply to the Lord Advocate, the Advocate General, the Attorney General [<sup>F19</sup>, the Advocate General for Northern Ireland] or the Attorney General for Northern Ireland.
- (3) This Act does not enable a court or tribunal to award any damages in respect of an act which is incompatible with any of the Convention rights which it could not award if section 8(3) and (4) of the Human Rights Act 1998 applied.

[<sup>F20</sup>(3A) Subsection (3B) applies to any proceedings brought by virtue of this Act against the Scottish Ministers or a member of the Scottish Government in a court or tribunal on the ground that an act of the Scottish Ministers or a member of the Scottish Government is incompatible with the Convention rights.

- (3B) Proceedings to which this subsection applies must be brought before the end of—
  - (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,

but that is subject to any rule imposing a stricter time limit in relation to the procedure in question.

(3C) Subsection (3B) 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.

(3D) In subsections (3A) and (3B) “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).

(3E) In subsection (3B) “rule” has the same meaning as it has in section 7(5) of the Human Rights Act 1998. ]

<sup>F21</sup>(...) .....

<sup>F21</sup>(...) .....

<sup>F21</sup>(...) .....

<sup>F21</sup>(...) .....

<sup>F21</sup>(...) .....

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- (4) <sup>F22</sup>... [<sup>F23</sup>Subject to subsection (3D),]in this section “act” means—
- (a) making any legislation,
  - (b) any other act or failure to act, if it is the act or failure of a member of the [<sup>F3</sup>Scottish Government].

#### Textual Amendments

- F3** 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)
- F19** Words in s. 100(2) inserted (12.4.2010) by [Justice \(Northern Ireland\) Act 2002 \(c. 26\)](#), ss. 28, 87, **Sch. 7 para. 7**; [S.R. 2010/113](#), **art. 2**, Sch. para. 19(a)
- F20** S. 100(3A)-(3E) inserted (3.7.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 14(6)**, 44(5) (with s. 14(8)); [S.I. 2012/1710](#), art. 2(g)
- F21** S. 100(3A)-(3E) omitted (3.7.2012) by virtue of [Scotland Act 2012 \(c. 11\)](#), **ss. 14(1)(a)**, 44(5) (with s. 14(5)); [S.I. 2012/1710](#), art. 2(g)
- F22** Words in s. 100(4) omitted (3.7.2012) by virtue of [Scotland Act 2012 \(c. 11\)](#), **ss. 14(1)(b)**, 44(5) (with s. 14(5)); [S.I. 2012/1710](#), art. 2(g)
- F23** Words in s. 100(4) inserted (3.7.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 14(7)**, 44(5) (with s. 14(8)); [S.I. 2012/1710](#), art. 2(g)

#### Marginal Citations

- M8** [1998 c. 42](#).

## 101 Interpretation of Acts of the Scottish Parliament etc.

- (1) This section applies to—
- (a) any provision of an Act of the Scottish Parliament, or of a Bill for such an Act, and
  - (b) any provision of subordinate legislation made, confirmed or approved, or purporting to be made, confirmed or approved, by a member of the [<sup>F3</sup>Scottish Government],
- which could be read in such a way as to be outside competence.
- (2) Such a provision is to be read as narrowly as is required for it to be within competence, if such a reading is possible, and is to have effect accordingly.
- (3) In this section “competence”—
- (a) in relation to an Act of the Scottish Parliament, or a Bill for such an Act, means the legislative competence of the Parliament, and
  - (b) in relation to subordinate legislation, means the powers conferred by virtue of this Act.

#### Textual Amendments

- F3** 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)

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

## 102 Powers of courts or tribunals to vary retrospective decisions.

- (1) This section applies where any court or tribunal decides that—
  - (a) an Act of the Scottish Parliament or any provision of such an Act is not within the legislative competence of the Parliament, or
  - (b) a member of the [<sup>F3</sup>Scottish Government] does not have the power to make, confirm or approve a provision of subordinate legislation that he has purported to make, confirm or approve [<sup>F24</sup>, or
  - (c) any other purported exercise of a function by a member of the Scottish Government was outside devolved competence.]
- (2) The court or tribunal may make an order—
  - (a) removing or limiting any retrospective effect of the decision, or
  - (b) suspending the effect of the decision for any period and on any conditions to allow the defect to be corrected.
- (3) In deciding whether to make an order under this section, the court or tribunal shall (among other things) have regard to the extent to which persons who are not parties to the proceedings would otherwise be adversely affected.
- (4) Where a court or tribunal is considering whether to make an order under this section, it shall order intimation of that fact to be given to—
  - (a) the Lord Advocate, and
  - (b) the appropriate law officer, where the decision mentioned in subsection (1) relates to a devolution issue (within the meaning of Schedule 6), [<sup>F25</sup>or to a compatibility issue,]unless the person to whom the intimation would be given is a party to the proceedings.
- (5) A person to whom intimation is given under subsection (4) may take part as a party in the proceedings so far as they relate to the making of the order.
- [<sup>F26</sup>(5A) Where the decision mentioned in subsection (1) is a decision of the Supreme Court on a compatibility issue, the power to make an order under this section is exercisable by the High Court of Justiciary instead of the Supreme Court.]
- (6) Paragraphs 36 and 37 of Schedule 6 apply with necessary modifications for the purposes of subsections (4) and (5) as they apply for the purposes of that Schedule.
- (7) In this section—
  - [<sup>F27</sup>“ compatibility issue ” has the meaning given by section 288ZA of the Criminal Procedure (Scotland) Act 1995, ]
  - “intimation” includes notice,
  - “the appropriate law officer” means—
    - (a) in relation to proceedings in Scotland, the Advocate General,
    - (b) in relation to proceedings in England and Wales, the Attorney General,
    - (c) in relation to proceedings in Northern Ireland, the [<sup>F28</sup>Advocate General for Northern Ireland].

### Textual Amendments

- F3** 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)

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- F24** S. 102(1)(c) and words added (3.7.2012) by Scotland Act 2012 (c. 11), **ss. 15, 44(5)**; S.I. 2012/1710, art. 2(h)
- F25** Words in s. 102(4)(b) inserted (22.4.2013) by Scotland Act 2012 (c. 11), **ss. 36(3)(a)**, 44(5); S.I. 2013/6, art. 2(c)
- F26** S. 102(5A) inserted (22.4.2013) by Scotland Act 2012 (c. 11), **ss. 36(3)(b)**, 44(5); S.I. 2013/6, art. 2(c)
- F27** Words in s. 102(7) inserted (22.4.2013) by Scotland Act 2012 (c. 11), **ss. 36(3)(c)**, 44(5); S.I. 2013/6, art. 2(c)
- F28** Words in s. 102(7) substituted (12.4.2010) by Justice (Northern Ireland) Act 2002 (c. 26), ss. 28, 87, **Sch. 7 para. 10**; S.R. 2010/113, **art. 2**, Sch. para. 19(b)

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

- C13** S. 102 amended (6.5.1999) by S.I. 1999/1347, **rule 8(1)(a)**

**103 The Judicial Committee.**

**F29** .....

**Textual Amendments**

- F29** S. 103 repealed (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 146, 148(1), Sch. 9 para. 101, **Sch. 18 Pt. 5**; S.I. 2009/1604, **art. 2**

*Supplementary powers*

**104 Power to make provision consequential on legislation of, or scrutinised by, the Parliament.**

- (1) Subordinate legislation may make such provision as the person making the legislation considers necessary or expedient in consequence of any provision made by or under any Act of the Scottish Parliament or made by legislation mentioned in subsection (2).
- (2) The legislation is subordinate legislation under an Act of Parliament made by—
- a member of the [<sup>F3</sup>Scottish Government],
  - a Scottish public authority with mixed functions or no reserved functions, or
  - any other person (not being a Minister of the Crown) if the function of making the legislation is exercisable within devolved competence.

[<sup>F30</sup>(3) For the purposes of subsection (2)(c), the function of Her Majesty of making an Order in Council under section 15(1) or (2) (power to specify persons disqualified from membership of the Parliament) is to be regarded as being exercisable within devolved competence.]

**Textual Amendments**

- F3** 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)
- F30** S. 104(3) inserted (31.10.2012) by Scotland Act 2012 (c. 11), **ss. 13(4)**, 44(5); S.I. 2012/2516, art. 2(b)

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

- C14** S. 104(2)(c) modified (23.3.2016) by Scotland Act 2016 (c. 11), **ss. 36(12)(b)**, 72(1)(b)

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## **105 Power to make provision consequential on this Act.**

Subordinate legislation may make such modifications in any pre-commencement enactment or prerogative instrument or any other instrument or document as appear to the person making the legislation necessary or expedient in consequence of this Act.

## **106 Power to adapt functions.**

- (1) Subordinate legislation may make such provision (including, in particular, provision modifying a function exercisable by a Minister of the Crown) as the person making the legislation considers appropriate for the purpose of enabling or otherwise facilitating the transfer of a function to the Scottish Ministers by virtue of section 53 or 63.
- (2) Subordinate legislation under subsection (1) may, in particular, provide for any function which—
  - (a) is not exercisable separately in or as regards Scotland to be so exercisable, or
  - (b) is not otherwise exercisable separately within devolved competence to be so exercisable.
- (3) The reference in subsection (1) to the transfer of a function to the Scottish Ministers shall be read as including the sharing of a function with the Scottish Ministers or its other adaptation.
- (4) No recommendation shall be made to Her Majesty in Council to make, and no Minister of the Crown shall make, subordinate legislation under this section which modifies a function of observing or implementing an obligation mentioned in subsection (5) unless the Scottish Ministers have been consulted about the modification.
- (5) The obligation is an international obligation, or an obligation under [F31EU] law, to achieve a result defined by reference to a quantity (whether expressed as an amount, proportion or ratio or otherwise), where the quantity relates to the United Kingdom (or to an area including the United Kingdom or to an area consisting of a part of the United Kingdom which includes the whole or part of Scotland).
- (6) If subordinate legislation under this section modifies a function of observing or implementing such an international obligation so that the function to be transferred to the Scottish Ministers relates only to achieving so much of the result to be achieved under the obligation as is specified in the legislation, references in section 58 to the international obligation are to be read as references to the requirement to achieve that much of the result.
- (7) If subordinate legislation under this section modifies a function of observing or implementing such an obligation under [F31EU] law so that the function to be transferred to the Scottish Ministers relates only to achieving so much of the result to be achieved under the obligation as is specified in the legislation, references in sections 29(2)(d) and 57(2) and paragraph 1 of Schedule 6 to [F31EU] law are to be read as including references to the requirement to achieve that much of the result.

### **Textual Amendments**

**F31** Words in s. 106 substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 3, 6

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## 107 Legislative power to remedy ultra vires acts.

Subordinate legislation may make such provision as the person making the legislation considers necessary or expedient in consequence of—

- (a) an Act of the Scottish Parliament or any provision of an Act of the Scottish Parliament which is not, or may not be, within the legislative competence of the Parliament, or
- (b) any purported exercise by a member of the [F3Scottish Government] of his functions which is not, or may not be, an exercise or a proper exercise of those functions.

### Textual Amendments

- F3** 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)**

## 108 Agreed redistribution of functions exercisable by the Scottish Ministers etc.

- (1) Her Majesty may by Order in Council provide for any functions exercisable by a member of the [F3Scottish Government] to be exercisable—
  - (a) by a Minister of the Crown instead of by the member of the [F3Scottish Government],
  - (b) by a Minister of the Crown concurrently with the member of the [F3Scottish Government], or
  - (c) by the member of the [F3Scottish Government] only with the agreement of, or after consultation with, a Minister of the Crown.
- (2) Where an Order is made under subsection (1)(a) or (b) in relation to a function of the Scottish Ministers, the First Minister or the Lord Advocate which is exercisable only with the agreement of, or after consultation with, any other of those persons, the function shall, unless the Order provides otherwise, be exercisable by the Minister of the Crown free from any such requirement.
- (3) An Order under this section may, in particular, provide for any function exercisable by a Minister of the Crown by virtue of an Order under subsection (1)(a) or (b) to be exercisable subject to a requirement for the function to be exercised with the agreement of, or after consultation with, another person.
- (4) This section does not apply to any retained functions of the Lord Advocate which fall within section 52(6)(a).

### Textual Amendments

- F3** 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)

- C15** S. 108 modified (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), **ss. 8(2)(3), 53(1)**; [S.I. 2005/1126](#), **art. 2(2)(e)**

*Status: Point in time view as at 23/05/2016.*

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

## **109 Agreed redistribution of property and liabilities.**

- (1) Her Majesty may by Order in Council provide—
  - (a) for the transfer to a Minister of the Crown or government department of any property belonging to the Scottish Ministers or the Lord Advocate, or
  - (b) for a Minister of the Crown or government department to have such rights or interests in relation to any property belonging to the Scottish Ministers or the Lord Advocate as Her Majesty considers appropriate (whether in connection with a transfer or otherwise).
- (2) Her Majesty may by Order in Council provide for the transfer to a Minister of the Crown or government department of any liabilities to which the Scottish Ministers or the Lord Advocate are subject.
- (3) An Order in Council under this section may only be made in connection with any transfer or sharing of functions of a member of the [<sup>F3</sup>Scottish Government] by virtue of section 108 or in any other circumstances in which Her Majesty considers it appropriate to do so for the purposes of this Act.

### **Textual Amendments**

- F3** 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\(f\)](#)

## **110 Scottish taxpayers for social security purposes.**

- (1) The Secretary of State may by order provide for individuals of any description specified in the order to be treated for the purposes of any of the matters that are reserved matters by virtue of Head F of Part II of Schedule 5 as if they were, or were not, Scottish taxpayers.
- (2) The Secretary of State may by order provide in relation to any year of assessment that, for those purposes, the basic rate in relation to the income of Scottish taxpayers shall be treated as being such rate as is specified in the order (instead of the rate increased or reduced for that year by virtue of any resolution of the Parliament in pursuance of section 73 passed after the beginning of the year).
- (3) An order under this section may apply in respect of any individuals whether Scotland is the part of the United Kingdom with which they have the closest connection or not.
- (4) In this section “Scottish taxpayer” has the same meaning as in Part IV.

## **111 Regulation of Tweed and Esk fisheries.**

- (1) Her Majesty may by Order in Council make provision for or in connection with the conservation, management and exploitation of [<sup>F32</sup>salmon, trout, eels, lampreys, smelt, shad and freshwater fish] in the Border rivers.
- (2) An Order under subsection (1) may—
  - (a) exclude the application of section 53 in relation to any Border rivers function,
  - (b) confer power to make subordinate legislation.
- (3) In particular, provision may be made by such an Order—

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- (a) conferring any function on a Minister of the Crown, the Scottish Ministers or a public body in relation to the Border rivers,
- (b) for any Border rivers function exercisable by any person to be exercisable instead by a person (or another person) mentioned in paragraph (a),
- (c) for any Border rivers function exercisable by any person to be exercisable concurrently or jointly with, or with the agreement of or after consultation with, a person (or another person) mentioned in paragraph (a).

(4) In this section—

“the Border rivers” means the Rivers Tweed and Esk,

“Border rivers function” means a function conferred by any enactment, so far as exercisable in relation to the Border rivers,

“conservation”, in relation to [<sup>F33</sup>salmon, trout, eels, lampreys, smelt, shad and freshwater fish,] includes the protection of their environment,

“eels”, [<sup>F34</sup>“fish”,] “freshwater fish”, “salmon” [<sup>F35</sup>, “smelt”] and “trout” have the same meanings as in the <sup>M9</sup>Salmon and Freshwater Fisheries Act 1975 [<sup>F36</sup>(as amended by the Marine and Coastal Access Act 2009)],

“the River Tweed” [<sup>F37</sup>means the Tweed district (as defined in article 2(1) of the Scotland Act 1998 (River Tweed) Order 2006 (S.I. 2006/2913)).]

“the River Esk” means the river of that name which, for part of its length, constitutes the border between England and Scotland including—

- (a) its tributary streams (which for this purpose include the River Sark and its tributary streams), and
- (b) such waters on the landward side of its estuary limits as are determined by an Order under subsection (1),

together with its banks;

and references to the Border rivers include any part of the Border rivers.

(5) An Order under subsection (1) may modify the definitions in subsection (4) of the River Tweed and the River Esk.

[<sup>F38</sup>(6) An Order under subsection (1) may amend that subsection so as to—

- (a) add any description of fish to it, or
- (b) remove any description of fish from it.]

#### Textual Amendments

**F32** Words in s. 111(1) substituted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 231(2)**, 324(3); S.I. 2009/3345, **art. 2**, Sch. para. 14

**F33** Words in s. 111(4) substituted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 231(3)**, 324(3); S.I. 2009/3345, **art. 2**, Sch. para. 14

**F34** Word in s. 111(4) inserted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 231(4)(a)**, 324(3); S.I. 2009/3345, **art. 2**, Sch. para. 14

**F35** Word in s. 111(4) inserted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 231(4)(b)**, 324(3); S.I. 2009/3345, **art. 2**, Sch. para. 14

**F36** Words in s. 111(4) inserted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 231(4)(c)**, 324(3); S.I. 2009/3345, **art. 2**, Sch. para. 14

**F37** S. 111(4): words in definition of “the River Tweed” substituted (15.11.2006) by [The Scotland Act 1998 \(River Tweed\) Order 2006 \(S.I. 2006/2913\)](#), arts. 1(2), **76**, **Sch. 4 para. 4**



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

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**F38** S. 111(6) inserted (12.11.2009 for certain purposes and 12.1.2010 otherwise) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 231(5), 324(1)(c)**; S.I. 2009/3345, **art. 2**, Sch. para. 14

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**Marginal Citations**

**M9** 1975 c. 51.

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