



Scotland Act 1998

1998 CHAPTER 46

PART VI **U.K.**

SUPPLEMENTARY

Subordinate legislation

113 **Subordinate legislation: scope of powers.** **U.K.**

- (1) References in this section to a power are to an open power and to any other power to make subordinate legislation conferred by this Act which is exercisable by Her Majesty in Council or by a Minister of the Crown, and include a power as extended by this section.
- (2) A power may be exercised so as to make different provision for different purposes.
- (3) A power (as well as being exercisable in relation to all cases to which it extends) may be exercised in relation to—
 - (a) those cases subject to specified exceptions, or
 - (b) any particular case or class of case.
- (4) A power includes power to make—
 - (a) any supplementary, incidental or consequential provision, and
 - (b) any transitory, transitional or saving provision,which the person making the legislation considers necessary or expedient.
- (5) A power may be exercised by modifying—
 - (a) any enactment or prerogative instrument,
 - (b) any other instrument or document,if the subordinate legislation (or a statutory instrument containing it) would be subject to any of the types of procedure referred to in Schedule 7.
- (6) But a power to modify enactments does not (unless otherwise stated) extend to making modifications of this Act or subordinate legislation under it.

Status: Point in time view as at 31/10/2012. This version of this provision has been superseded.

Changes to legislation: There are currently no known outstanding effects for the Scotland Act 1998, Section 113. (See end of Document for details)

- (7) A power may be exercised so as to make provision for the delegation of functions.
- (8) A power includes power to make provision for sums to be payable out of the Scottish Consolidated Fund or charged on the Fund.
- (9) A power includes power to make provision for the payment of sums out of money provided by Parliament or for sums to be charged on and paid out of the Consolidated Fund.
- [^{F1}(9A) A power may not be exercised so as to create any criminal offence punishable with any of the penalties specified for the offence in subsection (9B) or (10).
- (9B) In relation to Scotland, the specified penalties are—
- (a) where the offence is triable on summary complaint only, imprisonment for a period exceeding 12 months and a fine exceeding level 5 on the standard scale,
 - (b) where an offence triable either on indictment or on summary complaint is tried on summary complaint, imprisonment for a period exceeding 12 months and a fine exceeding the statutory maximum,
 - (c) where the offence is tried on indictment, imprisonment for a period exceeding two years.
- (10) In relation to England and Wales and Northern Ireland, the specified penalties are—
- (a) where the offence is tried summarily, imprisonment for a period exceeding three months and a fine exceeding—
 - (i) in the case of a summary offence, level 5 on the standard scale,
 - (ii) in the case of an offence triable either way, the statutory maximum,
 - (b) where the offence is tried on indictment, imprisonment for a period exceeding two years.]

(11) The fact that a power is conferred does not prejudice the extent of any other power.

[^{F2}(12) Her Majesty may by Order in Council amend subsection (9B) or (10) so as to change—

 - (a) any period of imprisonment specified there, or
 - (b) the amount of any fine so specified.]

Textual Amendments

- F1** S. 113(9A)-(10) substituted for s. 113(10) (31.10.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 39(2)**, 44(5); S.I. 2012/2516, art. 2(e)
- F2** S. 113(12) inserted (31.10.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 39(3)**, 44(5); S.I. 2012/2516, art. 2(e)
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Modifications etc. (not altering text)

- C1** S. 113 amendment to earlier affecting provision 2003 c. 44, Sch. 27 para. 7 (31.10.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 39(5)**, 44(5); S.I. 2012/2516, art. 2(e)

Status:

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Changes to legislation:

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