



# Scotland Act 1998

## 1998 CHAPTER 46

### PART VI

#### SUPPLEMENTARY

##### *Subordinate legislation*

#### **113 Subordinate legislation: scope of powers.**

(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.

[<sup>F1</sup>(1A) Subsections (2) to (11), except subsection (9), apply also to the power of the Scottish Ministers to make an order under section 12.]

(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.

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

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- (6) But a power to modify enactments does not (unless otherwise stated) extend to making modifications of this Act or subordinate legislation under it.
- (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.
- [<sup>F2</sup>(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 [<sup>F3</sup>the prescribed term] 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.]
- [<sup>F4</sup>(10A) In subsection (10)(a), “the prescribed term” means—
- (a) in relation to England and Wales, where the offence is a summary offence, 51 weeks;
  - (b) in relation to England and Wales, where the offence is triable either way, [<sup>F5</sup>the general limit in a magistrates’ court];
  - (c) in relation to ... Northern Ireland, three months.]
- [<sup>F6</sup>(10AA) If a power—
- (a) is exercised so as to make provision for a summary offence under the law of England and Wales to be punishable with imprisonment for more than 6 months (“the relevant provision”) and
  - (b) is so exercised—
    - (i) on or after 2 May 2022, but
    - (ii) before the day on which section 281(5) of the Criminal Justice Act 2003 comes into force,

the power must also be exercised so as to provide that, in relation to an offence committed before the day referred to in paragraph (b)(ii), any reference in the relevant provision to a term of imprisonment of more than 6 months is to be read as a reference to a term of imprisonment of 6 months.]
- (11) The fact that a power is conferred does not prejudice the extent of any other power.

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- [<sup>F7</sup>(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(1A) inserted (1.7.2015) by [Scotland Act 2012 \(c. 11\)](#), **ss. 3(1)**, 44(5); S.I. 2015/682, art. 2(b) (with saving in [S.I. 2015/683](#), art. 2)
- F2** 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)
- F3** Words in s. 113(10)(a) substituted (2.5.2022) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), **Sch. 27 para. 7(2)** (with s. 283(7)); [S.I. 2022/500](#), reg. 3(b)(ii)
- F4** S. 113(10A) inserted (2.5.2022) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), **Sch. 27 para. 7(3)** (with s. 283(7)) (as amended (31.10.2012) by [2012 c. 11](#), **s. 39(5)**; [S.I. 2012/2516](#), **art. 2(e)**); [S.I. 2022/500](#), **reg. 3(b)(ii)**)
- F5** Words in s. 113(10A)(b) substituted (14.7.2022) by [Judicial Review and Courts Act 2022 \(c. 35\)](#), s. 51(4), **Sch. 2 para. 18**; [S.I. 2022/816](#), regs. 1(2), 3(d)
- F6** S. 113(10AA) inserted (28.4.2022) by [The Criminal Justice Act 2003 \(Commencement No. 33\) and Sentencing Act 2020 \(Commencement No. 2\) Regulations 2022 \(S.I. 2022/500\)](#), regs. 1(2), **8(2)**
- F7** 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)

**Changes to legislation:**

There are currently no known outstanding effects for the Scotland Act 1998, Section 113.