



# Scotland Act 2016

## 2016 CHAPTER 11

### PART 4

#### OTHER LEGISLATIVE COMPETENCE

#### 36 Crown Estate

- (1) In Part 5 of the Scotland Act 1998, before the heading “Miscellaneous” insert—

*“The Crown Estate*

#### 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.

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- (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.
- (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.

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- (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.
- (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.”
- (2) Part 1 of Schedule 5 to the Scotland Act 1998 (general reservations) is amended as follows.
- (3) In sub-paragraph (3) of paragraph 2, after “Crown Estate” insert “ (that is, the property, rights and interests under the management of the Crown Estate Commissioners) ”.
- (4) After that sub-paragraph insert—  
“(3A) Sub-paragraph (1) does not affect the reservation by paragraph 1 of the requirements of section 90B(5) to (8).”
- (5) In paragraph 1(2) of Schedule 7 to that Act (procedure for subordinate legislation) in the appropriate place insert—
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- |              |         |
|--------------|---------|
| “Section 90B | Type C” |
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- (6) After paragraph 3 of that Schedule insert—  
“3A If legislation under section 90B amends a scheme under that section and does not contain provision—  
(a) made by virtue of subsection (12) or (19) of that section, or  
(b) adding to, replacing or omitting any part of the text of an Act,  
then, instead of the type C procedure, the type I procedure shall apply.”
- (7) For the purposes of the exercise on and after the transfer date of functions transferred by the scheme under section 90B of the Scotland Act 1998, the Crown Estate Act 1961 applies in relation to the transferee as it applied immediately before that date to the Crown Estate Commissioners, with the following modifications—  
(a) a reference to the Crown Estate is to be read as a reference to the property, rights and interests to which section 90B(5) applies;  
(b) a reference to the Treasury is to be read as a reference to the Scottish Ministers;

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- (c) a reference to the Comptroller and Auditor General is to be read as a reference to the Auditor General for Scotland;
- (d) a reference to Parliament or either House of Parliament is to be read as a reference to the Scottish Parliament;
- (e) the following do not apply—
  - in section 1, subsections (1), (4) and (7);
  - in section 2, subsections (1) and (2) and, if the Scottish Ministers are the transferee, the words in subsection (3) from “in relation thereto” to the end;
  - in section 4, the words “with the consent of Her Majesty signified under the Royal Sign Manual”;
  - sections 5, 7 and 8 and Schedule 1.
- (8) Subsection (7) is subject to any provision made by Order in Council under subsection (9) or by any other enactment, including an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.
- (9) Her Majesty may by Order in Council make such provision as She considers appropriate for or in connection with the exercise by the transferee under the scheme under section 90B of the Scotland Act 1998 (subject to subsections (5) to (8) of that section) of functions transferred by the scheme, including provision taking effect on or before the transfer date.
- (10) An Order in Council under subsection (9) may in particular—
  - (a) establish a body, including a body that may be nominated under that section as the transferee;
  - (b) amend, repeal, revoke or otherwise modify an enactment, an Act of the Scottish Parliament, or an instrument made under an enactment or Act of the Scottish Parliament.
- (11) The power to make an Order in Council under subsection (9) is exercisable by Scottish statutory instrument subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010).
- (12) That power is to be regarded as being exercisable within devolved competence before the transfer date for the purposes of—
  - (a) section 92(4)(c) of the Scotland Act 1998 (Queen's Printer for Scotland);
  - (b) section 104(2)(c) of that Act (power to make provision consequential on legislation of, or scrutinised by, the Parliament);
  - (c) paragraph 11(3)(c) of Schedule 4 to that Act (modification of enactments in relation to making of subordinate legislation).
- (13) In section 1(2) of the Civil List Act 1952 (payment of hereditary revenues into the Scottish Consolidated Fund) after “treasure trove” insert “and from the property, rights and interests the management of which is transferred by the scheme under section 90B of the Scotland Act 1998”.
- (14) In Schedule 1 to the Crown Estate Act 1961, omit paragraph 1(3A) and (4A) (Commissioner with special responsibility for Scotland).
- (15) In the Scotland Act 2012, omit section 18.

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### Commencement Information

II S. 36(1)(5)(6)(9)-(12) in force at Royal Assent, see s. 72(1)(b)

## 37 Equal opportunities

(1) Section L2 in Part 2 of Schedule 5 to the Scotland Act 1998 (equal opportunities) is amended as follows.

(2) Omit the words from “, including the subject-matter of” to “1995”.

(3) Under the heading “Exceptions”, at the end insert—

“Equal opportunities so far as relating to the inclusion of persons with protected characteristics in non-executive posts on boards of Scottish public authorities with mixed functions or no reserved functions.

Equal opportunities in relation to the Scottish functions of any Scottish public authority or cross-border public authority, other than any function that relates to the inclusion of persons in non-executive posts on boards of Scottish public authorities with mixed functions or no reserved functions. The provision falling within this exception does not include any modification of the Equality Act 2010, or of any subordinate legislation made under that Act, but does include—

- (a) provision that supplements or is otherwise additional to provision made by that Act;
- (b) in particular, provision imposing a requirement to take action that that Act does not prohibit;
- (c) provision that reproduces or applies an enactment contained in that Act, with or without modification, without affecting the enactment as it applies for the purposes of that Act.”

(4) Under the heading “Interpretation”, at the appropriate places insert—

““Board” includes any other equivalent management body.”

““Non-executive post” in relation to an authority means any position the holder of which is not an employee of the authority.”

““Protected characteristic” has the same meaning as in the Equality Act 2010.”

(5) Under that heading, at the end insert— “ The references to the Equality Act 2010 and any subordinate legislation made under that Act are to be read as references to those enactments, as at the day on which section 37 of the Scotland Act 2016 comes into force, but treating any provision of them that is not yet in force on that day as if it were in force. ”

(6) The Equality Act 2010 is amended as follows.

(7) In section 152(3) (power to specify public authorities: consultation and consent), for the words after “must” substitute “consult the Commission, and after making such an order they must inform a Minister of the Crown. ”

(8) In the table in section 154(3) (power to impose specific duties: cross-border authorities) in the second column for the words “The Scottish Ministers must consult a

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Minister of the Crown before” in both places substitute “ The Scottish Ministers must inform a Minister of the Crown after ”.

#### Commencement Information

I2 S. 37 in force at 23.5.2016, see s. 72(7)

### 38 Public sector duty regarding socio-economic inequalities

- (1) Part 1 of the Equality Act 2010 (socio-economic inequalities) is amended as follows.
- (2) Section 1 (public sector duty) is amended as follows.
- (3) In subsection (2) for “by a Minister of the Crown” substitute “ in accordance with subsection (2A) ”.
- (4) After subsection (2) insert—
  - “(2A) The guidance to be taken into account under subsection (2) is—
    - (a) in the case of a duty imposed on an authority in relation to devolved Scottish functions, guidance issued by the Scottish Ministers;
    - (b) in any other case, guidance issued by a Minister of the Crown.”
- (5) Section 2 (power to amend section 1) is amended as follows.
- (6) In subsections (7) and (9) omit “the Scottish Ministers or”.
- (7) In subsection (10) for “the Ministers” substitute “ the Welsh Ministers ”.
- (8) In subsection (11) for “section” substitute “ Part ”.
- (9) In section 216 of that Act (commencement) at the beginning of subsection (3) insert “ Subject to subsection (4), ” and after that subsection insert—
  - “(4) The following provisions of Part 1 (socio-economic inequalities) come into force on such day as the Scottish Ministers may by order appoint—
    - (a) section 1, so far as it applies to a relevant authority as defined by section 2(5);
    - (b) section 2, so far as it confers a power on the Scottish Ministers;
    - (c) section 3, for the purposes of section 1 to the extent mentioned in paragraph (a).
  - (5) The following do not apply to an order under subsection (4)—
    - (a) section 207(2) (see instead section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010: powers exercisable by Scottish statutory instrument), and
    - (b) section 210.”
- (10) In the Interpretation and Legislative Reform (Scotland) Act 2010, in section 30(4) (other instruments laid before the Parliament: exceptions) after paragraph (i) insert—
  - “(j) section 216(4) of the Equality Act 2010 (c.15).”

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### Commencement Information

**I3** S. 38 in force at 23.5.2016, see s. 72(7)

## 39 Tribunals

- (1) In Part 3 of Schedule 5 to the Scotland Act 1998 (reserved matters: general provisions) after paragraph 2 insert—

### “Tribunals

- 2A (1) This Schedule does not reserve the transfer to a Scottish tribunal of functions of a tribunal that relate to reserved matters, so far as those functions are exercisable in relation to Scottish cases.
- (2) “Scottish cases” has the meaning given by an Order in Council made by Her Majesty under this sub-paragraph.
- (3) Sub-paragraph (1) does not apply where a function is excluded from transfer.
- (4) Where a function is not excluded from transfer but is subject to qualified transfer, sub-paragraph (1) applies only if the transfer of the function is in accordance with provision made by Her Majesty by Order in Council.
- (5) An Order in Council under sub-paragraph (4)—
- (a) must specify the function to which it relates,
  - (b) must specify the Scottish tribunal to which the function may be transferred, and
  - (c) may make any other provision which Her Majesty considers necessary or expedient for the purposes of or in consequence of the transfer of the function and its exercise by the Scottish tribunal.
- (6) The functions that are subject to qualified transfer are the functions of the following tribunals—
- (a) the First-tier Tribunal or the Upper Tribunal that are established under section 3 of the Tribunals, Courts and Enforcement Act 2007;
  - (b) an employment tribunal or the Employment Appeal Tribunal;
  - (c) a tribunal listed in Schedule 1 to the Tribunals and Inquiries Act 1992;
  - (d) a tribunal listed in Schedule 6 to the Tribunals, Courts and Enforcement Act 2007.
- (7) Sub-paragraph (6)(c) and (d) include a tribunal added to the Schedule concerned after this paragraph comes into force.
- (8) Provision made by virtue of sub-paragraph (5)(c) may—
- (a) include provision that—
    - (i) modifies the function;

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- (ii) imposes conditions or restrictions (including conditions or restrictions relating to the composition or rules of procedure of the Scottish tribunal, or to its staff or accommodation);
- (b) be made with a view to purposes including—
  - (i) securing consistency in any respect in practice or procedure or otherwise between the Scottish tribunal and other tribunals;
  - (ii) promoting judicial co-operation in the interests of consistency.
- (9) Sub-paragraph (8) does not limit the provision that may be made by virtue of sub-paragraph (5)(c).
- (10) The following functions are excluded from transfer—
  - (a) functions of a national security tribunal;
  - (b) functions of a regulator, or of a person or body that exercises functions on behalf of a regulator;
  - (c) functions of the Comptroller-General of Patents, Designs and Trade Marks.
- (11) In this paragraph—
  - a “national security tribunal” means—
    - (a) the Pathogens Access Appeal Commission;
    - (b) the Proscribed Organisations Appeal Commission;
    - (c) the Special Immigration Appeals Commission;
    - (d) the tribunal established by section 65(1) of the Regulation of Investigatory Powers Act 2000 (investigatory powers tribunal);
    - (e) any other tribunal that has functions relating to matters falling within Section B8 of Part 2 of this Schedule, except a tribunal mentioned in sub-paragraph (6);
  - a “regulator” means a person or body that has regulatory functions (within the meaning given by section 32 of the Legislative and Regulatory Reform Act 2006);
  - a “Scottish tribunal” means a tribunal in Scotland—
    - (a) that does not have functions in or as regards any other country or territory, except for purposes ancillary to its functions in or as regards Scotland, and
    - (b) that is not, and does not have as a member, a member of the Scottish Government.
- (12) The powers conferred by this paragraph do not affect the powers conferred by section 30 or section 113.”
- (2) In paragraph 1(2) of Schedule 7 to that Act (procedure for subordinate legislation) at the appropriate place insert—

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“Schedule 5, Part 3, paragraph 2A

Type A”

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(3) Part 1 of Schedule 1 to the Tribunals and Inquiries Act 1992 (tribunals to which the Act applies) is amended as follows.

(4) Before paragraph 9A insert—

“Company names	9ZA. Company names adjudicators appointed under section 70(1) of the Companies Act 2006.”
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(5) In paragraph 34 (patents, designs and trademarks)—

(a) the words from “the Comptroller-General” to the end become sub-paragraph (a), and

(b) after that sub-paragraph insert—

“(b) a person appointed under section 27A(1)(a) of the Registered Designs Act 1949;

(c) a person appointed under section 77(1) of the Trade Marks Act 1994”.

(6) In section 7(2) of the Tribunals and Inquiries Act 1992 (tribunals in relation to which section 7 does not apply) after “3,” insert “ 9ZA, ”.

(7) In section 14(1)(a) of that Act (restricted application of Act in relation to certain tribunals) after “paragraph” insert “ 9ZA, ”.

#### Commencement Information

**I4** [S. 39](#) in force at 23.5.2016, see [s. 72\(7\)](#)

## 40 Roads

(1) In Part 2 of Schedule 5 to the Scotland Act 1998, Section E1 (specific reservations: road transport) is amended as follows.

(2) In the reservation relating to the subject-matter of certain enactments, for paragraph (c) (reservation of subject-matter of section 17 and other provisions of the Road Traffic Regulation Act 1984) substitute—

“(c) section 17 of the Road Traffic Regulation Act 1984 (traffic regulation on special roads) except so far as relating to the speed of vehicles on special roads, and section 87 of that Act (exemption of emergency vehicles from speed limits) so far as relating to the training of drivers of vehicles,”.

(3) In paragraph (d) of that reservation, after “the Road Traffic Act 1988” insert “, except so far as relating to the parking of vehicles on roads,”.

(4) In the first exception relating to the Road Traffic Act 1988, after “sections” insert “ 36 (offence of failing to comply with traffic sign), ”.

(5) At the end insert—

#### *“Interpretation*

The reference to the subject-matter of section 87 of the Road Traffic Regulation Act 1984 is to be construed as a reference to it as substituted by

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section 19 of the Road Safety Act 2006 as at the date when section 40 of the Scotland Act 2016 comes into force, treating section 19 and any amendment affecting it at that date as if they were in force (and, accordingly, paragraph 5(1) of Part 3 of this Schedule does not apply to that reference).”

#### Commencement Information

**I5** S. 40 in force at 23.5.2016, see s. 72(7)

#### 41 Roads: traffic signs etc

- (1) The Road Traffic Regulation Act 1984 is amended as follows.
- (2) In section 25(1) (Secretary of State to make pedestrian crossing regulations) for “Secretary of State” substitute “ national authority ”.
- (3) In section 64 (general provisions as to traffic signs)—
  - (a) in subsections (1) and (2) for “Secretary of State” substitute “ national authority ”,
  - (b) in subsection (1) for “Ministers acting jointly” substitute “ national authority ”,
  - (c) omit subsections (2A) to (2C), and
  - (d) omit subsections (7) and (8).
- (4) Section 65 (powers of traffic authorities as to placing of traffic signs) is amended as follows.
- (5) In subsection (1) omit “as may be given by the Ministers acting jointly”.
- (6) In subsections (1), (2), (3A)(ii) and (4) for “Secretary of State” substitute “ national authority ”.
- (7) In subsection (3) after “power” insert “ of the Secretary of State ”.
- (8) After that subsection insert—
  - “(3ZA) The power of the Scottish Ministers to give general directions under subsection (1) is to be exercisable by Scottish statutory instrument.
  - (3ZB) Before giving a general direction under subsection (1) the Secretary of State must consult with the Scottish Ministers.
  - (3ZC) Before giving a general direction under subsection (1) the Scottish Ministers must consult with the Secretary of State.”
- (9) In subsection (3A)(ii) after “prescribed” insert “ in regulations made by the national authority ”.
- (10) In section 69(3) (Secretary of State's directions for removal of traffic signs) for “Secretary of State” substitute “ national authority ”.
- (11) In section 70(1) (default powers of Secretary of State as to traffic signs)—
  - (a) for “Secretary of State” substitute “ national authority ”,
  - (b) omit “himself”,
  - (c) omit “by him” in the first place,

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- (d) for “him”, in the second place, substitute “ the national authority ”, and
  - (e) after “the authority” insert “ that failed to comply with the direction ”.
- (12) In section 71(1) (power to enter land in connection with traffic signs) for “Secretary of State” substitute “ national authority ”.
- (13) In section 77 (modification of provisions relating to directions where Secretary of State is the traffic authority) for “Secretary of State”, in both places, substitute “ national authority ”.
- (14) Section 79 (advances by Secretary of State towards expenses of traffic signs) is amended as follows.
- (15) In subsection (1), for the words from “Secretary of State” to “Parliament,” substitute “ national authority may ”.
- (16) After subsection (1) insert—
- “(1A) An advance by the Secretary of State under this section is to be made out of moneys provided by Parliament.”
- (17) In subsections (3) and (5) for “Secretary of State” substitute “ national authority ”.
- (18) In section 142(1) (general interpretation) at the appropriate place insert—
- ““national authority”—
  - (a) in relation to a function so far as exercisable within devolved competence, within the meaning of the Scotland Act 1998, means the Scottish Ministers;
  - (b) otherwise, means the Secretary of State;”.
- (19) The Road Traffic Act 1988 is amended as follows.
- (20) Section 36 (offence of failing to comply with traffic sign) is amended as follows.
- (21) In subsections (1)(b) and (3)(a) for “Secretary of State” substitute “ national authority ”.
- (22) In subsection (5) for the words from “Secretary of State for the Environment” to “jointly” substitute “ national authority ”.
- (23) After subsection (5) insert—
- “(6) Before making regulations under subsection (5) the Secretary of State must consult with the Scottish Ministers.
  - (7) Before making regulations under subsection (5) the Scottish Ministers must consult with the Secretary of State.
  - (8) In this section “national authority” has the meaning given by section 142(1) of the Road Traffic Regulation Act 1984.”

#### **Commencement Information**

**16** S. 41 in force at 23.5.2016, see s. 72(7)

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## 42 Roads: speed limits

- (1) The Road Traffic Regulation Act 1984 is amended as follows.
- (2) Section 81 (speed limit for restricted roads) is amended as follows.
- (3) In subsection (2)—
  - (a) for “Ministers acting jointly” substitute “ national authority ”, and
  - (b) omit the words from “made” to “Parliament”.
- (4) After that subsection insert—
  - “(3) An order under subsection (2)—
    - (a) if made by the Secretary of State, is to be made by statutory instrument and approved by a resolution of each House of Parliament;
    - (b) if made by the Scottish Ministers, is subject to the affirmative procedure.
  - (4) Before making an order under subsection (2) the Secretary of State must consult with the Scottish Ministers.
  - (5) Before making an order under subsection (2) the Scottish Ministers must consult with the Secretary of State.”
- (5) In section 82 (what roads are restricted roads)—
  - (a) in subsection (1)(b) for “Secretary of State” substitute “ Scottish Ministers ”, and
  - (b) in subsection (3) for “prescribed manner” substitute “ manner prescribed in regulations made by the national authority ”.
- (6) Section 83 (provisions as to directions by a traffic authority under section 82(2)) is amended as follows.
- (7) In subsection (1)—
  - (a) for “Secretary of State”, in both places, substitute “ national authority ”, and
  - (b) for “his” substitute “the national authority's”.
- (8) Section 84 (speed limits on roads other than restricted roads) is amended as follows.
- (9) In subsections (1A) and (1B) for “Secretary of State” substitute “ national authority ”.
- (10) Section 85 (traffic signs for indicating speed restrictions) is amended as follows.
- (11) In the following places, for “Secretary of State” substitute “ national authority ”
  - (a) subsection (1),
  - (b) subsection (2)(a) and (b),
  - (c) subsection (3), and
  - (d) subsection (5A).
- (12) In subsection (1) for “he” substitute “ the national authority ”.
- (13) In subsection (3)—
  - (a) omit “himself”,
  - (b) omit “by him” in the first place, and
  - (c) for “him”, in the second place, substitute “ the national authority ”.

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- (14) In subsection (5A) omit the words from “or, where” to “officer of the Scottish Ministers”.
- (15) In subsection (7) after “power” insert “ of the Secretary of State ”.
- (16) After subsection (7) insert—
  - “(8) The power of the Scottish Ministers to give general directions under subsection (2) is to be exercisable by Scottish statutory instrument.
  - (9) Before giving any general directions under subsection (2) the Secretary of State must consult with the Scottish Ministers.
  - (10) Before giving any general directions under subsection (2) the Scottish Ministers must consult with the Secretary of State.”
- (17) In section 87 (exemption of emergency vehicles from speed limits) (as amended by section 19 of the Road Safety Act 2006)—
  - (a) in paragraph (b) of subsection (1) for “prescribed purposes” substitute “ purposes prescribed by regulations made by the national authority ”,
  - (b) in that paragraph after “may be” insert “ so ”,
  - (c) in subsection (2)(a) for “this section” substitute “ subsection (3) ”,
  - (d) in subsection (4) for “The regulations”, in the first place, substitute “ Regulations under subsection (3) ”,
  - (e) in subsection (5) for “The regulations”, in the first place, substitute “ Regulations under subsection (3) ”, and
  - (f) in subsection (6) for “The regulations” substitute “ Regulations under subsection (3) ”.

#### Commencement Information

I7 S. 42 in force at 23.5.2016, see s. 72(7)

### 43 Roads: parking

- (1) The Road Traffic Act 1988 is amended as follows.
- (2) Section 20 (parking on verges etc: definition of “heavy commercial vehicle”) is amended as follows.
- (3) In subsection (5) for “Secretary of State” substitute “ national authority ”.
- (4) At the end add—
  - “(8) In subsection (5) “national authority”—
    - (a) in relation to a function so far as exercisable within devolved competence, within the meaning of the Scotland Act 1998, means the Scottish Ministers;
    - (b) otherwise, means the Secretary of State.
  - (9) Before making any regulations under subsection (5) in relation to vehicles used on roads in Scotland, the Secretary of State must consult the Scottish Ministers.”

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- (5) Section 41 (regulation of construction, weight, equipment and use of vehicles) is amended as follows.
- (6) In subsection (1) for “Secretary of State” substitute “ national authority ”.
- (7) After subsection (2) insert—
- “(2A) In subsection (1) “national authority”—
- (a) in relation to a function so far as exercisable within devolved competence, within the meaning of the Scotland Act 1998, means the Scottish Ministers;
- (b) otherwise, means the Secretary of State.
- (2B) Before making any regulations under this section in relation to the parking of vehicles on roads in Scotland, the Secretary of State must consult the Scottish Ministers.”

#### Commencement Information

**I8** S. 43 in force at 23.5.2016, see s. 72(7)

#### 44 Roads: consequential provision etc

- (1) Schedule 2 (roads: consequential and related provision) has effect.
- (2) The National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) has effect in relation to the Road Traffic Regulation Act 1984 and the Road Traffic Act 1988 as if the amendments of those Acts by sections 41 and 42(1) to (16) and Schedule 2 were in force immediately before the commencement of the Order.

#### Commencement Information

**I9** S. 44 in force at 23.5.2016, see s. 72(7)

#### 45 Policing of railways and railway property

- (1) In Part 2 of Schedule 5 to the Scotland Act 1998, Section E2 (specific reservations: rail transport) is amended as follows.
- (2) Under the heading “Exceptions”, after the exception relating to the promotion and construction of railways insert— “ Policing of railways and railway property. ”
- (3) Under the heading “Interpretation”, after the definition of “railway” insert—
- ““Railway property” has the meaning given by section 75(3) of the Railways and Transport Safety Act 2003.”

#### Commencement Information

**I10** S. 45 in force at 23.5.2016, see s. 72(7)

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## 46 British Transport Police: cross-border public authorities

- (1) The following are cross-border public authorities for the purposes of the Scotland Act 1998 (“the 1998 Act”)—
  - (a) the British Transport Police Authority;
  - (b) the Chief Constable of the British Transport Police Force;
  - (c) the deputy Chief Constable of the British Transport Police Force;
  - (d) the assistant Chief Constables of the British Transport Police Force.
- (2) In relation to those cross-border public authorities the reference in section 88(3) of the 1998 Act to a pre-commencement enactment is to be read as a reference to the Railways and Transport Safety Act 2003.
- (3) Except as provided by subsection (2), the 1998 Act applies in relation to the cross-border public authorities mentioned in subsection (1) in the same way as it applies in relation to cross-border public authorities specified in an Order in Council under section 88(5) of the 1998 Act.

### Commencement Information

**III** S. 46 in force at 23.5.2016, see s. 72(7)

VALID FROM 09/02/2018

## 47 Onshore petroleum

- (1) Section D2 in Part 2 of Schedule 5 to the Scotland Act 1998 (oil and gas) is amended as follows.
- (2) In the Exceptions, before “The manufacture of gas.” insert—

“The granting and regulation of licences to search and bore for and get petroleum that, at the time of the grant of the licence, is within the Scottish onshore area, except for any consideration payable for such licences.  
Access to land for the purpose of searching or boring for or getting petroleum under such a licence.”
- (3) After the Exceptions insert—

*“Interpretation*  
The Scottish onshore area is the area of Scotland that is within the baselines established by any Order in Council under section 1(1)(b) of the Territorial Sea Act 1987 (extension of territorial sea).  
“Petroleum” means petroleum within the meaning given by section 1 of the Petroleum Act 1998 in its natural state in strata.”

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VALID FROM 09/02/2018

#### 48 Onshore petroleum: consequential amendments

- (1) The Petroleum Act 1998 is amended as follows.
- (2) Section 3 (licences to search and bore for and get petroleum) is amended as follows.
- (3) In subsection (1)—
  - (a) for “Secretary of State” substitute “ appropriate Minister ”;
  - (b) for “he” substitute “ the appropriate Minister ”.
- (4) In subsection (3) for “Secretary of State” in the second place substitute “ appropriate Minister ”.
- (5) Section 4 (licences: further provisions) is amended as follows.
- (6) In subsection (1) for “Secretary of State” substitute “ appropriate Minister ”.
- (7) After that subsection insert—
  - “(1A) The Scottish Ministers may not make regulations under subsection (1)(e) prescribing model clauses that may be prescribed under subsection (1B).
  - (1B) The Secretary of State may make regulations prescribing model clauses on the consideration payable for a licence granted by the Scottish Ministers, and the following so far as they relate to such consideration—
    - (a) the measurement of petroleum obtained from the licenced area (including the facilitation of such measurement);
    - (b) the keeping of accounts;
    - (c) cancellation of a licence by the Secretary of State if there has been a failure to pay consideration or to comply with a clause on a matter falling within paragraph (a) or (b).
  - (1C) Model clauses prescribed under subsection (1B) shall, unless the Secretary of State thinks fit to modify or exclude them in any particular case, be incorporated in any licence granted by the Scottish Ministers.”
- (8) In subsection (3) for “Any such regulations” substitute “ Any regulations made by the Secretary of State ”.
- (9) After that subsection insert—
  - “(3A) Any regulations made by the Scottish Ministers shall be subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).”
- (10) After subsection (4) insert—
  - “(4A) As soon as practicable after granting a licence under section 3, the Scottish Ministers shall publish notice of the fact in the Edinburgh Gazette stating—
    - (a) the name of the licensee; and
    - (b) the situation of the area in respect of which the licence has been granted.”



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- (11) In section 5(9) (existing licences) for “the Secretary of State” in each place substitute “ the appropriate Minister ”.
- (12) In section 5A (rights transferred without consent) for “Secretary of State” in each place substitute “ appropriate Minister ”.
- (13) In section 5B(1) (information) for “the Secretary of State” in each place substitute “ the appropriate Minister ”.
- (14) In section 7 (ancillary rights) in subsection (2)—
  - (a) at the end of paragraph (b) omit “and”, and
  - (b) at the end of paragraph (c) insert “; and
  - (d) references to the Secretary of State (or the Minister) in sections 4 and 9 of that Act included references to the Scottish Ministers in relation to licences granted in relation to the Scottish onshore area.”
- (15) In section 8 (power to inspect plans of mines) for “the Secretary of State” in each place substitute “ the appropriate Minister ”.
- (16) After section 8 insert—

#### **“8A Interpretation of Part 1**

- (1) This section applies for the purposes of this Part.
  - (2) The “appropriate Minister” means—
    - (a) in relation to the Scottish onshore area, the Scottish Ministers;
    - (b) otherwise, the Secretary of State.
  - (3) The Scottish onshore area is the area of Scotland that is within the baselines established by any Order in Council under section 1(1)(b) of the Territorial Sea Act 1987 (extension of territorial sea).
  - (4) In subsection (3) “Scotland” has the same meaning as in the Scotland Act 1998.”
- (17) In section 188(12) of the Energy Act 2004, in the substituted subsection (7A), before paragraph (a) insert—

“(za) Part 1 of the Petroleum Act 1998.”.
  - (18) The Oil Taxation Act 1975 is amended as follows.
  - (19) In section 12(1A)(a)(ii) (authorities that can revoke licences) after [<sup>F1</sup>“OGA”] insert “, the Scottish Ministers ”.
  - (20) In paragraph 1(2) of Schedule 1 (determination of oil fields)—
    - (a) in paragraph (a) after “granted” insert “ by the [<sup>F2</sup>OGA] ”;
    - (b) after paragraph (a) insert—

“(aa) is the Scottish Ministers if the area is such that licences can be granted by the Scottish Ministers for all of it under Part 1 of the Petroleum Act 1998;

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(ab) is the [F2OGA] and the Scottish Ministers acting jointly if the area is such that licences can be granted for part of it by the [F2OGA] and for part of it by the Scottish Ministers;”.

(21) The Petroleum (Production) (Landward Areas) Regulations 1995 are amended as follows.

(22) In regulation 2 (interpretation) after the entry for “principal licence” insert—

““Scottish onshore area” has the meaning given by section 8A of the Petroleum Act 1998;”.

(23) In regulation 3 (application of the regulations) at the beginning of paragraph (1) insert “ Subject to paragraph (1A), ”.

(24) After that paragraph insert—

“(1A) These regulations do not apply to applications for licences to search and bore for, and get, petroleum within the Scottish onshore area.”

#### Textual Amendments

**F1** Word in s. 48(19) substituted (1.10.2016) by [The Petroleum \(Transfer of Functions\) Regulations 2016 \(S.I. 2016/898\)](#), regs. 1(2), **16(2)**

**F2** Word in s. 48(20) substituted (1.10.2016) by [The Petroleum \(Transfer of Functions\) Regulations 2016 \(S.I. 2016/898\)](#), regs. 1(2), **16(3)**

VALID FROM 29/11/2017

#### 49 Onshore petroleum: existing licences

(1) The Secretary of State may make any amendment that appears to the Secretary of State to be necessary or expedient in consequence of section 47 or 48—

- (a) in any model clause, to the extent that, under Part 1 of the Petroleum Act 1998, it is incorporated, or has effect as if incorporated, in an existing licence, and
- (b) in any other provision of an existing licence.

(2) In the case of an existing licence granted in respect of an area (“the licence area”) of which part only was within the Scottish onshore area at the time the licence was granted—

- (a) the Secretary of State may direct that it is to have effect as a licence in respect of an area comprising that part and a separate licence in respect of an area comprising the rest of the licence area, and
- (b) subsection (1) applies in relation to each of those licences as it applies in relation to the existing licence.

(3) The power to make amendments under subsection (1)(a) is exercisable by regulations made by statutory instrument.

(4) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

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- (5) In this section “existing licence” means a licence granted, before the commencement of section 47, under—
- (a) section 3 of the Petroleum Act 1998, or
  - (b) section 2 of the Petroleum (Production) Act 1934,
- in respect of an area all or part of which is within the Scottish onshore area, within the meaning given by Section D2 of Part 2 of Schedule 5 to the Scotland Act 1998.

## 50 Consumer advocacy and advice

- (1) Part 2 of Schedule 5 to the Scotland Act 1998 (specific reservations) is amended as follows.
- (2) In Section C7 (consumer protection)—
- (a) for the heading “Exception” substitute “ Exceptions ”;
  - (b) after that heading insert— “ The provision of consumer advocacy and advice by, or by agreement with, a public body or the holder of a public office. ”
- (3) In Section C8 (product standards, safety and liability) after the heading “Exceptions” insert— “ The provision of consumer advocacy and advice by, or by agreement with, a public body or the holder of a public office. ”
- (4) In Section C9 (weights and measures) after the reservations insert—
- “Exceptions*  
The provision of consumer advocacy and advice by, or by agreement with, a public body or the holder of a public office.”
- (5) In Section C11 (posts)—
- (a) for the heading “Exception” substitute “ Exceptions ”;
  - (b) after that heading insert— “ The provision of consumer advocacy and advice by, or by agreement with, a public body or the holder of a public office, but not any related compulsory levy on postal operators. ”;
  - (c) under the heading “Interpretation”, before “ “postal services” ” insert “ “postal operator”, ”.
- (6) In Section D1 (electricity)—
- (a) for the heading “Exception” substitute “ Exceptions ”;
  - (b) after the exception relating to the Environmental Protection Act 1990 insert— “ The provision of consumer advocacy and advice by, or by agreement with, a public body or the holder of a public office, but not any related compulsory levy on persons supplying, generating, transmitting or distributing electricity. ”
- (7) In Section D2 (oil and gas), at the end of the exceptions insert— “ The provision in relation to gas of consumer advocacy and advice by, or by agreement with, a public body or the holder of a public office, but not any related compulsory levy on persons supplying gas to premises or conveying gas through pipes. ”
- (8) In paragraph 3(2) of Part 3 of Schedule 5 to the Scotland Act 1998 (reserved bodies) at the end insert—
- “(e) the Office of Communications,
  - (f) the Gas and Electricity Markets Authority.”

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(9) Section 8 of the Utilities Act 2000 (payments by licence holders relating to new arrangements) is amended as follows.

(10) In subsection (2)—

- (a) after “payment by the licence holder of sums” insert “ — (a) ”;
- (b) at the end insert “, or
  - (b) relating to such amounts as the Secretary of State considers reasonable in respect of the provision, in or as regards Scotland, of consumer advocacy and advice by, or by agreement with, a public body or the holder of a public office, in relation to gas and electricity consumers”.

(11) Omit—

- (a) subsection (3A)(bb) and (cb);
- (b) in subsection (3A)(f) the words “or Citizens Advice Scotland”;
- (c) in subsection (3B)(a) the words “(bb),” and “,(cb)”;
- (d) in subsection (3C) the words “or Citizens Advice Scotland, or by them jointly,”.

(12) In subsection (9) after “(3A)” insert “ or to amounts mentioned in subsection (2)(b) ”.

(13) Section 51 of the Postal Services Act 2011 (consumer protection conditions) is amended as follows.

(14) At the end of subsection (2)(c) omit “and” and insert—

- “(ca) to make payments relating to such amounts as the Secretary of State considers reasonable in respect of the provision, in or as regards Scotland, of consumer advocacy and advice by, or by agreement with, a public body or the holder of a public office, in relation to users of postal services, and”.

(15) In subsection (6) after “(2)(c)” insert “, (ca) ”.

(16) Omit—

- (a) in subsection (2)(c) the words “, Citizens Advice Scotland”;
- (b) in subsection (4) the words “, Citizens Advice Scotland”;
- (c) subsection (4)(d), (e) and (f);
- (d) in subsection (4A) the words “or Citizens Advice Scotland, or by them jointly,”.

#### Commencement Information

I12 S. 50 in force at 23.5.2016, see s. 72(7)

## 51 Functions exercisable within devolved competence: consumer advocacy and advice

(1) The Scotland Act 1998 (“the 1998 Act”) has effect, in relation to any function so far as exercisable within devolved competence by virtue of a provision of section 50, as if references to a “pre-commencement enactment” were to—

- (a) an Act passed before or in the same session as the relevant date,

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- (b) any other enactment made before the relevant date,
- (c) subordinate legislation under section 106 of the 1998 Act, to the extent that the legislation states that it is to be treated as a pre-commencement enactment, but did not include the 1998 Act or this Act (or any amendment made by either of those Acts) or, subject to paragraph (c), an enactment comprised in subordinate legislation under either of those Acts.

(2) In this section—

- (a) expressions used in the 1998 Act have the same meaning as in that Act;
- (b) the relevant date is the date on which section 50 comes into force.

#### Commencement Information

**I13** S. 51 in force at 23.5.2016, see s. 72(7)

## 52 Gaming machines on licensed betting premises

(1) In Section B9 in Part 2 of Schedule 5 to the Scotland Act 1998 (betting, gaming and lotteries) at the end insert—

#### *“Exception*

In the case of a betting premises licence under the Gambling Act 2005, other than one in respect of a track, the number of gaming machines authorised for which the maximum charge for use is more than £10 (or whether such machines are authorised).”

(2) Section 172 of the Gambling Act 2005 (gaming machines) is amended as follows.

(3) In subsection (11) for “Secretary of State” substitute “ appropriate Minister ”.

(4) After that subsection insert—

“(12) In subsection (11) “the appropriate Minister” means—

- (a) the Scottish Ministers, so far as, in the case of a betting premises licence in respect of premises in Scotland and not in respect of a track, the order varies—
  - (i) the number of gaming machines authorised for which the maximum charge for use is more than £10, or
  - (ii) whether such machines are authorised;
- (b) otherwise, the Secretary of State.”

(5) In section 355 of that Act (regulations, orders and rules)—

- (a) in subsection (1) after “the Secretary of State” insert “ or the Scottish Ministers ”, and
- (b) for subsections (9) and (10) substitute—

“(9) Subsection (3) does not apply to regulations made by the Scottish Ministers (see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010: functions exercisable by Scottish statutory instrument).

(10) Regulations made by the Scottish Ministers under a provision specified in subsection (4), or under section 285, and an order made

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by the Scottish Ministers under section 172, shall be subject to the affirmative procedure.

(11) Any other regulations made by the Scottish Ministers under a provision of this Act shall be subject to the negative procedure.”

(6) The amendments made by this section do not apply in relation to a betting premises licence issued before this section comes into force.

**Commencement Information**

**I14** S. 52 in force at 23.5.2016, see s. 72(7)

**53 Abortion**

In Part 2 of Schedule 5 to the Scotland Act 1998 (specific reservations) omit Section J1 (abortion).

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

**C1** S. 53 modified (temp.) (17.5.2017) by [The Scotland Act 2016 \(Transitional\) Regulations 2017 \(S.I. 2017/444\)](#), [regs. 3\(1\)\(3\), 4](#)

**Commencement Information**

**I15** S. 53 in force at 23.5.2016, see s. 72(7)

**Status:**

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