



# 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;  
    (c) a reference to the Comptroller and Auditor General is to be read as a reference to the Auditor General for Scotland;

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- (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.