These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998

SCOTLAND ACT 1998

EXPLANATORY NOTES

COMMENTARY

Part IV: the Tax Varying Power
SECTION 73: Power to fix basic rate for Scottish taxpayers

Purpose and Effect

This section provides that the Scottish Parliament may pass a resolution providing for the basic rate of income tax to be increased or reduced for Scottish taxpayers - by not more than three pence in the pound - from that determined by the UK Parliament. The increased or reduced rate will not apply to income from savings and distributions.

General

This section is the first of a set of sections dealing with the tax-varying power of the Scottish Parliament.

Section 73 allows the Scottish Parliament to pass a resolution varying the basic rate of income tax for Scottish taxpayers by no more than three per cent. Section 74 makes further provisions with respect to tax-varying resolutions, and section 75 defines the term “Scottish taxpayer”.

Section 76 makes provision to take account of future changes to the structure of UK income tax. Sections 77 and 78 describe the accounting arrangements where income tax is increased or decreased for Scottish taxpayers. Section 79 permits the Treasury to make consequential subordinate legislation.

Parliamentary Consideration

Stage	*Date*	*Column*
CC	23-Feb-98	40
CC	23-Feb-98	69
CR	19-May-98	764
LC	30-Jul-98	1721
LC	6-Oct-98	261
Stage	**Date**	**Column**
LC	6-Oct-98	262
LC	6-Oct-98	273
LC	6-Oct-98	274
LR	28-Oct-98	2053

Details of Provisions

Subsection (1) describes the circumstances in which this section will apply. It applies where income tax is charged for any tax year and the Scottish Parliament has passed a resolution varying the basic rate of income tax for Scottish taxpayers by no more than three pence in the pound. The variation must be by a whole number or half of a whole number. Subsection (1) further provides that the section is subject to the conditions attaching to such tax-varying resolutions set out in section 74.

Subsection (2) provides that where the section applies, the basic rate of income tax determined by the UK Parliament for any tax year as it applies to the income of Scottish taxpayers shall be varied by the amount specified in the resolution.

Subsection (3) states that income from Scottish taxpayers does not include income from savings and distributions.

Subsections (4) and (5) provide that the section will also have effect where the charging of income tax or the determination of the basic rate for any tax year is given effect to by means of a resolution of the House of Commons under the Provisional Collection of Taxes Act 1968.
SECTION 74: Supplemental provision with respect to resolutions

Purpose and Effect

This section is entirely supplementary to the provisions of section 73 and sets out certain conditions attaching to tax-varying resolutions. In particular it provides that a resolution shall relate only to a single tax year commencing on or after the year 2000-01, and sets out by when the resolution must be passed to have effect.

General

The section forms part of the set dealing with the tax-varying power of the Scottish Parliament.

Section 73 allows the Scottish Parliament to pass a resolution varying the basic rate of income tax for Scottish taxpayers by no more than 3 per cent. Section 74 makes further provisions with respect to tax-varying resolutions, and section 75 defines the term “Scottish taxpayer”.

Section 76 makes provision to take account of future changes to the structure of UK income tax. Sections 77 and 78 describe the accounting arrangements where income tax is increased or decreased for Scottish taxpayers. Section 79 permits the Treasury to make consequential subordinate legislation.

Parliamentary Consideration

Stage	*Date*	*Column*
CC	23-Feb-98	40
CC	23-Feb-98	41
CC	23-Feb-98	82
LR	28-Oct-98	2053

Details of Provisions

Subsection (1) is introductory.

Subsection (2) provides that a tax-varying resolution must relate only to a single tax year, and generally must be passed before the start of the tax year to which it will apply.

But it cannot be passed more than 12 months in advance of that tax year. The subsection also provides that a resolution of the Scottish Parliament will have effect in relation to any determination of the UK basic rate by Westminster irrespective of whether the determination had been made at the time of the passing of the resolution. Thus the resolution of the Scottish Parliament may be passed in advance of the determination by Westminster. The intention here is to cater for a situation where the Scottish Parliament is dissolved or is in recess at the time the basic rate is determined.

Subsection (3) gives an exception to the rule that a tax-varying resolution must be passed before the start of the relevant tax year. Where the UK Parliament itself has not determined the basic rate for that tax year before 6 March in the preceding tax year, then the Scottish Parliament will have one month to pass a tax-varying resolution from the date the basic rate is determined.

Subsection (4) provides that, in a case where a tax varying resolution is passed after the beginning of the tax year to which it relates by virtue of subsection (3) that resolution will have effect from the start of that tax year.

Subsection (5) provides that only a member of the Scottish Executive may propose a tax-varying resolution. This accords with the precedent of the UK Parliament in relation to tax proposals.

Subsection (6) provides that the first tax year in which a tax-varying resolution may have effect is the year commencing on 6 April 2000. That is the first full tax year in which the Scottish Parliament will be in existence.

Subsection (7) provides that this section will also have effect where the basic rate is determined by means of a resolution of the House of Commons under the Provisional Collection of Taxes Act 1968.
SECTION 75: Scottish taxpayers

Purpose and Effect

This section defines the term "Scottish taxpayer" for the purposes of the provisions in the Act concerned with the Scottish Parliament's tax-varying power.

General

The section forms part of the set dealing with the tax-varying power of the Scottish Parliament.

Section 73 allows the Scottish Parliament to pass a resolution varying the basic rate of income tax for Scottish taxpayers by no more than 3 per cent. Section 74 makes further provisions with respect to tax-varying resolutions, and section 75 defines the term "Scottish taxpayer".

Section 76 makes provision to take account of future changes to the structure of UK income tax. Sections 77 and 78 describe the accounting arrangements where income tax is increased or decreased for Scottish taxpayers. Section 79 permits the Treasury to make consequential subordinate legislation.

Parliamentary Consideration

Stage	*Date*	*Column*
CC	23-Feb-98	41
CC	23-Feb-98	91
CC	23-Feb-98	92
LC	6-Oct-98	290

Stage	*Date*	*Column*
LR	28-Oct-98	2053
LR	28-Oct-98	2056
LR	28-Oct-98	2059

Details of Provisions

Subsection (1) provides that, for any tax year, a Scottish taxpayer is a person who is resident in the UK for income tax purposes where Scotland is the part of the UK with which that person has the closest connection during the year.

Subsection (2) defines “closest connection with Scotland”. There are three tests, only one of which need be satisfied. Broadly, a person is a Scottish taxpayer if:

subsection (3) of this section applies to him;

the number of days he spends in Scotland in the tax year equals or exceeds the number of days spent elsewhere in the UK (“day spent” is defined in subsection (4));

he is a Scottish MP, MEP or a member of the Scottish Parliament for the whole or any part of that year.

Subsection (3) sets out the circumstances in which that subsection will apply to an individual for a tax year. These are that the individual spends a part of that tax year in Scotland and, for at least part of that time, his principal UK home is located in Scotland and he makes use of that home as a place of residence. In addition, his principal UK home must be located in Scotland for at least as much of that year as the location of his principal UK home is not in Scotland.

Subsection (4) makes provision as to when a person spends a day in Scotland or spends a day elsewhere in the United Kingdom for the purposes of this section. In particular, a person spends a day in Scotland if, but only if, he is in Scotland at the end of that day. A person spends a day elsewhere in the United Kingdom if, but only if, he is in a part of the United Kingdom which is not Scotland at the end of that day and he does not spend that day in Scotland (i.e. he is not in Scotland at the end of that day).

Subsection (5) explains the circumstances in which a person’s principal UK home will be in Scotland. These are that a person has a place of residence in Scotland which is his only or main place of residence in the UK.

Subsection (6) confirms that a “place” may include a place on a vessel or other means of transport.
SECTION 76: Changes to income tax structure

Purpose and Effect

This section sets out circumstances in which the Treasury must consider whether the tax varying power of the Scottish Parliament ought to be amended. It applies where it appears to the Treasury that proposed changes to the UK income tax structure would affect significantly the practical extent for any year of the Scottish Parliament’s tax-varying powers. The section requires the Treasury at certain times to indicate to the House of Commons whether an amendment to the Scottish Parliament’s tax-varying power is necessary and, if so, to make defined and limited proposals for amending that power.

General

The section forms part of the set dealing with the tax-varying power of the Scottish Parliament.

Section 73 allows the Scottish Parliament to pass a resolution varying the basic rate of income tax for Scottish taxpayers by no more than 3 per cent. Section 74 makes further provisions with respect to tax-varying resolutions, and section 75 defines the term “Scottish taxpayer”.

Section 76 makes provision to take account of future changes to the structure of UK income tax. Sections 77 and 78 describe the accounting arrangements where income tax is increased or decreased for Scottish taxpayers. Section 79 permits the Treasury to make consequential subordinate legislation.

Parliamentary Consideration

Stage	*Date*	*Column*
CC	23-Feb-98	41
CC	23-Feb-98	92
CC	23-Feb-98	110
CR	19-May-98	765
LC	6-Oct-98	308
LC	6-Oct-98	309
LC	6-Oct-98	310
LC	6-Oct-98	312
LC	6-Oct-98	314
LC	6-Oct-98	316
LC	6-Oct-98	320
LR	28-Oct-98	2059

Details of Provisions

Subsection (1) describes the circumstances in which the section will apply. There must be a proposal, which is either published by the Treasury or the Inland Revenue or which appears to the Treasury to be likely to be enacted, to modify any income tax provision. The proposal must significantly effect the practical extent for any year of the Scottish Parliament’s tax varying powers (i.e. the amount of tax which could be raised or foregone by the Scottish Parliament under any tax varying resolution it is allowed to pass under the Act).

Subsection (2) imposes a duty on the Treasury to indicate to the House of Commons as soon as is reasonably practicable whether an amendment of the tax-varying power is required as a consequence of such a proposal; and if they think an amendment is required, to make appropriate proposals for amending that power.

Subsections (3), (4) and (5) impose certain restrictions on the substance of any Treasury proposals for amending the tax-varying power. The proposals must only apply to income tax; they must provide that any amended power is broadly of the same practical extent (i.e. is capable of raising or foregoing broadly the same amount of tax) as the existing power; the proposed revised powers must, if exercised, have broadly the same impact on the after-tax income levels of individual tax payers as the existing powers; and the proposals must not include proposals to enable the Parliament to vary the rate of tax applying to income from savings or distributions.

Subsections (6) and (7) give definitions.
SECTION 77: Accounting for additional Scottish tax

Purpose and Effect

This section applies where the basic rate of income tax is increased for Scottish taxpayers. It requires the Inland Revenue to pay into the Scottish Consolidated Fund (SCF) an amount equal to the estimated yield from the additional tax to be paid by Scottish taxpayers, and requires the Inland Revenue to make and maintain appropriate arrangements to determine the amount and frequency of payments into the SCF.

General

The section forms part of the set dealing with the tax-varying power of the Scottish Parliament.

Section 73 allows the Scottish Parliament to pass a resolution varying the basic rate of income tax for Scottish taxpayers by no more than 3 per cent. Section 74 makes further provisions with respect to tax-varying resolutions, and section 75 defines the term “Scottish taxpayer”.

Section 76 makes provision to take account of future changes to the structure of UK income tax. Sections 77 and 78 describe the accounting arrangements where income tax is increased or decreased for Scottish taxpayers. Section 79 permits the Treasury to make consequential subordinate legislation.

Parliamentary Consideration

Stage	*Date*	*Column*
CC	23-Feb-98	41
CC	23-Feb-98	124
Stage	**Date**	**Column**
LC	6-Oct-98	320
LR	28-Oct-98	2059

Details of Provisions

Subsection (1) provides that where the basic rate is increased by a resolution of the Scottish Parliament, the Inland Revenue must pay amounts into the Scottish Consolidated Fund (SCF).

Subsection (2) requires the Inland Revenue to determine and notify to the Scottish Ministers the amount to be paid over and the timing of such payments as soon as reasonably practicable after the resolution is passed.

Subsection (3) provides that any determination under subsection (2) above shall ensure that payments into the SCF properly represent the income tax receipts attributable to the resolution.

Subsections (4) and (5) provide for the Inland Revenue to make and maintain, and if necessary adjust, arrangements for estimating the total amount due to be paid into the SCF, and the amount and the frequency of individual payments in accordance with this section.

Subsection (6) requires the Inland Revenue to consult with the Scottish Ministers about those arrangements before making or modifying them.

Subsection (7) defines “income tax receipts” for the purposes of this section.

Subsection (8) provides that payments made under this section by the Inland Revenue shall be paid out of the gross revenues of that Department, and be deducted from the total amount of such revenues before they are paid into the Consolidated Fund.
SECTION 78: Effect of tax reduction for Scottish taxpayers

Purpose and Effect

This section is complementary to section 77, and applies where the basic rate of income tax is decreased for Scottish taxpayers. It requires payments out of the Scottish Consolidated Fund reflecting the shortfall in the yield of income tax resulting from the reduced rate, and provides for these payments to be accounted for to the UK Consolidated Fund.

General

The section forms part of the set dealing with the tax-varying power of the Scottish Parliament.

Section 73 allows the Scottish Parliament to pass a resolution varying the basic rate of income tax for Scottish taxpayers by no more than 3 per cent. Section 74 makes further provisions with respect to tax-varying resolutions, and section 75 defines the term “Scottish taxpayer”.

Section 76 makes provision to take account of future changes to the structure of UK income tax. Sections 77 and 78 describe the accounting arrangements where income tax is increased or decreased for Scottish taxpayers. Section 79 permits the Treasury to make consequential subordinate legislation.

Parliamentary Consideration

Stage	*Date*	*Column*
CC	23-Feb-98	124
LC	6-Oct-98	337
LR	28-Oct-98	2059

Details of Provisions

Subsection (1) provides that where the basic rate is decreased by a resolution of the Scottish Parliament, payments will be made out of the Scottish Consolidated Fund (SCF) to the Inland Revenue.

Subsection (2) requires the Inland Revenue to determine and notify to the Scottish Ministers the amount to be paid over and the timing of such payments as soon as reasonably practicable after the resolution is passed.

Subsection (3) provides that any determination under subsection (2) above shall ensure that payments out of the SCF properly represent the shortfall in income tax receipts attributable to the resolution.

Subsections (4) and (5) provide for the Inland Revenue to make and maintain, and if necessary adjust, arrangements for estimating the total amount due to be paid over, and the amount and the frequency of individual payments in accordance with this section.

Subsection (6) provides for consultation with the Scottish Ministers about those arrangements before they are made or modified.

Subsection (7) provides that “income tax receipts” for the purposes of this section has the same meaning as it has for section 77.

Subsection (8) provides that payments made under this section to the Inland Revenue shall be treated as part of the gross revenues of that Department and paid into the UK Consolidated Fund accordingly.
SECTION 79: Supplemental powers to modify enactments

Purpose and Effect

This section is supplementary to the provisions of sections 73 and 74. It permits the Treasury by order to modify enactments to take account of the Scottish Parliament's tax-varying power. In particular, such an order may exclude the effect of any tax-varying resolution in relation to certain enactments, or postpone the effect of such a resolution in relation to the operation of the PAYE system. Further provision about the making of subordinate legislation is to be found in sections 112 to 115 and Schedule 7.

General

The section forms part of the set dealing with the tax-varying power of the Scottish Parliament.

Section 73 allows the Scottish Parliament to pass a resolution varying the basic rate of income tax for Scottish taxpayers by no more than 3 per cent. Section 74 makes further provisions with respect to tax-varying resolutions, and section 75 defines the term "Scottish taxpayer".

Section 76 makes provision to take account of future changes to the structure of UK income tax. Sections 77 and 78 describe the accounting arrangements where income tax is increased or decreased for Scottish taxpayers. Section 79 permits the Treasury to make consequential subordinate legislation.

Parliamentary Consideration

Stage	*Date*	*Column*
LC	6-Oct-98	337
LR	28-Oct-98	2053
L3	9-Nov-98	545

Details of Provisions

Subsection (1) provides that the Treasury may make an order modifying any enactment as they consider necessary or expedient to take account of the fact that the Scottish Parliament has, is to have, or has exercised its tax-varying power. "Enactment" is defined in section 126(1).

Subsection (2) provides that a Treasury order may exclude the effect of the tax-varying power in relation to certain enactments.

Subsection (3) provides power by order to postpone temporarily the effect of a resolution in relation to the operation of PAYE.

Subsection (4) provides that orders under this section may have limited retrospective effect.

Subsection (5) sets out definitions.
SECTION 80: Reimbursement of expenses

Purpose and Effect

This section gives the Scottish Ministers the power to reimburse Ministers of the Crown or government departments for administrative expenses incurred by virtue of Part IV of the Act (the tax varying power). The existence of this power means that under the terms of section 65 reimbursements can be made out of the Scottish Consolidated Fund.

Parliamentary Consideration

Stage	*Date*	*Column*
LC	6-Oct-98	337

Details of Provisions

Before the Scottish Parliament is to be able to exercise its tax-varying power, certain mechanisms have to have been put in place and maintained. These mechanisms involve certain UK Government Departments (specifically Inland Revenue and DWP) incurring some set-up costs and some continuing maintenance costs. These costs will be incurred whether or not the Scottish Parliament makes use of the tax-varying power. Thus they are not attributable to any exercise by the Scottish Administration of its functions. Without this section these particular expenses could not be met by making payments out of the Scottish Consolidated Fund (because they would not count as "expenditure of the Scottish Administration" in terms of section 65(2)(a)). While these expenses could be met in other ways than payment out of the SCF (particularly through adjustment of the grant paid by the UK Government to the Scottish Administration), it is nevertheless desirable to have the SCF option available. The section achieves this by giving the Scottish Ministers a specific power to reimburse these administrative expenses.