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## SCHEDULES

### SCHEDULE 4

Sections 29 and 53(4).

#### ENACTMENTS ETC. PROTECTED FROM MODIFICATION

#### PART I

#### THE PROTECTED PROVISIONS

##### *Particular enactments*

- 1 (1) An Act of the Scottish Parliament cannot modify, or confer power by subordinate legislation to modify, any of the following provisions.
- (2) The provisions are—
- (a) Articles 4 and 6 of the <sup>M1</sup>Union with Scotland Act 1706 and of the <sup>M2</sup>Union with England Act 1707 so far as they relate to freedom of trade,
  - (b) the <sup>M3</sup>Private Legislation Procedure (Scotland) Act 1936,
  - (c) the following provisions of the <sup>M4</sup>European Communities Act 1972—
    - Section 1 and Schedule 1,
    - Section 2, other than subsection (2), the words following “such Community obligation” in subsection (3) and the words “subject to Schedule 2 to this Act” in subsection (4),
    - Section 3(1) and (2),
    - Section 11(2),
  - (d) paragraphs 5(3)(b) and 15(4)(b) of Schedule 32 to the <sup>M5</sup>Local Government, Planning and Land Act 1980 (designation of enterprise zones),
  - (e) sections 140A to 140G of the <sup>M6</sup>Social Security Administration Act 1992 (rent rebate and rent allowance subsidy and council tax benefit),
  - (f) the <sup>M7</sup>Human Rights Act 1998.

#### Marginal Citations

- M1** 1706 c. 11.
- M2** 1707 c. 7(S).
- M3** 1936 c. 52.
- M4** 1972 c. 68.
- M5** 1980 c. 65.
- M6** 1992 c. 5.
- M7** 1998 c. 42.

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*The law on reserved matters*

- 2 (1) An Act of the Scottish Parliament cannot modify, or confer power by subordinate legislation to modify, the law on reserved matters.
- (2) In this paragraph, “the law on reserved matters” means—
- (a) any enactment the subject-matter of which is a reserved matter and which is comprised in an Act of Parliament or subordinate legislation under an Act of Parliament, and
  - (b) any rule of law which is not contained in an enactment and the subject-matter of which is a reserved matter,
- and in this sub-paragraph “Act of Parliament” does not include this Act.
- (3) Sub-paragraph (1) applies in relation to a rule of Scots private law or Scots criminal law (whether or not contained in an enactment) only to the extent that the rule in question is special to a reserved matter or the subject-matter of the rule is—
- (a) interest on sums due in respect of taxes or excise duties and refunds of such taxes or duties, or
  - (b) the obligations, in relation to occupational or personal pension schemes, of the trustees or managers.
- (4) Sub-paragraph (3)(b) extends to cases where liabilities under orders made in matrimonial proceedings, or agreements made between the parties to a marriage, are to be satisfied out of assets of the scheme.
- 3 (1) Paragraph 2 does not apply to modifications which—
- (a) are incidental to, or consequential on, provision made (whether by virtue of the Act in question or another enactment) which does not relate to reserved matters, and
  - (b) do not have a greater effect on reserved matters than is necessary to give effect to the purpose of the provision.
- (2) In determining for the purposes of sub-paragraph (1)(b) what is necessary to give effect to the purpose of a provision, any power to make laws other than the power of the Parliament is to be disregarded.

*This Act*

- 4 (1) An Act of the Scottish Parliament cannot modify, or confer power by subordinate legislation to modify, this Act.
- (2) This paragraph does not apply to modifying sections 1(4), 17(5), 19(7), 21(5), 24(2), 28(5), 39(7), 40 to 43, 50, 69(3), 85 and 93 and paragraphs 4(1) to (3) and 6(1) of Schedule 2.
- (3) This paragraph does not apply to modifying any provision of this Act (other than sections 64(7), 66(2), 71(7), 77, 78 and 119) which—
- (a) charges any sum on the Scottish Consolidated Fund,
  - (b) requires any sum to be paid out of that Fund without further approval, or
  - (c) requires or authorises the payment of any sum into that Fund.

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- (4) This paragraph does not apply to any modifications of Part III which are necessary or expedient for the purpose or in consequence of the establishment of a new fund, in addition to the Scottish Consolidated Fund, out of which loans may be made by the Scottish Ministers.
- (5) This paragraph does not apply to—
  - (a) modifying so much of any enactment as is modified by this Act,
  - (b) repealing so much of any provision of this Act as amends any enactment, if the provision ceases to have effect in consequence of any enactment comprised in or made under an Act of the Scottish Parliament.

VALID FROM 11/06/2009

- [<sup>F1</sup>4A (1) Paragraph 4 does not apply to prevent an Act of the Scottish Parliament modifying this Act to make provision requiring any proceedings to which this paragraph applies to be brought before the end of the relevant period.
- (2) This paragraph applies to any proceedings against the Scottish Ministers or a member of the Scottish Executive that may, by virtue of this Act, be brought in any court or tribunal by any person (other than a person mentioned in sub-paragraph (3)) on the ground that an act of the Scottish Ministers or of a member of the Scottish Executive is incompatible with the Convention rights.
  - (3) This paragraph does not apply to proceedings brought by the Lord Advocate, the Advocate General, the Attorney General, the Attorney General for Northern Ireland or the Advocate General for Northern Ireland.
  - (4) In sub-paragraph (1) “relevant period” in relation to any proceedings to which this paragraph applies means—
    - (a) the period of one year beginning with the date on which the act complained of took place; or
    - (b) such longer period as the court or tribunal considers equitable having regard to all the circumstances.
  - (5) An Act of the Scottish Parliament may provide for the provision mentioned in sub-paragraph (1) to have effect subject to any rule imposing a stricter time limit in relation to the procedure in question.
  - (6) In this paragraph “act” does not include the making of any legislation but it does include any other act or failure to act (including a failure to make legislation).]

#### Textual Amendments

- F1** Sch. 4 para. 4A inserted (S.) (11.6.2009) by [The Scotland Act 1998 \(Modification of Schedule 4\) Order 2009 \(S.I. 2009/1380\)](#), arts. 1(1), 2

#### *Enactments modified by this Act*

- 5 An Act of the Scottish Parliament cannot modify, or confer power by subordinate legislation to modify—

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- (a) the effect of section 119(3) in relation to any provision of an Act of Parliament relating to judicial salaries,
- (b) so much of any enactment as—
  - (i) is amended by paragraph 2, 7 or 32 of Schedule 8, and
  - (ii) relates to the Advocate General,
- (c) so much of any enactment as is amended by paragraph 9(b) or 29 of Schedule 8.

#### *Shared powers*

- 6 An Act of the Scottish Parliament cannot modify, or confer power by subordinate legislation to modify, any enactment so far as the enactment relates to powers exercisable by a Minister of the Crown by virtue of section 56.

## PART II

### GENERAL EXCEPTIONS

#### *Restatement, etc.*

- 7 (1) Part I of this Schedule does not prevent an Act of the Scottish Parliament—
- (a) restating the law (or restating it with such modifications as are not prevented by that Part), or
  - (b) repealing any spent enactment,
- or conferring power by subordinate legislation to do so.
- (2) For the purposes of paragraph 2, the law on reserved matters includes any restatement in an Act of the Scottish Parliament, or subordinate legislation under such an Act, of the law on reserved matters if the subject-matter of the restatement is a reserved matter.

#### *Effect of Interpretation Act 1978*

- 8 Part I of this Schedule does not prevent the operation of any provision of the <sup>M8</sup>Interpretation Act 1978.

#### **Marginal Citations**

**M8** 1978 c. 30.

#### *Change of title etc.*

- 9 (1) Part I of this Schedule does not prevent an Act of the Scottish Parliament amending, or conferring power by subordinate legislation to amend, any enactment by changing—
- (a) any of the titles referred to in sub-paragraph (2), or
  - (b) any reference to a declarator,
- in consequence of any provision made by or under an Act of the Scottish Parliament.

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- (2) The titles are those of—
- (a) any court or tribunal or any judge, chairman or officer of a court or tribunal,
  - (b) any holder of an office in the Scottish Administration which is not a ministerial office or any member of the staff of the Scottish Administration,
  - (c) any register.

*Accounts and audit and maladministration*

- 10 Part I of this Schedule does not prevent an Act of the Scottish Parliament modifying, or conferring power by subordinate legislation to modify, any enactment for or in connection with the purposes of section 70 or 91.

*Subordinate legislation*

- 11 (1) Part I of this Schedule does not prevent an Act of the Scottish Parliament modifying, or conferring power by subordinate legislation to modify, any enactment for or in connection with any of the following purposes.
- (2) Those purposes are—
- (a) making different provision in respect of the document by which a power to make subordinate legislation within sub-paragraph (3) is to be exercised,
  - (b) making different provision (or no provision) for the procedure, in relation to the Parliament, to which legislation made in the exercise of such a power (or the instrument or other document in which it is contained) is to be subject,
  - (c) applying any enactment comprised in or made under an Act of the Scottish Parliament relating to the documents by which such powers may be exercised.
- (3) The power to make the subordinate legislation, or a power to confirm or approve the legislation, must be exercisable by—
- (a) a member of the Scottish Executive,
  - (b) any Scottish public authority with mixed functions or no reserved functions,
  - (c) any other person (not being a Minister of the Crown) within devolved competence.

**PART III**

CONSEQUENTIAL MODIFICATION OF SECTIONS 53 AND 54

- 12 (1) This paragraph applies to a function which (apart from this Schedule) would be transferred to the Scottish Ministers by virtue of section 53(2)(c).
- (2) If, because of anything in Part I of this Schedule, a provision of an Act of the Scottish Parliament modifying an enactment so as to provide for the function to be exercisable by a different person would be outside the legislative competence of the Parliament, the function is not so transferred.
- 13 (1) Paragraph 12 does not apply to any function conferred by any provision of—
- (a) the <sup>M9</sup>European Communities Act 1972,
  - (b) the <sup>M10</sup>Human Rights Act 1998, except sections 1, 5, 14 to 17 and 22 of that Act,

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- (c) the law on reserved matters (for the purposes of paragraph 2) so far as contained in an enactment.
- (2) For the purpose of determining—
- (a) whether any function under any of the provisions referred to in sub-paragraph (1) is transferred to the Scottish Ministers by virtue of section 53, and
  - (b) the extent to which any such function (other than a function of making, confirming or approving subordinate legislation) is exercisable by them,
- the references in section 54 to the legislative competence of the Parliament are to be read as if section 29(2)(c) were omitted.
- (3) Part I of this Schedule does not prevent an Act of the Scottish Parliament modifying, or conferring power by subordinate legislation to modify, any of the provisions mentioned in sub-paragraph (1) so as to provide for a function transferred to the Scottish Ministers by virtue of section 53 to be exercisable by a different person.

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**Marginal Citations**

**M9** 1972 c. 68.

**M10** 1998 c. 42.

- 14 If any pre-commencement enactment or prerogative instrument is modified by subordinate legislation under section 105, a function under that enactment or instrument (whether as it has effect before or after the modification) is not transferred by virtue of section 53 if the subordinate legislation provides that it is not to be so transferred.

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