

SCHEDULES

SCHEDULE 8

Section 125.

MODIFICATIONS OF ENACTMENTS

Public Revenue (Scotland) Act 1833 (c. 13)

- 1 In section 2 of the Public Revenue (Scotland) Act 1833 (regulation of Queen's and Lord Treasurer's Remembrancer), for "Treasury" in both places there is substituted "Scottish Ministers".

Crown Suits (Scotland) Act 1857 (c. 44)

- 2 (1) The Crown Suits (Scotland) Act 1857 is amended as follows.
- (2) In section 1 (Crown suits may be brought by or against Lord Advocate)—
- (a) after "Crown" there is inserted "(including the Scottish Administration)", and
 - (b) for "Her Majesty's Advocate for the time being" there is substituted "the appropriate Law Officer".
- (3) In section 2 (authority of Crown required)—
- (a) for "Her Majesty's Advocate" there is substituted "the appropriate Law Officer", and
 - (b) after "Majesty" there is inserted "of the part of the Scottish Administration".
- (4) In section 3 (absence of authority cannot be founded upon), for "Her Majesty's Advocate" there is substituted "the appropriate Law Officer".
- (5) After section 4 there is inserted—

"4A Meaning of "the appropriate Law Officer"

In this Act "the appropriate Law Officer" means—

- (a) the Lord Advocate, where the action, suit or proceeding is on behalf of or against any part of the Scottish Administration, and
 - (b) the Advocate General for Scotland, in any other case."
- (6) In section 5 (change of Lord Advocate not to affect proceedings)—
- (a) for "Her Majesty's Advocate" there is substituted "the Lord Advocate or the Advocate General for Scotland", and
 - (b) for "the office of Her Majesty's Advocate" there is substituted "that office".

Sheriff Courts and Legal Officers (Scotland) Act 1927 (c. 35)

- 3 (1) The Sheriff Courts and Legal Officers (Scotland) Act 1927 is amended as follows.

Status: This is the original version (as it was originally enacted).

- (2) In section 1(2) (appointment etc. of procurator fiscal), “with the consent of the Treasury” is omitted.
- (3) In section 2 (appointment of sheriff clerk and procurator fiscal deputes), “with the consent of the Treasury as to numbers and salaries” is omitted.
- (4) In section 3 (whole-time sheriff clerks and procurators fiscal and deputes), “and in either case with the consent of the Treasury” is omitted.
- (5) In section 5 (whole-time clerks), “with the consent of the Treasury as to numbers and salaries” is omitted.
- (6) In section 12 (prosecutions at instance of procurator fiscal), “after consultation with the Treasury” is omitted.

Administration of Justice (Scotland) Act 1933 (c. 41)

- 4 In the Administration of Justice (Scotland) Act 1933, in sections 24(7) and 25 (officers of Court of Session etc.), “and shall be exercised on nomination by the Lord Advocate” is omitted.

Private Legislation Procedure (Scotland) Act 1936 (c. 52)

- 5 In section 1 of the Private Legislation Procedure (Scotland) Act 1936 (application for provisional order: notices), after subsection (4) there is added—
 “(5) This section shall not apply where any public authority or any persons desire to obtain parliamentary powers the conferring of which is wholly within the legislative competence of the Scottish Parliament.”

United Nations Act 1946 (c. 45)

- 6 In section 1 of the United Nations Act 1946 (measures to give effect to decisions of Security Council), in subsection (4), for the words following “shall” there is substituted “forthwith after it is made be laid—
 (a) before Parliament; and
 (b) if any provision made by the Order would, if it were included in an Act of the Scottish Parliament, be within the legislative competence of that Parliament, before that Parliament.”

Crown Proceedings Act 1947 (c. 44)

- 7 (1) The Crown Proceedings Act 1947 is amended as follows.
- (2) In section 38(2) (interpretation)—
 (a) in the definition of “His Majesty’s aircraft”, after “Kingdom” there is inserted “or the Scottish Administration”,
 (b) in the definition of “His Majesty’s ships”, after “Kingdom” there is inserted “or the Scottish Administration” and after “said Government” there is inserted “or Administration”, and
 (c) in the definition of “officer”, after “Minister of the Crown” there is inserted “and a member of the Scottish Executive”.
- (3) In section 40 (savings)—

Status: This is the original version (as it was originally enacted).

- (a) in subsection (2), after “in the United Kingdom”, in each place where those words appear, there is inserted “or the Scottish Administration”, and
- (b) after subsection (3) there is inserted—

“(3A) A certificate of the Scottish Ministers to the effect that—

- (a) any alleged liability of the Crown arises otherwise than in respect of the Scottish Administration,
- (b) any proceedings by the Crown are proceedings otherwise than in right of the Scottish Administration,

shall, for the purposes of this Act, be conclusive as to that matter.”

- (4) In the proviso to section 44 (remit from sheriff court to Court of Session on Lord Advocate’s certificate)—

- (a) for “Lord Advocate” there is substituted “appropriate Law Officer”, and
- (b) at the end there is inserted—

“In this proviso, “the appropriate Law Officer” means—

- (a) the Lord Advocate, where the proceedings are against any part of the Scottish Administration, and
- (b) the Advocate General for Scotland, in any other case.”

- (5) In section 50 (application to Scotland of section 35), subsection (2) of section 35 as substituted for Scotland is amended as follows—

- (a) in paragraph (d)—

- (i) after “Crown” there is inserted “in right of Her Majesty’s Government in the United Kingdom”,
- (ii) for “Lord Advocate” there is substituted “Advocate General for Scotland”, and
- (iii) after “department”, in the second place where it appears, there is inserted—

“(i) shall not be entitled to avail itself of any set-off or counterclaim if the subject matter thereof relates to the Scottish Administration, and

(ii)”,
and

- (b) after that paragraph there is inserted—

“(e) a part of the Scottish Administration, in any proceedings against that part or against the Lord Advocate on its behalf, shall not be entitled to avail itself of any set-off or counterclaim if the subject matter thereof relates to another part of the Scottish Administration or to the Crown in right of Her Majesty’s Government in the United Kingdom.”

- (6) In section 51(2) (application to Scotland of section 38), in paragraph (ii), after “Lord Advocate” there is inserted “or the Advocate General for Scotland”.

Status: This is the original version (as it was originally enacted).

Public Registers and Records (Scotland) Act 1948 (c. 57)

- 8 In section 1(1) of the Public Registers and Records (Scotland) Act 1948 (appointment etc. of Keeper of the Registers and Keeper of the Records), for “Secretary of State” there is substituted “Scottish Ministers”.

Lands Tribunal Act 1949 (c. 42)

- 9 In section 2 of the Lands Tribunal Act 1949 (members etc. of Lands Tribunal for Scotland)—
- (a) in subsection (9)—
 - (i) after “effect” there is inserted “with the omission of subsection (8) and”, and
 - (ii) in paragraph (a), for “(8)” there is substituted “(7)”, and
 - (b) after that subsection there is inserted—

“(10) The remuneration of members of the Lands Tribunal for Scotland shall be charged on the Scottish Consolidated Fund.”

Defamation Act 1952 (c. 66)

- 10 In section 10 of the Defamation Act 1952 (limitation on privilege at elections), after “local government authority” there is inserted “to the Scottish Parliament”.

Defamation Act (Northern Ireland) 1955 (c. 11 (N.I.))

- 11 In section 10(2) of the Defamation Act (Northern Ireland) 1955 (limitation on privilege at elections), after “Parliament of the United Kingdom” there is inserted “or to the Scottish Parliament”.

Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49)

- 12 In section 1(1) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (power of Secretary of State to appoint Registrar General), for “Secretary of State” there is substituted “Scottish Ministers”.

Pensions (Increase) Act 1971 (c. 56)

- 13 In Part II of Schedule 2 to the Pensions (Increase) Act 1971 (official pensions out of local funds), before paragraph 39 there is inserted—

“Scottish Parliament and Scottish Executive

- 38AB A pension payable under a scheme established by virtue of section 81(4) (b) of, or paragraph 3(4)(b) of Schedule 2 to, the Scotland Act 1998.”

Superannuation Act 1972 (c. 11)

- 14 In section 1(6) of the Superannuation Act 1972 (superannuation as respects civil servants etc.), for “or the Consolidated Fund” there is substituted “the Consolidated Fund or the Scottish Consolidated Fund”.

Status: This is the original version (as it was originally enacted).

European Communities Act 1972 (c. 68)

- 15 (1) The European Communities Act 1972 is amended as follows.
- (2) In section 2 (general implementation of Treaties)—
- (a) references to a statutory power or duty include a power or duty conferred by an Act of the Scottish Parliament or an instrument made under such an Act, and
 - (b) references to an enactment include an enactment within the meaning of this Act.
- (3) In relation to regulations made by the Scottish Ministers, or an Order in Council made on the recommendation of the First Minister, under section 2—
- (a) in subsection (2), “designated” in the first sentence, and the second sentence, shall be disregarded,
 - (b) references to an Act of Parliament shall be read as references to an Act of the Scottish Parliament, and
 - (c) paragraph 2(2) of Schedule 2 shall have effect as if the references to each, or either, House of Parliament were to the Scottish Parliament.
- (4) In section 3(4) (evidence), references to a government department include any part of the Scottish Administration.

Interpretation Act 1978 (c. 30)

- 16 (1) The Interpretation Act 1978 is amended as follows.
- (2) After section 23 there is inserted—
- “23A Acts of the Scottish Parliament etc**
- (1) This Act applies in relation to an Act of the Scottish Parliament and an instrument made under such an Act only to the extent provided in this section.
 - (2) Except as provided in subsection (3) below, sections 15 to 18 apply to—
 - (a) an Act of the Scottish Parliament as they apply to an Act,
 - (b) an instrument made under an Act of the Scottish Parliament as they apply to subordinate legislation.
 - (3) In the application of those sections to an Act and to subordinate legislation—
 - (a) references to an enactment include an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and
 - (b) the reference in section 17(2)(b) to subordinate legislation includes an instrument made under an Act of the Scottish Parliament.
 - (4) In the application of section 20 to an Act and to subordinate legislation, references to an enactment include an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.”
- (3) In Schedule 1 (words and expressions defined), the following definitions are inserted in the appropriate places—
- ““Act” means an Act of Parliament.”

Status: This is the original version (as it was originally enacted).

““Enactment” does not include an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.”

Education (Scotland) Act 1980 (c. 44)

- 17 In section 135(1) of the Education (Scotland) Act 1980 (interpretation), in the definition of “Her Majesty’s inspectors”, “on the recommendation of the Secretary of State” is omitted.

Civil Jurisdiction and Judgments Act 1982 (c. 27)

- 18 (1) Section 46 of the Civil Jurisdiction and Judgments Act 1982 (domicile and seat of the Crown) is amended as follows.
- (2) In subsection (3), after paragraph (a) there is inserted—
- “(aa) the Crown in right of the Scottish Administration has its seat in, and in every place in, Scotland,”.
- (3) In subsection (7), after “Kingdom” there is inserted “, the Scottish Administration”.

Mental Health Act 1983 (c. 20)

- 19 In section 141 of the Mental Health Act 1983 (members of the House of Commons suffering from mental illness), after subsection (7), there is added—
- “(8) This section also has effect in relation to members of the Scottish Parliament but as if—
- (a) any references to the House of Commons or the Speaker were references to the Scottish Parliament or (as the case may be) the Presiding Officer, and
- (b) subsection (7) were omitted.”

National Audit Act 1983 (c. 44)

- 20 Sections 6 and 7 of the National Audit Act 1983 (value for money studies) shall not apply in relation to—
- (a) the Scottish Administration or any part of it, or
- (b) any Scottish public authority with mixed functions or no reserved functions.

Tourism (Overseas Promotion) (Scotland) Act 1984 (c. 4)

- 21 In section 1 of the Tourism (Overseas Promotion) (Scotland) Act 1984 (power of Scottish Tourist Board to promote tourism in Scotland outside UK), subsection (2) is omitted.

Bankruptcy (Scotland) Act 1985 (c. 66)

- 22 For section 1 of the Bankruptcy (Scotland) Act 1985 there is substituted—

“1 Accountant in Bankruptcy

- (1) The Accountant in Bankruptcy shall be appointed by the Scottish Ministers.
- (2) The Scottish Ministers may appoint a member of the staff of the Accountant in Bankruptcy to be Depute Accountant in Bankruptcy to exercise all of the functions of the Accountant in Bankruptcy at any time when the Accountant in Bankruptcy is unable to do so.”

Insolvency Act 1986 (c. 45)

- 23 (1) The Insolvency Act 1986 is amended as follows.
- (2) Anything directed to be done, or which may be done, to or by—
- (a) the registrar of companies in Scotland by virtue of any of the provisions mentioned in sub-paragraph (3), or
 - (b) the assistant registrar of friendly societies for Scotland by virtue of any of those provisions as applied (with or without modification) in relation to friendly societies, industrial and provident societies or building societies,
- shall, or (as the case may be) may, also be done to or by the Accountant in Bankruptcy.
- (3) Those provisions are: sections 53(1), 54(3), 61(6), 62(5) (so far as relating to the giving of notice), 67(1), 69(2), 84(3), 94(3), 106(3) and (5), 112(3), 130(1), 147(3), 170(2) and 172(8).
- (4) Anything directed to be done to or by—
- (a) the registrar of companies in Scotland by virtue of any of the provisions mentioned in sub-paragraph (5), or
 - (b) the assistant registrar of friendly societies for Scotland by virtue of any of those provisions as applied (with or without modification) in relation to friendly societies, industrial and provident societies or building societies,
- shall instead be done to or by the Accountant in Bankruptcy.
- (5) Those provisions are: sections 89(3), 109(1), 171(5) and (6), 173(2)(a) and 192(1).
- (6) In section 427 (members of the House of Commons whose estates are sequestrated etc.), after subsection (6) there is inserted—
- “(6A) Subsections (4) to (6) have effect in relation to a member of the Scottish Parliament but as if—
- (a) references to the House of Commons were to the Parliament and references to the Speaker were to the Presiding Officer, and
 - (b) in subsection (4), for “under this section” there were substituted “under section 15(1)(b) of the Scotland Act 1998 by virtue of this section”.”

Public Order Act 1986 (c. 64)

- 24 In section 26(1) of the Public Order Act 1986 (savings for reports of parliamentary proceedings), after “Parliament” there is inserted “or in the Scottish Parliament”.

Status: This is the original version (as it was originally enacted).

Copyright, Designs and Patents Act 1988 (c. 48)

- 25 (1) The Copyright, Designs and Patents Act 1988 is amended as follows.
- (2) In section 12(9) (duration of copyright in literary, dramatic, musical or artistic works), for “166” there is substituted “166A”.
- (3) In section 153(2) (qualification for copyright protection), for “166” there is substituted “166A”.
- (4) In section 163(6) (Crown copyright), for “and 166” there is substituted “to 166A”.
- (5) In section 164(1) (Crown copyright in Acts of Parliament etc.), after “Parliament” there is inserted “Act of the Scottish Parliament”.
- (6) After section 166 there is inserted—

“166A Copyright in Bills of the Scottish Parliament

- (1) Copyright in every Bill introduced into the Scottish Parliament belongs to the Scottish Parliamentary Corporate Body.
- (2) Copyright under this section subsists from the time when the text of the Bill is handed in to the Parliament for introduction—
- (a) until the Bill receives Royal Assent, or
 - (b) if the Bill does not receive Royal Assent, until it is withdrawn or rejected or no further parliamentary proceedings may be taken in respect of it.
- (3) References in this Part to Parliamentary copyright (except in section 165) include copyright under this section; and, except as mentioned above, the provisions of this Part apply in relation to copyright under this section as to other Parliamentary copyright.
- (4) No other copyright, or right in the nature of copyright, subsists in a Bill after copyright has once subsisted under this section; but without prejudice to the subsequent operation of this section in relation to a Bill which, not having received Royal Assent, is later reintroduced into the Parliament.”
- (7) In section 178 (minor definitions)—
- (a) in the definition of “the Crown”, after “of” there is inserted “the Scottish Administration or of”, and
 - (b) in the definition of “parliamentary proceedings”, after “Assembly” there is inserted “of the Scottish Parliament”.
- (8) In section 179 (index of defined expressions), in column 2 of the entry for “Parliamentary copyright”, for “and 166(6)” there is substituted “166(6) and 166A(3)”.

Official Secrets Act 1989 (c. 6)

- 26 (1) Section 12 of the Official Secrets Act 1989 (meaning of “Crown servant” and “government contractor” for the purposes of that Act) is amended as follows.
- (2) In subsection (1), after paragraph (a) there is inserted—
- “(aa) a member of the Scottish Executive or a junior Scottish Minister;”.

Status: This is the original version (as it was originally enacted).

(3) In subsection (2)(a), after “above,” there is inserted “of any office-holder in the Scottish Administration,”.

(4) After subsection (3) there is inserted—

“(4) In this section “office-holder in the Scottish Administration” has the same meaning as in section 126(7)(a) of the Scotland Act 1998.”.

Prisons (Scotland) Act 1989 (c. 45)

27 (1) The Prisons (Scotland) Act 1989 is amended as follows.

(2) Section 2 of that Act (appointment of officers etc.) is omitted.

(3) In section 3(1) (prison officers), for the words following “Secretary of State” there is substituted—

“(1A) Every prison shall have a governor and such other officers as may be necessary.”

(4) In section 3A (medical services)—

(a) in subsection (2), for “appointing” there is substituted “providing” and for “appointment” there is substituted “provision”, and

(b) in subsection (4), for “appointed” there is substituted “provided”.

European Communities (Amendment) Act 1993 (c. 32)

28 In section 6 of the European Communities (Amendment) Act 1993 (persons who may be proposed for membership of the Committee of the Regions), after “he is” there is inserted “a member of the Scottish Parliament”.

Scottish Land Court Act 1993 (c. 45)

29 In section 1 of the Scottish Land Court Act 1993 (the Scottish Land Court)—

(a) in subsection (2), for “Secretary of State” there is substituted “First Minister”, and

(b) after subsection (2) there is inserted—

“(2A) Before recommending the appointment of a person as Chairman, the First Minister shall consult the Lord President of the Court of Session.”

Value Added Tax Act 1994 (c. 23)

30 In section 41 of the Value Added Tax Act 1994 (application to the Crown), in subsection (6), after “includes” there is inserted “the Scottish Administration”.

Requirements of Writing (Scotland) Act 1995 (c. 7)

31 In section 12(1) of the Requirements of Writing (Scotland) Act 1995 (interpretation)

—
(a) in the definition of “Minister”, after “1975” there is inserted “and also includes a member of the Scottish Executive”, and

Status: This is the original version (as it was originally enacted).

- (b) in paragraph (a) of the definition of “officer”, after “Department” there is inserted “or, as the case may be, as a member of the staff of the Scottish Ministers or the Lord Advocate”.

Criminal Procedure (Scotland) Act 1995 (c. 46)

- 32 (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) After section 288 there is inserted—

“Devolution issues

288A Rights of appeal for Advocate General: devolution issues

- (1) This section applies where—
 - (a) a person is acquitted or convicted of a charge (whether on indictment or in summary proceedings), and
 - (b) the Advocate General for Scotland was a party to the proceedings in pursuance of paragraph 6 of Schedule 6 to the Scotland Act 1998 (devolution issues).
- (2) The Advocate General for Scotland may refer any devolution issue which has arisen in the proceedings to the High Court for their opinion; and the Clerk of Justiciary shall send to the person acquitted or convicted and to any solicitor who acted for that person at the trial, a copy of the reference and intimation of the date fixed by the Court for a hearing.
- (3) The person may, not later than seven days before the date so fixed, intimate in writing to the Clerk of Justiciary and to the Advocate General for Scotland either—
 - (a) that he elects to appear personally at the hearing, or
 - (b) that he elects to be represented by counsel at the hearing,
 but, except by leave of the Court on cause shown, and without prejudice to his right to attend, he shall not appear or be represented at the hearing other than by and in conformity with an election under this subsection.
- (4) Where there is no intimation under subsection (3)(b), the High Court shall appoint counsel to act at the hearing as *amicus curiae*.
- (5) The costs of representation elected under subsection (3)(b) or of an appointment under subsection (4) shall, after being taxed by the Auditor of the Court of Session, be paid by the Advocate General for Scotland out of money provided by Parliament.
- (6) The opinion on the point referred under subsection (2) shall not affect the acquittal or (as the case may be) conviction in the trial.

288B Appeals to Judicial Committee of the Privy Council

- (1) This section applies where the Judicial Committee of the Privy Council determines an appeal under paragraph 13(a) of Schedule 6 to the Scotland Act 1998 against a determination of a devolution issue by the High Court in the ordinary course of proceedings.

Status: This is the original version (as it was originally enacted).

- (2) The determination of the appeal shall not affect any earlier acquittal or earlier quashing of any conviction in the proceedings.
- (3) Subject to subsection (2) above, the High Court shall have the same powers in relation to the proceedings when remitted to it by the Judicial Committee as it would have if it were considering the proceedings otherwise than as a trial court.”

- (3) In section 307(1) (interpretation), after the definition of “crime” there is inserted—
““devolution issue” has the same meaning as in Schedule 6 to the Scotland Act 1998;”.

Defamation Act 1996 (c. 31)

- 33 (1) The Defamation Act 1996 is amended as follows.
- (2) In section 17(1) (interpretation), in the definition of “statutory provision”, after “1978” there is inserted—
“(aa) a provision contained in an Act of the Scottish Parliament or in an instrument made under such an Act,”.
- (3) In paragraph 11(1)(c) of Schedule 1 (qualified privilege), after “Minister of the Crown” there is inserted “a member of the Scottish Executive”.

Damages Act 1996 (c. 48)

- 34 In section 6 of the Damages Act 1996 (guarantees for public sector settlements), after subsection (8) there is inserted—
“(8A) In the application of subsection (3) above to Scotland, for the words from “guidelines” to the end there shall be substituted “the Minister”. ”