



# Scotland Act 2012

## 2012 CHAPTER 11

### PART 4

#### MISCELLANEOUS AND GENERAL

##### *Miscellaneous*

### **39 Maximum penalties which may be specified in subordinate legislation**

- (1) The 1998 Act is amended as follows.
- (2) In section 113 (subordinate legislation: scope of powers), for subsection (10) substitute—
  - “(9A) A power may not be exercised so as to create any criminal offence punishable with any of the penalties specified for the offence in subsection (9B) or (10).
  - (9B) In relation to Scotland, the specified penalties are—
    - (a) where the offence is triable on summary complaint only, imprisonment for a period exceeding 12 months and a fine exceeding level 5 on the standard scale,
    - (b) where an offence triable either on indictment or on summary complaint is tried on summary complaint, imprisonment for a period exceeding 12 months and a fine exceeding the statutory maximum,
    - (c) where the offence is tried on indictment, imprisonment for a period exceeding two years.
  - (10) In relation to England and Wales and Northern Ireland, the specified penalties are—
    - (a) where the offence is tried summarily, imprisonment for a period exceeding three months and a fine exceeding—
      - (i) in the case of a summary offence, level 5 on the standard scale,

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*Changes to legislation: There are currently no known outstanding effects  
for the Scotland Act 2012, Section 39. (See end of Document for details)*

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- (ii) in the case of an offence triable either way, the statutory maximum,
  - (b) where the offence is tried on indictment, imprisonment for a period exceeding two years.”
- (3) After subsection (11) of that section insert—
- “(12) Her Majesty may by Order in Council amend subsection (9B) or (10) so as to change—
- (a) any period of imprisonment specified there, or
  - (b) the amount of any fine so specified.”
- (4) In Schedule 7 (procedure for subordinate legislation), in paragraph 1, at the appropriate place insert—

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“Section 113(12)

Type A”.

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- (5) The amendments made by paragraph 7 of Schedule 27 to the Criminal Justice Act 2003 (alteration of maximum penalties etc) have effect (when they come into force) in relation to section 113 as amended by this section as they have effect in relation to that section as originally enacted, except that in subsection (10A)(c) the words “Scotland and” are omitted.

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**Commencement Information**

**II**    [S. 39](#) in force at 31.10.2012 by [S.I. 2012/2516](#), [art. 2\(e\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Scotland Act 2012, Section 39.