



# EXPLANATORY NOTES

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## Scotland Act 2016

### Chapter 11

£11.00



# SCOTLAND ACT 2016

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Scotland Act 2016 (c. 11) which received Royal Assent on 23 March 2016.

- These Explanatory Notes have been prepared by the Scotland Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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## Overview of the Act

- 1 The Scotland Act 2016 delivers the Smith Commission Agreement, which was published in November 2014 having been agreed by all the political parties in Scotland.
- 2 This Act is intended to be an enabling Act and the majority of the provisions in the Act set out the powers that are being transferred to the Scottish Parliament and or the Scottish Ministers. In particular the Scotland Act 2016 amends the Scotland Act 1998 and rebalances the devolved and reserved responsibilities between the administrations. This Act also includes provisions which set out the constitutional relationship of the Scottish Parliament and Scottish Government within the United Kingdom's constitutional arrangements. It does not amend this relationship.
- 3 In summary this Act:
  - declares that the Scottish Parliament and the Scottish Government are considered permanent parts of the UK's constitutional arrangements and will not be abolished without a decision of the people of Scotland. It also recognises that the UK Parliament will not normally legislate in relation to devolved matters without the consent of the Scottish Parliament, whilst retaining the sovereignty to do so;
  - gives increased autonomy to the Scottish Parliament and the Scottish Ministers in relation to the operation of Scottish Parliament and local government elections in Scotland;
  - gives increased autonomy to the Scottish Parliament in relation to the power to amend sections of the Scotland Act 1998 which relate to the operation of the Scottish Parliament and the Scottish Government within the United Kingdom;
  - increases the financial accountability of the Scottish Parliament through devolution of the rates and bands of income tax, Air Passenger Duty and Aggregates Levy, and assignment of VAT revenues;
  - increases responsibility of welfare policy and delivery in Scotland through the devolution of welfare powers to the Scottish Parliament and / or the Scottish Ministers;
  - gives significant responsibility to Scotland for areas such as road signs, speed limits, onshore oil and gas extraction, consumer advocacy and advice amongst others by devolution of powers in relation to these fields to the Scottish Parliament and the Scottish Ministers; and
  - increases scrutiny for the Scottish Parliament of specific bodies and increases the ability of the Scottish Government to design schemes relating to energy efficiency and fuel poverty by the devolution of functions to the Scottish Ministers.
- 4 The Smith Commission Agreement sought to increase the financial accountability of the Scottish Parliament. A new fiscal framework has been agreed for Scotland to accompany the further powers included in this Act, in order to set and coordinate sustainable fiscal policy for the UK as a whole. This gives the Scottish Government the tools to manage the powers in this Act while ensuring consistency with the fiscal framework in the rest of the UK.

## Policy background

- 5 On 18 September 2014 the people of Scotland voted to remain part of the United Kingdom. The cross-party Smith Commission was established by the Prime Minister to agree further powers that should be devolved to Scotland. The cross-party talks facilitated an inclusive engagement process across Scotland and agreed further devolution of powers to the Scottish Parliament and the Scottish Ministers, particularly more financial, welfare and taxation powers, strengthening the Scottish Parliament and the Scottish Government within the United Kingdom.
- 6 The Smith Commission Agreement, agreed by all of Scotland's 5 main political parties, was published in November 2014. In January 2015, the UK Government published draft clauses and a command paper that indicated how the Agreement would be implemented.
- 7 The policy objective of the Scotland Act 2016 was to implement the Smith Commission Agreement. It increases the Scottish Parliament's ability to make autonomous choices that benefit the people of Scotland; and to be accountable for those decisions. The Act devolves a range of powers to the Scottish Parliament and Scottish Government.

## Legal background

- 8 This Act is intended to be an enabling Act and the majority of the provisions in the Act set out the powers that are being transferred to the Scottish Parliament and or the Scottish Ministers. In particular the Scotland Act 2016 amends the Scotland Act 1998 and rebalances the devolved and reserved responsibilities between the administrations. The Act also includes provisions which set out the constitutional relationship of the Scottish Parliament and Scottish Government within the United Kingdom's constitutional arrangements. It does not amend this relationship.

## Territorial extent and application

- 9 This Act has a UK extent and required a Legislative Consent Motion from the Scottish Parliament on the basis that it contains provisions applying to Scotland which alter the legislative competence of the Scottish Parliament and the executive competence of the Scottish Ministers. A Legislative Consent Motion, sponsored by the Scottish Government, was passed by the Scottish Parliament on 16 March 2016.



## Commentary on provisions of Act

- 10 The Scotland Act 1998 sets out the framework of Scottish devolution. The limits on the power of the Scottish Parliament to legislate for Scotland are set out in the 1998 Act. For the purposes of the Scotland Act 2016, the limitations that are relevant are those preventing the Scottish Parliament from making provision relating to reserved matters or modifying the law on reserved matters or most provisions the Scotland Act 1998 itself. Reserved matters are defined in Schedule 5 to the 1998 Act. Reserved matters are areas of law where the UK Parliament has exclusive competence to legislate. For example, the Scottish Parliament cannot make law relating to nuclear weapons. Some of the reservations in Schedule 5 contain exceptions. For example, oil and gas is reserved but the manufacture of gas is specifically excepted from that reservation and the Scottish Parliament can therefore legislate about the manufacture of gas. This 2016 Act alters Schedule 5 to 1998 Act (see Parts 1 - 4) to give the Scottish Parliament more powers to legislate. This is done by amending the reservations and or adding new exceptions to the reservations.
- 11 Where a Minister of the Crown has functions in those areas of law that are being devolved to the Scottish Parliament, the 2016 Act also addresses the transfer of functions to the Scottish Ministers.

## Part 1: Constitutional Arrangements

### Chapter 1: The Scottish Parliament and the Scottish Government

#### Section 1: The Scottish Parliament and the Scottish Government

- 12 Section 1 inserts a new Part, Part 2A, with new section 63A into the Scotland Act 1998 after Part 2 (the Scottish Administration). Section 63A provides that the Scottish Parliament and Government are permanent parts of the United Kingdom's constitutional arrangements, and that those institutions cannot be abolished except on the basis of a decision of the people of Scotland in a referendum.
- 13 Subsection (1) of section 63A provides that the Scottish Parliament and the Scottish Government are permanent parts of the United Kingdom's constitutional arrangements.
- 14 Subsection (2) of section 63A sets out that the purpose of this section is to signify the commitment of the UK Parliament and UK Government to the Scottish Parliament and Scottish Government.
- 15 Subsection (3) of section 63A provides that, in view of that commitment, the Scottish Parliament and the Scottish Government are not to be abolished except on the basis of a decision of the people of Scotland in a referendum.

### Chapter 2: The Sewel convention

#### Section 2: The Sewel convention

- 16 This section inserts subsection (8) into section 28 of the Scotland Act 1998 so it is recognised that, although the sovereignty of the UK Parliament is unchanged by the legislative competence of the Scottish Parliament, the UK Parliament will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament.

- 17 This reflects what has come to be known as the Sewel Convention. Lord Sewel indicated in the House of Lords during the passage of the Scotland Bill (H.L. Deb vol. 592 col. 791) that “we would expect a convention to be established that Westminster would not normally legislate with regard to devolved matters without the consent of the Scottish Parliament.

## Chapter 3: Elections etc

### Section 3: Elections

- 18 Section 3 splits the elections reservation at Section B3 of Part 2 to Schedule 5 to the Scotland Act 1998 into two parts: B3(A) and B3(B).
- 19 Section B3(A) covers all matters concerning elections for membership of the House of Commons and the European Parliament to include who may stand or vote in those elections, procedures under which votes are counted and candidates returned, and what the constituencies and timings of those elections should be.
- 20 New section B3(B) reserves certain matters in relation to elections for membership of the Scottish Parliament and local government elections in Scotland.
- 21 Paragraph 1 reserves the subject-matter of sections 2(2A) and 12A of the Scotland Act 1998.
- 22 Paragraph 2 reserves the subject-matter of section 43(1AA) of the Representation of the People Act 1983.
- 23 Paragraph 3 reserves:
- a. the combination of polls at elections or referendums that are outside the legislative competence of the Scottish Parliament with polls at (i) Scottish Parliamentary elections or (ii) local government elections in Scotland; and
  - b. the combination of polls at ordinary Scottish Parliamentary general elections with polls at ordinary local government elections in Scotland .
- 24 The reservation at paragraph 4 provides that the Individual Electoral Registration Digital Service for applications for registration or for verifying information contained in applications for registration in relation to elections for membership of the Scottish Parliament or local government elections in Scotland is reserved.
- 25 The reservation at paragraph 5 sets out the subject-matter of those provisions in the Political Parties, Elections and Referendums Act 2000 (“the 2000 Act”) which are reserved in relation to elections for the membership of the Scottish Parliament.
- 26 The reservation at paragraph 6 covers campaign expenditure by political parties, controlled expenditure and donations to third parties, but only where the regulated period in respect of such expenditure for elections to the Scottish Parliament overlaps with the regulated period for elections for membership of the House of Commons or European Parliament.
- 27 The subject matter of sections 1 to 4 of the 2000 Act, which relate to the establishment and constitution of the Electoral Commission are reserved; however many of the Electoral Commission’s general functions and enforcement functions under Parts 1 and 10 of the 2000 Act are not reserved in relation to elections for membership of the Scottish Parliament.

## Section 4: Power to make provision about elections

28 This section substitutes new sections 12 and 12A of the Scotland Act 1998 (“the 1998 Act”).

### Section 12

- 29 The executive functions given to the Scottish Ministers under the new section 12(1) include those functions relating to Scottish Parliamentary elections in respect of which the Scottish Ministers already had executive competence by virtue of section 12 of the 1998 Act as amended by section 1 of the Scotland Act 2012 (the conduct of Scottish Parliamentary elections, and the questioning of such elections and the consequences of irregularities). The Scottish Ministers exercised these powers in the Scottish Parliament (Elections etc.) Order 2015 (S.S.I. 2015/425). The new section 12(1) also includes those functions previously exercised by the Secretary of State under section 12A(1) of the 1998 Act as amended by section 1 of the Scotland Act 2012 (the return of members of the Scottish Parliament otherwise than at an election). Subsection (1) of new section 12 of the 1998 Act provides that the powers of the Scottish Ministers under section 12 are aligned with the legislative competence of the Scottish Parliament.
- 30 Subsection (2) of new section 12 of the 1998 Act clarifies the scope of the order-making power provided by subsection (1) and makes clear that it enables provision to be made:
- a. for the registration of electors;
  - b. for disregarding alterations in a register of electors;
  - c. about limits of the election expenses of individual candidates;
  - d. for the combination of polls;
  - e. to modify the operation of section 7(1) of the 1998 Act, which provides for the return of constituency members to be determined before the process of allocating regional members can proceed, where a poll at a constituency election is abandoned (or notice of it is countermanded) so that special provision can be made enabling the regional members to be returned even though not all of the constituency members have been returned; and
  - f. to modify the effect of section 8(7) of the 1998 Act to ensure that the correct number of seats are allocated.
- 31 Subsection (3) of new section 12 makes it clear that subsection (1)(c) will enable sections 10(4) to 10(5A) of the 1998 Act, which relate to the procedure for replacing regional MSPs who stood on a regional party list, to be modified.
- 32 Subsection (4) of new section 12 supplements and elaborates on the scope of subsection (1) and gives the Scottish Ministers powers relating to the application and modification of electoral law.
- 33 Subsection (4)(a) of new section 12 enables the established statutory procedures for elections to be applied, subject to any necessary alterations.
- 34 Subsection (4)(b) of new section 12 enables consequential modification of any legislative provision relating to the registration of Scottish Parliamentary or local government electors in Scotland.

- 35 Subsection (5) of new section 12 provides that the return of a member at an election to the Scottish Parliament may be questioned only under Part 3 (legal proceedings) of the Representation of the People Act 1983, as applied and modified by an order under subsection (1).
- 36 Subsection (6) of new section 12 enables the Scottish Ministers to make orders as regards the designation of regional returning officers.

### **Section 12A**

- 37 Subsections (1) to (3) of new section 12A give the Secretary of State the power to make regulations in order to combine the polls at certain Scottish Parliamentary elections with the polls at certain UK Parliamentary and European Parliamentary elections.
- 38 Subsection (4) of new section 12A provides that the Secretary of State must obtain the agreement of the Scottish Ministers before any making such regulations.
- 39 Subsection (5) of new section 12A supplements and elaborates on the scope of subsection (1) and gives the Secretary of State powers relating to the application and modification of electoral law.
- 40 Subsection (5)(a) of new section 12A enables the established statutory procedures for elections to be applied, subject to any necessary alterations.
- 41 Subsection (5)(b) of new section 12A provides that regulations made under subsection (1), may amend forms contained in, or in regulations or rules made under, the Representation of the People Acts to enable such forms to be used for elections to the Scottish Parliament as well as for their original purpose.
- 42 Subsection (2) of section 4 inserts new subsection (5C) into section 15 of the Representation of the People Act 1985, requiring the Secretary of State to consult the Scottish Ministers before making combination rules under section 15(5), where one of the elections is a local government election in Scotland.

### **Section 5: Timing of elections**

- 43 Subsections (1) to (3), amend section 2 of the Scotland Act 1998 (“the 1998 Act”), by providing that section 2(2) of the 1998 Act is subject to a new subsection (2A). Subsection (2A) provides that the poll for a Scottish Parliamentary ordinary general election cannot take place on the same date as; (a) the date of a poll at a UK Parliamentary general election; or (b) the date of a poll at a European Parliamentary general election.
- 44 Subsection (3) also inserts a new subsection (2B), which provides that where subsection (2A) prevents the poll for a Scottish Parliamentary ordinary general election from being held on a day specified in section 2(2) of the 1998 Act, the Scottish Ministers may make an order specifying the alternative day on which the poll shall be held.
- 45 Subsection (4) amends section 2(3) of the 1998 Act in order that the Scottish Parliament will be dissolved automatically at the beginning of the “minimum period”, which ends with the day, if the polls is to be held on the first Thursday in May, on that date and, otherwise, on the day specified by the Scottish Ministers by order under subsection (2B).
- 46 Subsection (5) amends section 2(5) of the 1998 Act to provide that where the Presiding Officer proposes to move the date for the holding of a poll for a Scottish Parliamentary ordinary general election under that section, the poll cannot be held on the same date as a UK Parliamentary general election or a European Parliamentary general election.

- 47 Subsection (6) inserts a new subsection (5ZA), which has the effect that where Scottish Ministers make an order under section 2(2B) of the 1998 Act specifying an election date, and the Presiding Officer proposes a new date for the election under section 2(5) of that Act, the election will be held on the date proposed under section 2(5).
- 48 Subsection (7) removes subsections (5A) to (5C) from section 2.
- 49 Subsection (8) provides that an order made by the Scottish Ministers under section 2(2B) of the 1998 Act will be subject to the affirmative procedure in the Scottish Parliament.
- 50 Subsections (9) to (11) amend section 43 of the Representation of the People Act 1983 by inserting new subsections (1AA), (1AB) and (1AC).
- 51 New subsection (1AA) prevents the poll at a local government election in Scotland from being held on the same day as a poll for a Scottish Parliamentary ordinary general election.
- 52 New subsection (1AB) provides that where the date of a poll at an ordinary local government election in Scotland would be on the same date as the poll at an ordinary general Scottish Parliamentary election, the Scottish Ministers may by order specify an alternative date for the poll at the local government election.
- 53 New subsection (1AC) provides that an order made by the Scottish Ministers will be subject to the affirmative procedure in the Scottish Parliament.

## Section 6: Electoral registration: the digital service

- 54 Subsection (2) amends section 10ZC of the Representation of the People Act 1983 (“the 1983 Act”), which concerns the procedure for applications to the register of electors, to provide for certain functions of the Secretary of State relating to the Digital Service, to be exercisable by the Scottish Ministers concurrently with a Minister of the Crown. The functions are exercisable by the Scottish Ministers: (a) in respect of elections to the Scottish Parliament or local government elections; (b) only with the agreement of a Minister of the Crown, and (c) subject to the same provisions as the Scottish Ministers' power to make other regulations under this section, except that they are subject to the negative procedure in the Scottish Parliament.
- 55 Subsection (3) amends section 10ZD of the 1983 Act, which concerns the alteration of the name or address of a person on the register, to provide for certain functions of the Secretary of State relating to the Digital Service to be exercisable by the Scottish Ministers concurrently with a Minister of the Crown. These functions are subject to the same provisions as apply to subsection (2).
- 56 Subsection (4) amends section 53 of the 1983 Act, which concerns the power to make regulations as to registration, to provide for certain functions of the Secretary of State relating to the Digital Service to be exercisable by the Scottish Ministers concurrently with a Minister of the Crown. These functions are subject to the same provisions as apply to subsections (2) and (3).

## Section 7: Expenditure in connection with elections

- 57 Section 7 inserts three new sections into the Political Parties, Elections and Referendums Act 2000 (“the 2000 Act”) to transfer to the Scottish Ministers powers currently exercised by the Secretary of State in relation to controlled expenditure and campaign expenditure at elections to the Scottish Parliament, except when the regulated period in respect of campaign or controlled expenditure for elections to the Scottish Parliament overlaps with the regulated period for elections for membership of the House of Commons or European Parliament. In each case in exercising these powers the Scottish Ministers will be subject to the same or equivalent requirements and procedures as those to which the Secretary of State is currently subject in exercising such powers.
- 58 Subsection (2) of section 7 inserts new section 72A into the 2000 Act. Subsection (1) of the new section provides for the Scottish Ministers to approve a code of practice prepared by the Electoral Commission in accordance with paragraph 3(1) of Schedule 8 to the 2000 Act, which provides guidance to political parties on expenses, which count as campaign expenditure at elections to the Scottish Parliament. By this provision the Scottish Ministers may also amend Part 1 of Schedule 8 to the 2000 Act, which sets out the expenses that count as campaign expenditure at elections to the Scottish Parliament.
- 59 Subsection (3) of new section 72A provides that these powers do not apply when the regulated period in respect of campaign or controlled expenditure for elections to the Scottish Parliament overlaps with the regulated period for elections for membership of the House of Commons or European Parliament
- 60 Subsection (3) of section 7 inserts a new section 85A into the 2000 Act. Subsection (1) of the new section provides for the Scottish Ministers to approve a code of practice prepared by the Electoral Commission in accordance with paragraph 3(1) of Schedule 8A to the 2000 Act, which provides guidance to third parties on expenses which count as controlled expenditure at elections to the Scottish Parliament. By this provision the Scottish Ministers may also amend Part 1 of Schedule 8A to PPERA, which sets out the expenses which count as controlled expenditure at elections to the Scottish Parliament.
- 61 Subsection (3) of new section 85A provides that these powers do not apply when the regulated period in respect of campaign or controlled expenditure for elections to the Scottish Parliament overlaps with the regulated period for elections for membership of the House of Commons or European Parliament
- 62 Subsection (4) of section 7 inserts a new section 95ZA into the 2000 Act. This allows Scottish Ministers to exercise a number of powers in Schedule 11 to the 2000 Act which relate to donations to third parties which campaign at elections to the Scottish Parliament.
- 63 Subsection (3) of new section 95ZA provides that these powers do not apply when the regulated period in respect of campaign or controlled expenditure for elections to the Scottish Parliament overlaps with the regulated period for elections for membership of the House of Commons or European Parliament
- 64 Subsection (5) of section 7 determines the period for which new section 95ZA has effect.
- 65 Subsections (6) to (10) of section 7 amend section 155 of the 2000 Act, so that certain powers of the Secretary of State to vary sums in the 2000 Act transfer to the Scottish Ministers. In each case, in exercising these powers the Scottish Ministers will be subject to the same or equivalent requirements and procedures as the Secretary of State is currently subject in exercising such powers.

- 66 Subsection (7) of section 7 amends the power of the Secretary of State to vary certain sums in Part 5 and Part 6 of and Schedules 9, 10 and 11 to the 2000 Act. By this subsection, the Secretary of State will no longer have such power where the sum only relates to an election the conduct of which is within the legislative competence of the Scottish Parliament.
- 67 Subsection (8) inserts a new subsection (1A) into section 155 of the 2000 Act to allow the Scottish Ministers to vary sums in Part 5 and Part 6 of and Schedules 9, 10 and 11 to the 2000 Act where the sum relates to an election the conduct of which is within the legislative competence of the Scottish Parliament.
- 68 Subsection (9) provides that these sums can only be varied by the Scottish Ministers to take into account changes in the value of money, or on the recommendation of the Electoral Commission.
- 69 Subsection (10) inserts new subsections (4A) and (4B) into section 155 of the 2000 Act, which relate to the sums specified in Schedule 11 to the 2000 Act. These new subsections have the effect of requiring the Scottish Ministers to vary sums under Schedule 11 to the 2000 Act to take account of changes in the value of money in each session of the Scottish Parliament over two years in length or, if the sums are not so varied, to lay a statement before the Scottish Parliament setting out the Scottish Ministers' reasons for not doing so.
- 70 Subsections (11) to (13) amend section 156 of the 2000 Act so that certain order-making powers of the Secretary of State transfer to the Scottish Ministers.
- 71 Subsection (12) inserts new subsections (4B) to (4D) into section 156 of the 2000 Act. Each subsection specifies the parliamentary procedure to which orders made by the Scottish Ministers are subject.
- 72 The effect of new subsection (4B) is that orders made by the Scottish Ministers under the 2000 Act will be subject to the negative procedure, except orders under section 155(2)(a) of the 2000 Act which will be subject to no parliamentary procedure pursuant to subsection 4(C), and orders made under the provisions listed in section 156(4) of the 2000 Act (in respect of those provisions which relate to matters within devolved competence) , which, pursuant to subsection (4D), are subject to the affirmative procedure.
- 73 Subsection (13) has the effect that an order made by the Scottish Ministers under section 155 of the 2000 Act may contain incidental, supplementary or transitional provisions or savings, and may make different provisions for different cases.
- 74 Subsection (14) makes consequential changes to the Interpretation and Legislative Reform (Scotland) Act 2010 as a result of the procedure that applies to orders by the Scottish Ministers under section 155(2)(a) of the 2000 Act.

## Section 8: Review of electoral boundaries by the Local Government Boundary Commission for Scotland

- 75 This section transfers the Boundary Commission for Scotland's functions in relation to Scottish Parliament boundaries to the Local Government Boundary Commission for Scotland. It also transfers powers in relation to Scottish Parliament boundaries to the Scottish Government and provides for the Local Government Boundary Commission to report to the Scottish Parliament in relation to boundary reviews for the Scottish Parliament.

- 76 Subsection (2) replaces references to the Boundary Commission for Scotland within Schedule 1 to the 1998 Act with references to the Local Government Boundary Commission for Scotland. This means that the Boundary Commission for Scotland will no longer have functions in relation to Scottish Parliament boundaries and the functions will instead be carried out by the Local Government Boundary Commission for Scotland.
- 77 Subsections (3) to (5) amend Schedule 1 to the 1998 Act so that the Local Government Boundary Commission for Scotland will report to the Scottish Ministers on Scottish Parliamentary boundaries, rather than the Secretary of State for Scotland, and must submit its next report on Scottish Parliament constituency boundaries to the Scottish Ministers no earlier than 1 May 2018 and no later than 1 May 2022. This reflects that the Boundary Commission for Scotland's previous report on Scottish Parliament boundaries was submitted on 1 May 2010, and recreates the window of 8 to 12 years for submission of future reports by the Local Government Boundary Commission for Scotland, as provided for by paragraph 3(5) of Schedule 1. The amendments to Schedule 1 also mean that the Scottish Parliament, rather than the UK Parliament, must approve by resolution a draft Order in Council implementing the recommendations made in the Local Government Boundary Commission for Scotland's report, before the draft Order is submitted to Her Majesty in Council.
- 78 Subsections (6) and (8) make minor consequential textual amendments to Schedule 1 which are required as a result of these changes.
- 79 Subsection (7) omits paragraph 3(11) of Schedule 1. Paragraph 3(11) is no longer required as the Local Government Boundary Commission for Scotland will already lay its report before the Scottish Parliament under paragraph 3(9).

## Section 9: Functions exercisable within devolved competence: elections

- 80 When competence to legislate was given to the Scottish Parliament on various matters under the Scotland Act 1998, the functions under existing enactments at that time, prerogative and other executive functions exercisable by a Minister of the Crown were also transferred to the Scottish Ministers by a general transfer under section 53 of that Act. Other references on existing enactments were also glossed by sections 117-122 of the Scotland Act 1998 to take accounts of the transfer of responsibility to the Scottish Parliament and the Scottish Ministers.
- 81 Where the Act transfers legislative competence to the Scottish Parliament, provision needs to be made for the functions of a Minister of the Crown that fall within the scope of the newly devolved competence and other appropriate amendments made to legislation. In some instances, e.g. speed limits, this is done by transferring functions to the Scottish Ministers by textual amendment of the relevant legislation. However, in the case of devolution to the Scottish Parliament by virtue of section 3 (elections), this is done by updating the operation of section 53 of the Scotland Act 1998.
- 82 This section makes provision to ensure that references in enactments immediately preceding the transfer of power to the Scottish Parliament are glossed, rather than only transferring functions and glossing references in legislation immediately preceding the coming into force of the Act.

## Section 10: Minor and consequential amendments: elections etc

- 83 This section makes minor changes to existing legislation which are consequential to the changes made by this Part of the Act or which are otherwise obsolete.



- 84 Subsection (7) revokes the Scotland Act 1998 (Modification of Schedules 4 and 5 and Transfer of Functions to the Scottish Ministers) Order (S.I. 2015/692) and the Scotland Act 1998 (Modification of Schedules 4 and 5) Order 2015 (S.I. 2015/1764). The effect of these Orders is replaced by the amendments to section B3 in Part 2 of Schedule 5 to the 1998 Act and by sections 4 and 5.

## Chapter 4: Legislation by the Parliament

### Section 11: Super-majority requirement for certain legislation

- 85 Section 11 requires certain types of electoral legislation to be passed by a two-thirds majority of the Scottish Parliament.
- 86 Subsection (4) inserts a new subsection (2A) into section 31 of the Scotland Act 1998 (“the 1998 Act”) to require the Presiding Officer to decide before the final stage at which a Bill can be amended whether, in his or her view, any provision of the Bill relates to a protected subject-matter. The Presiding Officer must make a statement to this effect.
- 87 Subsection (5) inserts new subsections (4) and (5) into section 31 of the 1998 Act, which set out when a provision of a Bill relates to a protected subject-matter for the purpose of the section. This is when a provision would modify the law relating to the following matters, or enable the law relating to the following matters to be modified by subordinate legislation. The matters are, in relation to elections to the Scottish Parliament, and unless a provision is incidental to or consequential on any other provision of the Bill: the franchise for elections, the electoral system, the number of constituencies and regions or other such areas and the numbers of members to be returned in each constituency or region or other such areas.
- 88 Subsection (6) inserts a new section 31A into the 1998 Act which provides that a Bill which the Presiding Officer has decided includes a provision which relates to a protected subject-matter can only be passed if, at its final stage, the number of members voting for it is at least two-thirds of the total number of seats for members of the Parliament.
- 89 Subsection (10) inserts new section 32A into the 1998 Act which allows the Advocate General, the Lord Advocate or the Attorney General to refer to the Supreme Court the question of whether a Bill or any provision of a Bill relates to a protected subject-matter. Under this subsection a Bill may not be referred to the Supreme Court if the Bill passed with at least a two-thirds majority.
- 90 Subsection (2) of new section 32A, taken with section 36(5) of the 1998 Act as amended by subsection (18) provides that such a reference may only be made in certain circumstances within 4 weeks of the passing or rejection of a Bill at its final stage or within 4 weeks of the approval of a Bill following reconsideration after a Supreme Court decision.
- 91 Subsection (8) amends section 32(2)(a) of the 1998 Act so that a Bill may not be submitted for Royal Assent during the period when a reference may be made to the Supreme Court under section 32A.
- 92 Subsection (9) inserts a new subsection (2A) into section 32 of the 1998 Act. Taken with section 36(5) of the 1998 Act as amended by subsection (18), this new subsection provides that a Bill may not be submitted for Royal Assent if the Supreme Court has decided on a reference that any provision of the Bill relates to a protected subject-matter, unless since the decision the Bill has been approved by a two-thirds majority on reconsideration by the Scottish Parliament.

- 93 Subsection (13) amends section 33(2)(b) of the 1998 Act so that a reference to the Supreme Court of a question of legislative competence may be made within 4 weeks of the passing of a Bill, or within 4 weeks of the approval of the Bill following reconsideration of the Bill, regardless of the reason for the reconsideration.
- 94 Subsection (14) amends section 35(3) of the 1998 Act so that the time during which the Secretary of State may intervene in certain cases under section 35 is extended to take account of the possibility of approval of the Bill following reconsideration under sections 36(4)(aa) or (4A) (reconsideration by the Scottish Parliament following a Supreme Court reference to resolve a question whether a provision of a Bill relates to a protected subject-matter), and also to take account of the possibility of a Supreme Court reference on grounds of protected subject-matter being decided or otherwise disposed of.
- 95 Subsections (16) and (17) amend section 36 of the 1998 Act to provide for the circumstances in which standing orders must provide for a Bill to be reconsidered by the Scottish Parliament following the Supreme Court deciding whether a provision of the Bill relates to a protected subject-matter.
- 96 Subsection (18) also amends section 36 of the 1998 Act to ensure that any Bill reconsidered following a reference to the Supreme Court on whether a provision of the Bill relates to a protected subject-matter is subject to a final stage at which it can be approved or rejected.
- 97 Subsection (19) amends section 36 of the 1998 Act to provide that references in the 1998 Act to the passing of a Bill are, in the case of a Bill reconsidered following a reference to the Supreme Court on whether a provision of the Bill relates to a protected subject-matter, to be read a references to the approval of the Bill.

## Section 12: Scope to amend Scotland Act 1998

- 98 Section 12 amends Schedule 4 of the Scotland Act 1998 (“the 1998 Act”).
- 99 Subsection (2) substitutes a new sub-paragraph 4(2) which means that the ability of an Act of the Scottish Parliament to modify, or to confer power by subordinate legislation to modify, provisions of the 1998 Act is extended to provisions which relate to the operation of the Scottish Parliament and Scottish Government.
- 100 New sub-paragraph 4(2)(a) of Schedule 4 will enable the Scottish Parliament to amend, or to confer the power to amend by subordinate legislation, certain provisions in Part 1 of the 1998 Act (the Scottish Parliament) in relation to matters relating to the administration of the Scottish Parliament, including certain arrangements for elections to the Scottish Parliament; the terms of office, resignation and disqualification for Members of the Scottish Parliament; members’ interests; the role of the Presiding Officer and Clerk of the Parliament; Letters Patent and proclamations; and certain proceedings of the Parliament.
- 101 New sub-paragraph 4(2)(b) of Schedule 4 will enable the Scottish Parliament to amend, or to confer the power to amend by subordinate legislation, certain provisions in Part 2 of the 1998 Act (the Scottish Administration) in relation to matters relating to the administration of the Scottish Government, including certain matters concerning its membership and certain matters concerning the appointment and removal of ministers.
- 102 New sub-paragraph 4(2)(c) of Schedule 4 will enable the Scottish Parliament to amend, or to confer the power to amend by subordinate legislation, certain provisions relating to the Auditor General for Scotland and financial controls, accounts and audit. The power of the Scottish Parliament to amend Part 4 of the 1998 Act (financial provisions) is unchanged. The power of the Scottish Parliament to amend Part 4A of the 1998 Act (taxation) is also unchanged.

- 103 New sub-paragraph 4(2)(d) of Schedule 4 will enable the Scottish Parliament to amend, or to confer the power to amend by subordinate legislation, certain provisions of Part 5 of the 1998 Act (miscellaneous and general) in relation to matters including the remuneration of members of the Parliament and Government and arrangements for investigating complaints of maladministration.
- 104 New sub-paragraph 4(2)(e) of Schedule 4 will enable the Scottish Parliament to amend, or to confer the power to amend by subordinate legislation, certain provisions of Part 6 of the 1998 Act (supplementary), including Schedule 7, in relation to the powers of Scottish Ministers to make subordinate legislation, and other matters such as accounts and audits and the laying of reports before Parliament.
- 105 New sub-paragraph 4(2)(f) of Schedule 4 will enable the Scottish Parliament to amend, or to confer the power to amend by subordinate legislation, Schedule 1 to the 1998 Act, which makes provision for the constituencies and regions for elections to the Scottish Parliament and the number of regional members of the Scottish Parliament.
- 106 New sub-paragraph 4(2)(g) of Schedule 4 will enable the Scottish Parliament to amend, or to confer the power to amend by subordinate legislation, certain matters contained in Schedule 2 to the 1998 Act, which makes provision about the Scottish Parliamentary Corporate Body, including matters such as the property, staff and business of the Scottish Parliamentary Corporate Body.
- 107 New sub-paragraph 4(2)(h) of Schedule 4 will enable the Scottish Parliament to amend, or to confer the power to amend by subordinate legislation, certain matters contained in Schedule 3 to the 1998 Act, which makes provision as to how certain matters are to be dealt with by standing order, including matters such as the preservation of order, the withdrawal of rights and privileges, and the proceedings to be held in public.
- 108 Subsection (3) amends the type of procedure to which orders under section 97 of the 1998 Act are subject.

## Part 2: Tax

### Chapter 5: Income tax

#### Section 13: Power of Scottish Parliament to set rates of income tax

- 109 This section provides the structure within which the Scottish Parliament may legislate to set the rates of income tax and the limits at which these are paid, for the non-savings and non-dividend income of Scottish taxpayers.
- 110 Subsection (2) replaces the power of the Scottish Parliament to set, by resolution, a rate of income tax, to set a basic rate and any other rates of Income Tax.
- 111 Subsection (3) provides that, where the Scottish Parliament sets more than one rate of income tax, it must, by resolution, set out the limits at which those rates apply or make other provision to enable it to be ascertained which rates apply in relation to a Scottish taxpayer. It additionally provides that a Scottish rate resolution may not provide for different rates to apply in relation to different types of income.
- 112 Subsection (4) omits the requirement that a Scottish rate resolution specify only one rate.
- 113 Subsection (5) provides that all rates set by the Scottish Parliament must be a whole or half number or zero.
- 114 Subsection (6) amends the title of Section 80C of the Scotland Act 1998 to reflect the changes made by subsection (2).
- 115 Subsection (8) makes a consequential amendment to section 80A(1)(a) of that Act (overview of Part 4A).
- 116 Subsection (10) amends the Treasury's power to modify by Order section 11A of the Income Tax Act 2007 to reflect the changes made by subsection 2.
- 117 Subsection (11) amends the Treasury's power to modify by Order any enactment not contained in Chapter 2 of Part 2 of the Income Tax Act 2007 to reflect the changes made by subsection (2).
- 118 Subsection (12) amends the Treasury's power, to postpone temporarily the effect of a Scottish resolution in relation to the operation of PAYE, to reflect the changes made by subsection 2.
- 119 Subsection (13) amends the requirement on the Comptroller and Auditor General to report on Scottish rate provisions, to reflect the changes made by subsection (2).
- 120 Subsection (14) provides that the amendments made by the section come into force on a day appointed by the Treasury by regulations.
- 121 Subsection (15) provides that the amendments made by the section have effect in relation to a tax year appointed by the Treasury by regulations and subsequent tax years.
- 122 Subsection (16) provides that the day set under subsection (14) must precede the tax year set by subsection (15).

#### Section 14: Amendments of Income Tax Act 2007

- 123 The Income Tax Act 2007 (ITA) includes the charge to income tax, income tax rates, the calculation of income tax liability and general income tax definitions.

- 124 Subsection (3) omits the cross reference to the calculation of Scottish basic, higher and additional rates from the provisions in ITA that set out the main rates at which income tax is charged.
- 125 Subsection (4) inserts a signpost to the provisions in the Scotland Act 1998 that provide for the powers for the Scottish Parliament to set rates and rate limits for income tax.
- 126 Subsection (5) omits the provisions in ITA that provide the calculation of Scottish basic, higher and additional rates.
- 127 Subsection (6) removes the reference to Scottish basic, higher and additional rates in the provisions in ITA that set out what income is charged at the three main rates of income tax.
- 128 Subsection (8) replaces the charge to income tax at the Scottish basic, higher and additional rates with a provision that income tax is charged on the non-savings income of a Scottish taxpayer at the Scottish basic rate and any other rates set by a Scottish rate resolution.
- 129 Subsection (9) omits a cross reference in respect of a Scottish taxpayer to the provisions in ITA which identify which part of a person's income the Scottish basic, higher and additional rates apply to.
- 130 Subsection (11) omits a cross reference to the Scottish basic, higher and additional rates in the provisions in ITA that provide the rates of income tax that apply to dividends in place of the basic, higher and additional rates.
- 131 Subsection (13) updates the definition provision in ITA to reflect the changes made by section 13 and this section by omitting the definitions of Scottish higher rate and Scottish additional rate, amending the definition of Scottish basic rate to refer to the Scottish basic rate set by a Scottish rate resolution, and inserting definitions of Scottish rate and Scottish rate resolution.
- 132 Subsection (14) omits the references to Scottish higher rate and Scottish additional rate in the index of defined expressions in ITA. This subsection also amends the defined expression for Scottish basic rate to omit the cross reference to the provisions in ITA which provide the calculation of Scottish basic, higher and additional rates.
- 133 Subsection (15) provides that the amendments made by section 13 have effect from the tax year set by Treasury regulations as set out by section 14 of this Act.

## Section 15: Consequential amendments: income tax

- 134 This section makes amendments to statute in consequence of sections 13 and 14.
- 135 Subsection (1) amends section 110(2) of the Scotland Act 1998 (which gives the Secretary of State the power, for social security purposes, to deem an individual a Scottish taxpayer) to reflect the ability for the Scottish Parliament to set the rates of Income Tax and the limits at which these are paid, for the non-savings and non-dividend income of Scottish taxpayers.
- 136 Subsections (2) to (5) amend the Taxation of Chargeable Gains Tax 1992 (TCGA). Section 4 of TCGA sets out the rate of Capital Gains Tax (CGT) that an individual pays – this can be affected by the rate of income tax at which an individual is liable.
- 137 Currently individuals who pay Income Tax at the higher rate also pay CGT at the higher rate of 28%. As announced at Budget 2016, the UK government will reduce this higher rate to 20% from 6 April this year. As CGT remains a reserved matter so to ensure that the tax applies equally to all UK individuals, subsections (2) to (5) therefore make amendments to sections 4 and 4A of TCGA to ensure that the rate of CGT that applies to Scottish income taxpayers is

calculated by reference to UK income tax limits rather than the Scottish Income Tax limits. So after 6 April 2016, a CGT rate of 20% will apply to a Scottish Income Tax payer if their income exceeds the UK Income Tax higher rate threshold.

- 138 Subsection (6) makes consequential amendments to the Finance Act 2014.
- 139 Subsection (7) provides that the Treasury may by regulations set the tax years to which the amendments made by subsections (3) to (6) have effect.
- 140 Subsections (8) to (14) provide the Treasury with the power, by regulations, to make consequential, transitional or saving provision in connection with sections 13 and 14.

## Chapter 6: Value added tax

### Section 16: Assignment of VAT

- 141 Section 16 makes amendments to the Scotland Act 1998 (“the Scotland Act”) and to the Commissioners for Revenue and Customs Act 2005 (“the CRCA”).
- 142 Section 64 of the Scotland Act makes provision for the Scottish Consolidated Fund and for payments to be made into and from the fund. Section 16(2) inserts a new subsection, (2A), which requires that the Secretary of State pay into the fund any amounts payable in accordance with the terms of section 64A of the Scotland Act.
- 143 Section 16(3) inserts a new section, section 64A, into the Scotland Act.
- 144 Section 64A(1) provides that where there is an agreement between the Treasury and the Scottish Ministers for identifying an amount agreed to represent the standard rate of VAT attributable to Scotland for any period then an amount calculated in accordance with section 64A(3) is payable for that period.
- 145 Section 64A(2) provides that where there is an agreement between the Treasury and the Scottish Ministers for identifying an amount agreed to represent the reduced rate of VAT attributable to Scotland for any period then an amount calculated in accordance with section 64A(4) is payable for that period.
- 146 Section 64A(3) outlines the calculation of the first 10 percentage points of the attributable standard rate VAT.
- 147 Section 64A(4) outlines the calculation of the first 2.5 percentage points of the attributable reduced rate VAT.
- 148 Section 64A(5) provides that payment under section 64(2A) of the Scotland Act of an amount calculated pursuant to section 64A(3) or (4) is to be made in accordance with any agreement between the Treasury and the Scottish Ministers as to the time of payment or otherwise.
- 149 Section 18 of the CRCA prohibits the disclosure, by Her Majesty’s Revenue and Customs (“HMRC”) officials, of information held by HMRC in connection with its functions. Section 18(2) provides for exceptions to this prohibition and section 16(5) inserts a new subsection, (2)(k), which permits disclosure in connection with, or with anything done with a view to, the making or implementation of an agreement referred to in section 64A(1) or (2) of the Scotland Act.
- 150 Section 16(6) inserts a new subsection, (2A), into section 18 of the CRCA. The new subsection prohibits further disclosure of information lawfully disclosed pursuant to section 18(1)(k) of that Act without the consent of the Commissioners of HMRC.

151 Section 19 of the CRCA provides that it is an offence to disclose information in contravention of section 18(1) the CRCA. Section 16(6) amends section 19 to provide that it is also an offence to disclose information in contravention of section 18(2A) of the CRCA.

## Chapter 7: Devolved taxes

152 Section A1 (fiscal, economic and monetary policy) in Part 2 of Schedule 5 to the Scotland Act 1998 gives the Scottish Parliament legislative competence for devolved taxes, including their collection and management. Sections 80I and 80K of the Scotland Act 1998 provide that a tax on transactions involving interests in land and a tax charged on disposals to landfill made in Scotland are devolved taxes. Sections 17 and 18 add tax on carriage of passengers by air and commercial exploitation of aggregate to the list of devolved taxes for which the Scottish Parliament has legislative competence.

### Section 17: Tax on carriage of passengers by air

153 This section, along with section 19 provides the mechanism for bringing to an end the collection and management of the United Kingdom's air passenger duty in Scotland and allowing the Scottish Parliament to introduce its own tax on the carriage of passengers by air from airports in Scotland.

154 Subsection (1) introduces new section 80L to Chapter 5, Part 4A of the Scotland Act 1998. New section 80L provides that a tax charged on the carriage of passengers by air from airports in Scotland is a devolved tax.

155 From a date to be appointed by regulations made by the Treasury, the existing air passenger duty will be limited to the carriage of passengers on flights beginning at an airport in England, Wales or Northern Ireland. The new devolved tax cannot be charged on the carriage of passengers boarding an aircraft prior to that date.

### Section 18: Tax on commercial exploitation of aggregate

156 This section, along with section 19 and Schedule 1, provides the mechanism for bringing to an end the collection and management of the UK's aggregates levy in Scotland and allowing the Scottish Parliament to introduce its own tax on the commercial exploitation of aggregate in Scotland. Aggregates levy is a tax on the commercial exploitation of aggregate (rock, sand and gravel) in the UK, with 'commercial exploitation' defined by reference to four events which trigger a charge to the tax.

157 This section sets out the scope of the Scottish Parliament's power to introduce a tax on the commercial exploitation of aggregate in Scotland. The commercial exploitation of aggregate for fuel (as defined) is excluded from the scope of the tax. Subject to this limitation, the section leaves the terms 'aggregate' and 'commercial exploitation' undefined, so that the Scottish Parliament may decide its own definitions.

158 Subsection (1) inserts a new Chapter 6 (section 80M) into Part 4A of the Scotland Act 1998.

159 In new section 80M:

- a. Subsection (1) provides that a tax charged on aggregate when it is subjected to commercial exploitation in Scotland is a devolved tax.

- b. Subsections (2) and (3) provide that the devolved tax cannot be charged when aggregate is subjected to commercial exploitation for fuel, that is, used as a fuel (for example, when coal is burned) or processed in order to extract or produce fuel (for example, when shale is hydraulically fractured to extract gas). The exclusion also applies when aggregate is supplied under a contract for any of these purposes.
- c. Subsection (2) of this section provides that the devolved tax cannot be charged on the commercial exploitation of aggregate in Scotland before a date to be specified in secondary legislation. Subsection (4) provides for the date of the changes made by subsection (3) and Schedule 1 to be appointed by regulations made by the Treasury.

### Section 19: Devolved taxes: further provision

160 This section makes a minor consequential amendment to the Scotland Act 1998 and provides for regulations to make further provision relating to the disapplication of air passenger duty and aggregates levy to Scotland. It also provides for the Parliamentary procedure that these regulations must follow.

## Chapter 8: Borrowing

### Section 20: Borrowing

161 This section provides the Scottish government Ministers with additional powers to borrow for certain purposes and increases the aggregate limits on borrowing for current and capital expenditure. The section gives effect to the agreement between the Scottish government and the UK government on the Scottish government's fiscal framework. The values and circumstances of use of the borrowing powers are set out in that agreement.

162 Subsection (1) amends sections 66 and 67 of the Scotland Act 1998, as amended by section 32 of the Scotland Act 2012.

163 Subsection (2) amends section 66(1) (borrowing by the Scottish Ministers from the Secretary of State) of the Scotland Act 1998.

164 Subsection (3) extends the number of reasons for Scottish Ministers to borrow.

165 Subsection (4) extends revenues from the assignment of VAT to the taxes for which it is available to Scottish Ministers to borrow due to a shortfall in receipts.

166 Subsection (5) adds two powers:

- a. That Scottish Ministers can borrow where devolved welfare payments required to be paid exceed the forecast level of welfare payments.
- b. That Scottish Ministers can borrow in the event of a Scotland-specific negative economic shock. This enables Scottish Ministers to borrow where there is an observed or forecast shortfall in tax receipts or increase in demand-led welfare. A negative economic shock is defined in the fiscal framework agreement as being triggered when onshore Scottish GDP growth is below 1% in absolute terms on a rolling 4 quarter basis, and 1 percentage point below UK GDP growth over the same period.

167 Subsection (6) defines the welfare payments where Scottish Ministers will be allowed to borrow for a deviation from forecast levels.



- 168 Subsection (7) raises the total limit on the amount of borrowing permitted to finance current expenditure from £500million to £1.75billion.
- 169 Subsection (8) raises the total limit on the amount of borrowing permitted to finance capital expenditure from £2.2billion to £3billion.
- 170 Subsection (9) sets out that the Treasury may by regulation set the commencement of the amendments in this section.
- 171 Subsection (10) specifies that the regulation would be by statutory instrument.
- 172 Subsection (11) specifies the procedure for making the commencement regulations.

## Chapter 9: Information

### Section 21: Provision of information to the Office for Budget Responsibility

- 173 This section enables the Office of Budget Responsibility to obtain such information about the Scottish finances as it may reasonably require to fulfil its statutory duty. This information will be used to produce forecasts and analysis of the economy and the public finances.
- 174 Subsection (1) provides that the Office has a right of access to such Scottish public finances information as may reasonably be required for it to report on the sustainability of the public finances. This includes information which may reasonably be required to produce fiscal and economic forecasts, and to assess the likely or actual achievement of the fiscal mandate. The Office's right of access to this information can be exercised at any reasonable time. The Office also has a right to assistance and explanation in relation to this information, set out in subsection (2).
- 175 Subsection (3) provides that the right of access applies to information held by Scottish Ministers or any other Scottish public authority specified in regulations made by the Secretary of State.
- 176 Subsection (4) specifies that the Office will receive information in compliance with any statutory provision (such as the Data Protection Act 1998) or common law rules (such as duties of confidentiality). The Office will not have access to confidential information relating to taxpayers and any information that is received will comply with data protection principles. The Office has not required access to such information in exercising its current forecasting functions.

## Part 3: Welfare Benefits and Employment Support

### Chapter 10: Welfare Benefits

#### Section 22: Disability, industrial injuries and carer's benefits

- 177 This section amends Section F1 (social security schemes) in Part 2 of Schedule 5 to the Scotland Act 1998 to give the Scottish Parliament legislative competence in relation to disability, industrial injuries and carer's benefits, which are currently reserved to Westminster. The Scottish Parliament will have the power to create additional benefits, replace existing benefits with new benefits or other payments and to determine the structure and value of such provision.
- 178 Subsection (2) amends the current social security scheme reservation by introducing two new exceptions (Exception 1 and Exception 2) for disability benefits, severe disablement benefit payable to a relevant person, certain industrial injuries benefits, and carer's benefits, other than benefits which are, or form an element of, an excluded benefit. The effect of Exceptions 1 and 2 is to bring the benefits which they describe within the legislative competence of the Scottish Parliament.
- 179 Subsection (4) defines various terms:
- a. "Disability benefit" means a benefit which is normally payable in respect of a significant adverse effect which impairment to a person's physical or mental condition has on their ability to carry out day-to-day activities (examples of such activities include looking after yourself, moving around, or communicating) or a significant need arising from impairment to a person's physical or mental condition (examples of such needs include a need for attention or supervision to avoid substantial danger to anyone). The adverse effect or need must not be short-term, because disability benefits are not intended to cover, for example, temporary effects arising from illness. The phrase "normally payable" is designed to provide sufficient flexibility to enable provision for exceptional cases - for example it would enable provision to be made to prevent the payment of benefit in situations where a person is temporarily accommodated at public or local expense in a care home or is receiving free in-patient treatment from the NHS or to relax conditions for the terminally ill. The term "significant adverse effect" is designed to be a very broad definition although it is not completely limitless and it would not include something that is minor, trivial or negligible. This definition of "disability benefit" covers the following benefits currently paid by the UK Government: Attendance Allowance, Disability Living Allowance and Personal Independence Payment. The definition is based on the common feature of these benefits that, with the exception of those people who are terminally ill, eligibility is usually based on the effects on the individual, or the needs of the individual, rather than the nature of their condition itself;
  - b. "Severe disablement benefit" means a benefit which is normally payable in respect of a person's being incapable of work for a period of at least 28 weeks beginning no later than their 20th birthday or incapable of work and disabled for a period of at least 28 weeks. This definition covers Severe Disablement Allowance which is currently paid by the UK Government. Severe Disablement Allowance was payable to people who could not meet the National Insurance conditions for Incapacity Benefit. It was closed to new claims in 2001. Severe Disablement Allowance (and Incapacity Benefit)

claimants below state pension age are currently being assessed for eligibility for Employment and Support Allowance which was introduced in 2008 and which will remain reserved to the UK Government. For this reason the section only applies to Severe Disablement Benefit insofar as it is payable in respect of a relevant person. Subsection (4) defines a “relevant person” as someone who is entitled to severe disablement allowance at the point the section is commenced as respects severe disablement benefit;

- c. “Industrial injuries benefit” means a benefit which is paid to a person who is or was in relevant employment where that person has suffered a personal injury caused by an accident arising out of and in the course of their employment, or where a person has a disease or personal injury due to the nature of their employment. It also covers trainees on approved relevant employment training schemes. “Relevant employment” means employed earner’s employment and includes employment which would have been employed earner’s employment but for the fact that a person’s employment contract was void or unlawful as a result of a failure to comply with employment legislation. “Employed earner’s employment” has the same meaning as set out in the Social Security Contributions and Benefits Act 1992 as at 28 May 2015, the date the Scotland Bill was introduced into Parliament. These benefits recognise the loss of earning potential and additional care needs of the claimant and are paid only for diseases and injuries that are prescribed in legislation. This definition of “industrial injuries benefit” covers the following benefits currently paid by the UK Government: Industrial Injuries Disablement Benefit; Constant Attendance Allowance; Exceptionally Severe Disablement Allowance; Reduced Earnings Allowance; Retirement Allowance; Unemployability Supplement; Industrial Death Benefit; Industrial Injuries Disablement Gratuity and Hospital Treatment Allowance; and
- d. “Carer’s benefit” means a benefit which is normally payable in respect of the provision of regular and substantial care to someone normally receiving a disability benefit as defined above. This definition covers Carer’s Allowance currently paid by the UK Government.

180 The definition of “excluded benefit” ensures that those benefits which are reliant on a test of an individual’s means (income or capital) or which are payable out of the National Insurance Fund, and which may be payable, or provide premiums or additional amounts, to people with health conditions, disabilities or caring responsibilities, remain reserved. Examples of such benefits include contributory and income-related Employment and Support Allowance, contributory and income-related Jobseeker’s Allowance, Pension Credit and Universal Credit.

181 The definition of “excluded benefit” also ensures that lump sum payment schemes for people with the diseases specified in the definition remain reserved.

182 The definition of “employment” uses a broad, everyday understanding of what constitutes employment including any trade, business, profession, office or vocation and is relevant to the definition of “industrial injuries benefit”.

183 This section does not affect the Vaccine Damage Payments Scheme, which remains reserved in section F1 in Part 2 of Schedule 5 to the Scotland Act 1998.

### Section 23: Benefits for maternity, funeral and heating expenses

184 This section amends Section F1 (social security schemes) in Part 2 of Schedule 5 to the Scotland Act 1998, to give the Scottish Parliament legislative competence over provision of financial or other assistance for the purposes of meeting or reducing maternity expenses, funeral expenses and expenses for heating incurred due to cold weather.

- 185 The Scottish Parliament will have legislative competence to make provision for the type of payments which are currently the subject matter of the regulated Social Fund. The UK Government currently makes such provision through the Sure Start Maternity Grant, Funeral Payment, Cold Weather Payment and Winter Fuel Payment. The Scottish Parliament will have legislative competence to make provision for payments or other assistance and to determine conditions of entitlement or to replace these types of benefits entirely.
- 186 The current social security schemes reservation explicitly provides, through an exclusion from the exceptions, that the subject matter of both section 138 of the Social Security Contributions and Benefits Act 1992 (payments out of the social fund) and section 69 of the Child Support, Pensions and Social Security Act 2000 (discretionary housing payments) is reserved. Subsection (3) amends the current social security schemes reservation to remove this provision. Section 25 makes specific provision for the transfer of competence in relation to discretionary housing payments).
- 187 Subsection (3) also inserts new exclusions from the exceptions to the social security schemes reservation. Exclusions (a) and (b) provide that the National Insurance Fund and the Social Fund remain reserved. That is, the Scottish Parliament do not have competence over the funds themselves. Exclusion (c) ensures that the provision of Budgeting Loans out of the Social Fund remains reserved.
- 188 Subsection (4) removes interpretation provisions that are no longer needed.
- 189 Subsection (5) amends section 138 of the Social Security Contributions and Benefits Act 1992 to ensure that executive competence to make payments for Sure Start Maternity Grants, Funeral Payments, Cold Weather Payments and Winter Fuel Payments will transfer to the Scottish Ministers along with the transfer of legislative competence over the subject matter of these benefits. The social fund itself will remain reserved. It also enables the Scottish Ministers to make use of the regulation-making powers in the Social Security Contributions and Benefits Act 1992.
- 190 Paragraph (4C) of the text inserted by subsection (5) extends the scope of the power in section 30(3) of the Scotland Act 1998 to enable the UK and Scottish Parliaments to specify which functions under section 138 SSCBA are exercisable ‘in or as regards Scotland.’

#### Section 24: Discretionary payments: top-up of reserved benefits

- 191 Section 24 inserts Exception 5 in Section F1 (social security schemes) in Part 2 of Schedule 5 to the Scotland Act 1998.
- 192 Exception 5 provides the Scottish Parliament with legislative competence to introduce discretionary top-up payments to people in Scotland who are entitled to a reserved benefit. These top-up payments could be paid on an individual case by case basis or to provide on-going entitlement to specific or all benefit claimants.
- 193 The exception does not devolve competence over the provision of discretionary financial assistance as part of a reserved benefit (for example Universal Credit hardship payments).
- 194 The exception provides that where a person is in receipt of a reserved benefit that is subject to a reduction, suspension or non-payability (for example as a result of a sanction because of non-compliance with a work-related requirement) a discretionary top-up payment cannot be made to an individual simply to offset this reduction.

## Section 25: Discretionary housing payments

- 195 This section amends Section F1 (social security schemes) in Part 2 of Schedule 5 to the Scotland Act 1998 to confer on the Scottish Parliament legislative competence in relation to discretionary housing payments (“DHPs”).
- 196 DHPs are administered by local authorities and provide a flexible, local mechanism for providing additional financial assistance for housing costs to Housing Benefit claimants, and Universal Credit claimants. Claimants apply to the local authority for help and the local authority makes a decision, based on their local policy. The current powers in relation to DHPs are found in sections 69 and 70 of the Child Support, Pensions and Social Security Act 2000. Pursuant to these powers the Secretary of State for Work and Pensions made the Discretionary Financial Assistance Regulations 2001 (S.I. 2001/1167) and the Discretionary Housing Payments (Grants) Order 2001 (S.I. 2001/2340).
- 197 The section transfers legislative competence to the Scottish Parliament such that it can set up its own legislative scheme in relation to DHPs. However, any such scheme must only provide assistance with housing costs to applicants who are in receipt of either housing benefit or another reserved benefit which includes payment for rental housing costs. The prohibitions against granting DHP where the need for financial assistance with housing costs arises from a benefit suspension or sanction must be retained by any devolved legislative scheme.
- 198 Similar to Exception 5 for top-up payments (in Section 24), the exception does not devolve competence over the provision of discretionary financial assistance as part of a reserved benefit (for example Universal Credit hardship payments).

## Section 26: Discretionary payments and assistance

- 199 Section 26 replaces the exception in Section F1 (social security schemes) in Part 2 of Schedule 5 to the Scotland Act 1998 relating to “Providing occasional financial or other assistance” with new Exception 7 and new Exception 8.
- 200 Exception 7 provides the Scottish Parliament with legislative competence to introduce discretionary payments to help alleviate a short-term need for people whose well-being is at risk. This is similar to, but expands upon, the power that the Scottish Parliament currently has to make exceptional payments under certain circumstances and under which the Scottish Welfare Fund is delivered. Under the new power, there is no longer the requirement for the person’s need to be immediate or to have arisen out of an exceptional event or circumstances.
- 201 The second limb of Exception 7 provides that where a person is in receipt of a reserved benefit that is subject to a reduction, suspension, or non-payability (for example as a result of a sanction because of non-compliance with a work-related requirement or the recovery of an overpayment or repayment of a compensation payment) a discretionary payment cannot be made to simply offset this reduction. However, a discretionary payment may be made if the need arises due to some other exceptional circumstance or event not related purely to the reduction in the benefit.
- 202 As was previously the case, under Exception 8, the Scottish Parliament will be able to continue to make provision for occasional payments to help vulnerable people needing to establish or maintain a settled home.

## Section 27: Welfare foods

- 203 This section removes Section J5 (welfare foods) in Part 2 of Schedule 5 to the Scotland Act 1998 and so removes the reservation for Schemes made by regulations under section 13 of the Social Security Act 1988. It also adds a new exception to Section F1 of Part 2 Schedule 5 to the 1998 Act (social security schemes) so that the subject-matter of section 13 of the Social Security Act 1988 (benefits under schemes for improving nutrition: pregnant women, mothers and children) is excepted from that reservation. The effect of this is to devolve to the Scottish Parliament legislative competence for welfare foods.
- 204 The UK Government currently makes such provision through the Nursery Milk Scheme and the Healthy Start Scheme. The Nursery Milk Scheme provides for entitlement to specific amounts of free milk for children under the age of 5 who are looked after for a prescribed amount of time by approved day care providers. The Healthy Start Scheme currently provides food vouchers, which can be exchanged for food at retailers registered to receive the vouchers, and vitamins vouchers, which can be exchanged at NHS outlets or, in Scotland, at some community pharmacies. Entitlement is linked to whether the recipient or, as the case may be, a member of their family, is in receipt of certain means tested social security benefits or child tax credit.
- 205 The Scottish Parliament will have legislative competence to abolish or amend these schemes, or to make new schemes for the provision of welfare foods.
- 206 Subsection (5) removes the obligation on the Secretary of State to consult Scottish Ministers before establishing, or varying, a welfare foods scheme for England and Wales.
- 207 Section 15A of the Social Security Act 1988 applies the ancillary powers in section 172(2) to (5) of the Social Security Contributions and Benefits Act 1992 to regulations and orders made under the Social Security Act 1988. Insofar as it is necessary, these ancillary powers will also transfer to Scottish Ministers along with the section 13 power.

## Section 28: Power to create other new benefits

- 208 Under the Scotland Act 1998 if the area is one of devolved responsibility then the Scottish Parliament have full legislative competence to enact legislation in that area, including the provision of new benefits. However as Social Security remains reserved, the Scottish Government would be required to engage with the UK Government if they wished to create new benefits that strayed into the reservation under Section F1 in Part 2 of Schedule 5 to the 1998 Act.
- 209 This section inserts Exception 10 into Section F1, giving the Scottish Parliament powers to create new benefits in areas of devolved responsibility.
- 210 Any new benefits introduced by the Scottish Government must be funded from the Scottish Consolidated Fund. These new benefits will be administered by the Scottish Government and will not be part of the UK-wide welfare system.
- 211 The power to create new benefits will not extend to pensions as the Smith Commission Report specifically states that all aspects of pensions should remain reserved. Similar to discretionary payments, new benefits created under this power cannot be used to simply offset a reduction, suspension or non-payability in a reserved benefit due to an individual's conduct (for example as a result of a sanction because of non-compliance with a work-related requirement).
- 212 This exception will only apply to the social security schemes reservation and not to any other reservation in the 1998 Act.

213 Section 28 will give the Scottish Parliament parallel legislative competence to that of the UK Parliament but not the power to amend UK legislation. The UK Parliament will still be able to legislate in all areas of welfare across Great Britain without the requirement of a legislative consent motion, except for those areas already devolved and those being devolved by other sections of this Act (for example, carers and disability benefits covered by section 22).

#### Section 29: Universal credit: cost of claimants who rent accommodation

214 This section enables Scottish Ministers to exercise certain regulation-making powers for Scotland in respect of the housing costs within Universal Credit for claimants who rent their home.

215 The Scottish Ministers be able to make regulations to amend the way in which the housing costs for Universal Credit are calculated for claimants who rent accommodation. They will also be able to make regulations which enable the housing costs to be paid to someone on behalf of a claimant such as the claimant's landlord. This power can be exercised concurrently with the Secretary of State, which means that both the UK Government and Scottish Government have the same power to make regulations for Scotland on the matters covered by this section which they can exercise independently.

216 The Scottish Ministers, before making regulations with regard to the matters covered by this section, must consult with the Secretary of State about the practicality of implementing them. If, following this consultation, the Scottish Ministers proceed to make regulations and the Secretary of State considers that it is not practicable to implement the changes in the proposed timescale, he or she may make regulations to postpone the time Scottish Minister's regulations will start to have effect.

217 Regulations made by Scottish Ministers under this section will be subject to the negative procedure in the Scottish Parliament; replicating the approach taken in the UK Parliament.

218 The Secretary of State cannot make any regulations under the powers specified in this section without first consulting with the Scottish Ministers.

#### Section 30: Universal credit: persons to whom, and time when, paid

219 This section enables the Scottish Ministers to exercise regulation-making powers for Scotland to provide for alternative payment arrangements in relation to Universal Credit.

220 The Scottish Ministers will have the power to make regulations dealing with the persons to whom payments of Universal Credit can be made and the frequency of those payments.

221 This power can be exercised concurrently with the Secretary of State, which means that both the UK Government and Scottish Government have the same power to make regulations for Scotland on the matters covered by this section which they can exercise independently.

222 The Scottish Ministers must, before making regulations under the powers mentioned in this section consult with the Secretary of State about the practicability of implementing them. If, following this consultation, the Scottish Ministers proceed to make regulations and the Secretary of State considers that it is not practicable to implement the changes in the proposed timescale, the Secretary of State may make regulations to postpone the time Scottish Minister's regulations will start to have effect.

223 Regulations made by Scottish Ministers under the powers mentioned in this section will be subject to the negative resolution procedure in the Scottish Parliament; replicating the approach taken in the UK Parliament.

224 The Secretary of State cannot make any regulations in relation to Scotland under the powers mentioned in this section without first consulting with the Scottish Ministers.

## Chapter 9: Employment support

### Section 31: Employment support

- 225 This section amends Section H3 (job search and support) in Part 2 of Schedule 5 to the Scotland Act 1998.
- 226 Exception 1 gives the Scottish Parliament legislative competence in relation to creating employment schemes to assist those at risk of becoming long-term unemployed, and to help disabled people into work, including schemes which seek to help employers find suitable employees. For example, under current arrangements in Great Britain much of this support is provided through the Work Programme in respect of the long-term unemployed, and through Work Choice in respect of disabled people.
- 227 The Scottish Parliament will be able to make provision for arrangements to provide facilities, support or services to help people into work, or where they arrange for others to provide facilities, support or services to help people into work. For example, currently the UK Government arranges for support to the long term unemployed to be provided by third party providers, contracted through the Work Programme contracts.
- 228 The arrangements may include making payments to a person. Examples of where payments are made in respect of current or previous equivalent UK Government schemes include payments to contracted Work Programme Providers for the results they achieve, payments to employers as Wage Incentives, and payments to claimants to cover travel expenses incurred whilst engaging with provision.
- 229 These arrangements could support claimants through work search support, provision of skills and training, and community placements, or through other new techniques. Any support for those at risk of long-term unemployment must assist the claimant for at least one year.
- 230 Subsection (5) provides for section 56(1)(g) of the Scotland Act 1998 to have effect as if it referred to section 17B of the Jobseekers Act 1995 (schemes for assisting persons to obtain employment: “work for your benefit” schemes etc). This enables the functions under section 17B to continue to be exercisable separately within devolved competence by a Minister of the Crown as well as by the Scottish Ministers, thus providing an exception to the general rule that functions which transfer to the Scottish Ministers under section 53 of the Scotland Act 1998 are no longer exercisable by Ministers of the Crown in or as regards Scotland.

## Chapter 10: General

### Section 32: Functions exercisable within devolved competence

- 231 When competence to legislate was given to the Scottish Parliament on various matters under the Scotland Act 1998, the functions under existing enactments at that time, prerogative and other executive functions exercisable by a Minister of the Crown were also transferred to the Scottish Ministers by a general transfer under section 53 of that Act. Other references in existing enactments were also glossed by sections 117 - 122 of the Scotland Act 1998 to take account of the transfer of responsibility to the Scottish Parliament and Scottish Ministers.



232 Where this Act transfers legislative competence to the Scottish Parliament, the functions of a Minister of the Crown need to be transferred to the Scottish Ministers and other appropriate amendments made to legislation. In some instances e.g. speed limits, this done by way of textual amendment of those functions. However in the case of devolution to the Scottish Parliament of sections 22, 23, 24, 25, 26, 27 and 31 this is done by updating the operation of section 53.

233 As the devolution to the Scottish Parliament of many of the welfare provisions may take place at different dates, the section makes provision to ensure that references in enactments immediately preceding the transfer of power to the Scottish Parliament are glossed rather than only transferring functions and glossing references in legislation immediately preceding the coming into force of the Act.

### Section 33: Social Security Advisory Committee and Industrial Injuries Advisory Council

234 The effect of this section is that the Social Security Advisory Committee (SSAC) and Industrial Injuries Advisory Council (IIAC) will only advise the Secretary of State and not Scottish Ministers. SSAC and IIAC cannot give advice to Scottish Ministers on those benefits for which the Scottish Parliament have legislative competence. Scottish Ministers will not be able to refer draft regulations to SSAC or to IIAC for consideration or refer questions relating to relevant social security enactments or industrial injuries benefits.

### Section 34: Information-sharing

235 This section provides for the sharing of data between the Secretary of State and the Scottish Ministers.

236 Subsection (1) allows information held by the Secretary of State (or by a person providing services to him or her) for the purpose of a social security function to be supplied to the Scottish Ministers (or to their service providers), for use for the purpose of a relevant Scottish social security function.

237 Subsection (3) allows information held by the Scottish Ministers (or by their service providers) for the purpose of a relevant Scottish social security function to be supplied to the Secretary of State (or to a person providing services to him or her) for use for the purpose of a social security function.

238 Subsection (7) defines the social security functions and relevant Scottish social security functions for the purposes of which information may be supplied. By virtue of subsection (8) this includes any other functions as may be prescribed by regulations made by the Secretary of State. Subsections (9) and (10) provide that such regulations must be by Statutory Instrument and subject to the affirmative procedure.

239 Where information has been supplied for use for the purpose of a social security function or a relevant Scottish social security function, subsections (2) and (4) permit the recipient to use that information for any other purpose for which information held for those purposes could be used. However, subsection (6) provides that information supplied under this section must not be passed on to another person or body without the authority of the original supplier (that is, the Secretary of State or the Scottish Ministers).

### Section 35: Extension of unauthorised disclosure offence

240 This section provides for Part 2 of Schedule 4 to the Social Security Administration Act 1992 to be amended.

- 241 Section 123 of the Social Security Administration Act 1992 contains an offence of the unauthorised disclosure of information. It applies to (amongst others) those individuals who are or have been employed in social security administration.
- 242 So far as civil servants in the Scottish Administration are concerned, they are only covered by the offence to the extent that their functions are, or are connected with, functions of the First-tier Tribunal or Upper Tribunal (established under the Tribunals, Courts and Enforcement Act 2007) which relate to social security or to occupational or personal pension schemes or to war pensions or functions of the Chief, or any other Social Security Commissioner.
- 243 Once responsibility for additional social security functions is devolved to the Scottish Ministers, the limited application of this offence to employees of the Scottish Administration will not be appropriate.
- 244 Therefore section 35 amends the scope of the offence so that it also applies to those civil servants in the Scottish Administration whose functions relate to social security administration generally. It does this by amending the definition of Scottish Administration contained in Part 2 of Schedule 4 to the Social Security Administration Act 1992.

## Part 4: Other Legislative Competence

### Section 36: Crown Estate

- 245 This section concerns Crown property managed by the Crown Estate Commissioners (the “Commissioners”), an independent commercial public body with responsibility for managing and turning to account the property forming part of the Crown Estate.
- 246 Currently, the management of the Crown Estate is a reserved matter. Section 36 provides for the devolution to Scotland of the functions of managing the Crown Estate’s then current wholly-owned assets in Scotland (“the Scottish assets”), the revenue arising from those assets and competence to legislate about those functions going forwards.
- 247 The Commissioners currently have a duty under the Crown Estate Act 1961 (c.55) to manage the Crown Estate on a commercial basis. Depending on any future legislation passed by the Scottish Parliament, the Scottish Ministers may be able to take a different approach to managing the Scottish assets (for example, to adopt a less commercial approach to some aspects of management, including widening the role of social enterprise). To ensure both that the Scottish Ministers can manage the Scottish assets as they see fit, whilst at the same time ensuring that the Commissioners continue to meet their existing commercial management obligations under the Crown Estate Act 1961, section 36 effects devolution by means of a transfer of functions.
- 248 In overview, this section addresses the following matters-
- a. The transfer of the functions of managing the Scottish assets from the Commissioners to the Scottish Ministers or a person nominated by them (“the transferee”), together with the rights and liabilities attaching to those functions.
  - b. The payment of hereditary revenues from the Scottish assets into the Scottish Consolidated Fund.
  - c. The amendment of the existing reservation in the Scotland Act 1998 (c.46) which concerns the management of the Crown Estate.
  - d. Provision facilitating the introduction by the Scottish Ministers of a different form of management (different to that otherwise applicable under the Crown Estate Act 1961) before the transfer takes place, but to take effect immediately upon transfer.
  - e. Protection of the Scottish assets as an estate in land in perpetuity.
  - f. Consequential amendments to the Crown Estate Act 1961 and the Scotland Act 2012 (c.11).

249 These matters are explained in more detail below.

#### **New section 90B and the transfer scheme**

250 Section 36(1) inserts new section 90B (the Crown Estate) into the Scotland Act 1998.

- 251 New section 90B(1) enables the Treasury to make a scheme transferring all the existing Scottish functions of the Commissioners to the transferee.
- 252 New section 90B(2) defines these functions as the Commissioners' functions in relation to property, rights and interests in land in Scotland and rights in relation to the Scottish zone<sup>1</sup>. Property, rights and interests held by a limited partnership registered under the Limited Partnerships Act 1907 (c.24) are expressly excluded as are any interests in such a partnership (new section 90B(3)).
- 253 The Commissioners have a function of maintaining the Crown Estate as an estate in land with such proportion of cash or investments as they consider necessary under section 1(3) of the Crown Estate Act 1961. By means of this function the Crown Estate is (in effect) held in trust for the Sovereign. New section 90B(5) requires post-transfer management to be on behalf of the Crown. Subsections (6) and (7) of new section 90B allow the disposal and acquisition of property post-transfer and all acquired property (excluding hereditary revenues) must also be managed on behalf of the Crown. Post-transfer new section 90B(8) requires the property, rights and interests to be maintained as an estate in land (or as estates in land separately managed).
- 254 The scheme will provide for the transfer of associated rights and liabilities of the Commissioners and it must include provision ensuring that no person in Crown employment is adversely affected by the transfer (new section 90B(10) and (11)). In order that there is a clear statement of the starting position for devolution purposes, the scheme will also set out a full (but non-exhaustive) list of the property, rights and interests which are relevant to the transfer (new section 90B(9)).
- 255 The scheme will include such provision as the Treasury consider necessary or expedient in relation to defence or national security, telecommunications, oil and gas, and the interests of consumers in relation to electricity networks (new section 90B(12)). The transfer will take effect subject to this provision (new section 90B(13)).
- 256 The scheme will be made as a statutory instrument and it must be agreed with the Scottish Ministers (new section 90B(17) and (18)). The scheme may make additional provision in accordance with new section 90B(14), which could include (for example) conferring a power of direction on the Secretary of State in respect of matters of defence or national security.
- 257 On the transfer date specified in the scheme the existing Scottish functions, and the associated rights and liabilities, will vest in the transferee in accordance with the scheme (new section 90B(15)). The transfer scheme will have the effect of transferring the Commissioners' functions under the Crown Estate Act 1961 to the transferee. Section 36(7) makes provision modifying the Crown Estate Act 1961 in its application to the transferee for these purposes<sup>2</sup>.
- 258 The scheme will be subject to the usual draft affirmative procedure before both Houses of Parliament (also known as the type C procedure) (section 36(5)). Any amendment of the scheme will be made in the same way as the scheme itself. However, amendments of the scheme will be subject to the usual negative procedure before both Houses of Parliament (also

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<sup>1</sup> The terms "Scotland" and "the Scottish zone" are defined in section 126(1) of the Scotland Act.

<sup>2</sup> See note of the effect of section 36(9) in this respect, found in paragraph 260.

known as the type I procedure) provided there is no amendment of primary legislation, no retrospective provision (under new section 90B(19)) and no amendment made under new section 90B(12) (section 36(6)).

259 New section 90B(16) enables the Treasury to certify that any matter has vested in a person by virtue of the scheme. Such a certificate is conclusive evidence for all purposes.

#### **Other aspects of section 36**

260 As mentioned above, section 36(7) modifies the Crown Estate Act 1961 as it will apply to the transferee after the transfer. However, the Scottish Ministers may wish to adopt a different form of management for the Scottish assets. To facilitate arrangements for the management of the functions by the transferee before the transfer takes place (allowing the new arrangements to take effect immediately on transfer), section 36(9) enables Her Majesty to make provision by Order in Council in connection with the transfer. This power is exercisable by Scottish statutory instrument and subject to the affirmative procedure before the Scottish Parliament (section 36(11)). Section 36(10) makes it clear that the Order in Council may be used to establish a body to which the functions of managing the Scottish assets may be transferred.

261 Once the transfer scheme takes effect, the Scottish Parliament will have competence to legislate about the management of the Scottish assets. Section 36(3) amends the reservation in paragraph 2(3) of Schedule 5 to the Scotland Act 1998 which concerns the management of the Crown Estate. In order to clarify the operation of that reservation after the transfer, a definition of the Crown Estate is inserted into that paragraph. The effect of the amendment is that the reservation will no longer apply to the management of the Scottish assets (that is, the existing Scottish functions as defined in new section 90B(2)), but will continue to apply to existing limited partnership interests and would apply to further investment, if any, that the Commissioners might make in Scotland after the transfer date.

262 Section 36(4) inserts a new reservation into Schedule 5, which reserves the subject matter of subsections (5) to (8) of new section 90B, in particular, the requirement to manage the Scottish assets on behalf of the Crown and the requirement of maintaining the Scottish assets as an estate in land.

263 Section 36(13) amends section 1(2) of the Civil List Act 1952 (c.37) so that the revenue from the Scottish assets will be paid into the Scottish Consolidated Fund.

264 Subsections (14) and (15) of section 36 make consequential amendments to the Crown Estate Act 1961 and the Scotland Act 2012 so as to repeal the current provisions concerning the Crown Estate Commissioner with special responsibility for Scotland.

265 Subsections (1), (5), (6) and (9) to (12) of section 36 will come into force on Royal Assent. All other subsections will come into force at the same time as the transfer scheme.

### **Section 37: Equal opportunities**

266 This section amends the reservation of equal opportunities in Section L2 in Part 2 of Schedule 5 to the Scotland Act 1998 to give the Scottish Parliament more competence to legislate for equalities.

267 Section L2 currently reserves equal opportunities including the subject-matter of the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976 and the Disability Discrimination Act 1995. The references to the repealed legislation are removed. This amendment does not change the scope of the reservation.

268 Subsection (3) sets out the new exceptions to the reservation. The exceptions specify that:

- a. the Scottish Parliament may legislate about equal opportunities in relation to non-executive appointments to the boards of Scottish public authorities that have devolved functions; and
- b. in relation to Scottish functions of Scottish or cross-border public authorities (other than board appointments), the Scottish Parliament may introduce protections and requirements that supplement but do not modify the existing provisions of the Equality Act 2010 (the 2010 Act).

269 Subsection (4) includes definitions for the key terms used in subsection (3).

270 Subsection (7) amends section 152(3) of the 2010 Act so that the Scottish Ministers will no longer have to obtain the consent of a Minister of the Crown before making an order to amend Part 3 of Schedule 19 to the 2010 Act. Schedule 19 lists those public authorities which are subject to the public sector equality duty.

271 Subsection (8) means that the Scottish Ministers would no longer have to consult a Minister of the Crown before adding a cross-border authority to that Schedule.

### Section 38: Public sector duty regarding socio-economic inequalities

272 This section sets out arrangements for the commencement and implementation of Part 1 of the 2010 Act in Scotland (socio-economic inequalities), which this section amends. That Part of the 2010 Act, which will enable the Scottish Ministers to impose the socio-economic duty on public bodies exercising devolved functions, is already devolved, but there had not until now been an available mechanism for the Scottish Ministers to commence the provision as it related to those bodies.

273 Subsection (4) amends section 1 of the 2010 Act by providing that the Scottish Ministers may issue guidance to public authorities exercising devolved Scottish functions on how to fulfil the duty. Where the function concerned is not devolved, the authority must follow guidance issued by a Minister of the Crown.

274 Subsections (5) to (8) amend section 2 of the 2010 Act by removing the requirement that Scottish Ministers consult a Minister of the Crown prior to making regulations under Part 1 of the 2010 Act and make consequential amendments.

275 In relation to commencement, subsection (9) amends section 216 of the 2010 Act (commencement) to ensure that the Scottish Ministers may commence Part 1, which will be by order, at a time of their choosing.

276 Subsections (9) and (10) also make consequential amendments to deal with the procedure applicable to the powers of the Scottish Ministers under the 2010 Act.

### Section 39: Tribunals

277 This section amends Part 3 of Schedule 5 (reserved matters) to the Scotland Act 1998 (“the 1998 Act”) by inserting new paragraph 2A. New paragraph 2A will allow provision to be made for tribunal functions relating to reserved matters in Scottish cases to be exercised by a Scottish tribunal. These tribunals will only have functions in or as regards Scotland. The insertion of paragraph 2A will not affect any matters where the Scottish Parliament already has legislative competence.

- 278 It is anticipated that the transfer of functions from the reserved tribunals to the specified tribunals in Scotland would take place through a two-stage process. First, an Order in Council would be made to specify the functions which could be transferred, along with any conditions or restrictions on the competence of the Scottish Parliament in legislating in relation to the transfer of those functions to the tribunals and the carrying out of those functions by the specified Scottish tribunal. This would give the Scottish Parliament competence to legislate to transfer the specified functions to the specified tribunal. The Scottish Parliament would then have to effect the transfer of the relevant functions to that Scottish tribunal. It is possible that there will be UK tribunals whose functions are neither subject to qualified transfer nor excluded from transfer. It is expected that these situations will arise infrequently. Provision could be made by UK Parliament for the transfer of the functions of these tribunals by the Scottish Parliament by providing for a definition of "Scottish cases" under paragraph 2A(2) that would apply to them.
- 279 As set out in the Command Paper "Scotland in the United Kingdom: An enduring settlement", this two-stage process will need to be operated in collaboration with the Scottish Government and the judiciary in both Scotland and England & Wales. It is anticipated given the range of subject areas and tribunals that will need to be discussed and the timetable for the implementation of the Tribunals (Scotland) Act 2014, that the transfer of reserved functions to tribunals in Scotland will be dealt with in tranches. Paragraph 2A allows sufficient flexibility for this to happen.
- 280 Subsection (1) of section 39 inserts the new paragraph 2A into Part 3 of Schedule 5 to the 1998 Act.
- 281 Paragraph 2A(1) makes clear that Schedule 5 to the 1998 Act does not prevent the Scottish Parliament legislating to transfer to Scottish tribunals functions relating to reserved matters where those functions relate to "Scottish cases".
- 282 Sub-paragraph (2) provides that Her Majesty will, by Order in Council, set out what constitutes "Scottish cases" for these purposes. It is anticipated that given the variety of work undertaken by the reserved tribunals that different definitions of "Scottish cases" will be required for each potential transfer. For example, the definition of "Scottish cases" in relation to welfare benefit appeals is likely to differ to that used for employment appeals. This power, taken with section 113(2) of the 1998 Act provides the necessary flexibility.
- 283 Sub-paragraph (3) makes clear that the power in sub-paragraph (1) does not apply to any functions that are expressly excluded from transfer. These excluded functions are listed in sub-paragraph (10) and, where necessary, further definitions are found in sub-paragraph (11).
- 284 Sub-paragraph (4) introduces the concept of "qualified transfer". Where tribunal functions are subject to qualified transfer, the transfer of those functions in legislation made by the Scottish Parliament must be in accordance with the provisions made by Her Majesty by Order in Council under this sub-paragraph. The tribunal functions that are subject to qualified transfer are listed in sub-paragraph (6).

- 285 Sub-paragraph (5) makes further provision for the purposes of sub-paragraph (4). Sub-paragraph (5)(a) and (b) provides that an Order in Council made under sub-paragraph (4) must specify the tribunal functions to which it relates and the Scottish tribunal to which those functions may be transferred. Sub-paragraph (5)(c) enables provision to be included in such an Order in Council where it is considered by Her Majesty to be necessary or expedient for the purposes of or in consequence of the transfer of the functions and their exercised by the relevant Scottish tribunal. Sub-paragraph (8) provides a non-exhaustive list of the provision which may be included in an Order in Council by virtue of sub-paragraph (5)(c).
- 286 Sub-paragraph (6) provides that the functions of the following tribunals are subject to qualified transfer:
- a. the First-tier Tribunal and the Upper Tribunal, both of which were established under the Tribunals, Courts and Enforcement Act 2007,
  - b. an employment tribunal or the Employment Appeal Tribunal,
  - c. any tribunals listed in Schedule 1 to the Tribunals and Inquiries Act 1992, and
  - d. any tribunals listed in Schedule 6 to the 2007 Act (ones which have not been transferred into the unified tribunal structure established by the 2007 Act).
- 287 Sub-paragraph (7) clarifies that sub-paragraph (6) applies to any tribunal added to Schedule 1 to the 1992 Act or Schedule 6 to the 2007 Act after paragraph 2A comes into force.
- 288 Sub-paragraph (8) sets out some of the matters which may be included in an Order in Council under sub-paragraph (5)(c). These could include provision modifying the functions that are to be transferred or imposing conditions or restrictions on the rules of procedure of the Scottish tribunal, as well as conditions necessary to ensure that the operation of the functions in respect of that tribunal relevant to the delivery of the reserved policy remain consistent. This would also enable, where necessary, provisions to be made in the interest of national security.
- 289 The reserved tribunals that are expected to be subject to paragraph 2A, range from those dealing with individuals challenging decisions of the state on personal welfare benefit claims to claims against private sector employers for breach of contract. As such, the matters considered by and the potential limits, constraints and requirements on the exercise of relevant functions are likely to differ depending upon the matters being heard.
- 290 Sub-paragraph (9) clarifies that sub-paragraph (8) does not exhaustively describe, or otherwise limit, the provision which can be made by an Order in Council under sub-paragraph (5)(c).
- 291 Sub-paragraph (10) sets out the functions which excluded from transfer. These include the functions of any "national security tribunal" (further defined in sub-paragraph (11)), the functions of regulators, such as the Civil Aviation Authority and the Office of Road and Rail, and the functions of the Comptroller-General of Patents, Designs and Trade Marks.
- 292 Sub-paragraph (11) defines key terms used in paragraph 2A.
- 293 The Order in Council making powers conferred under paragraph 2A are in addition to, and do not limit, the powers conferred by sections 30 and 113 of the Scotland Act 1998 (sub-paragraph (12)).



294 Subsection (2) of section 39 amends Schedule 7 to 1998 Act to set out the approval mechanism required for an Order in Council made under new paragraph 2A. No recommendation can be made to Her Majesty in Council to make such an Order until a draft of it has been laid before and approved by both the UK and Scottish Parliaments.

295 Subsections (3) to (7) of section 39 insert two additional reserved tribunals into the list of tribunals in Schedule 1 to the Tribunals and Inquiries Act 1992. These are persons appointed under section 27A(1)(a) of the Registered Designs Act 1949 and section 77(1) of the Trade Marks Act 1994, who hear certain appeals from the Comptroller-General of Patents, Designs and Trade Marks, and the Company Names Adjudicators.

## Section 40: Roads

296 Paragraph (c) of Section E1 (specific reservations: road transport) of Part 2 of Schedule 5 to the 1998 Act provides that the subject matter of the following provisions of the Road Traffic Regulation Act 1984 ("the RTRA 1984") are reserved matters:-

- a. section 17 (traffic regulation on special roads);
- b. section 25 (pedestrian crossings);
- c. Part V (traffic signs); and
- d. Part VI (speed limits).

297 Paragraph (d) of Section E1 provides the subject-matter of the Road Traffic Act 1988 and the Road Traffic Offenders Act 1988 are reserved matters.

298 This section amends Section E1 as follows.

299 It substitutes a new paragraph (c) which provides that the subject-matter of the following provisions of the RTRA 1984 will remain reserved:-

- a. section 17 (traffic regulation on special roads) except so far as it relates to the speed of vehicles; and
- b. section 87 (exemption of emergency vehicles from speed limits) so far as it relates to the training of the drivers of emergency vehicles.

300 It excepts from the subject matter of Road Traffic Act 1988, the parking of vehicles on roads in Scotland.

301 The subject matter of section 36 (offence of failing to comply with a traffic sign) of the Road Traffic Act 1988 is also excepted.

302 It inserts an interpretative provision to the effect that the reference to section 87 of the RTRA 1984 is to be construed as if section 19 of the Road Safety Act 2006 were in force. Section 19, which has yet to be commenced, substitutes a new section 87 of the RTRA 1984.

## Section 41: Roads: traffic signs etc

303 In consequence of the devolution to the Scottish Parliament of traffic signs, this section transfers the relevant functions of the Secretary of State to the Scottish Ministers in relation to roads in Scotland in so far as they are exercisable within devolved competence, within the meaning of the Scotland Act 1998.

- 304 Section 54 of that Act provides, inter alia, that a function is outside devolved competence where it makes any provision by subordinate legislation which would be outside the legislative competence of the Parliament if it were included in an Act of the Scottish Parliament.
- 305 Section 41 amends the following provisions of the RTRA 1984:
- 306 Section 25(1) (Secretary of State to make pedestrian crossing regulations), to enable the national authority to exercise the power to make regulations in respect of pedestrian crossings.
- 307 Section 64 (general provisions as to traffic signs), to enable the national authority to exercise the power to make regulations in respect of traffic signs.
- 308 Section 65 (powers of highway authorities as to placing of traffic signs), to:
- a. enable the national authority to exercise the power to give general directions in relation to the placing of traffic signs;
  - b. provide that the power of the Scottish Ministers to give general directions is to be exercisable by Scottish statutory instrument; and
  - c. require the Scottish Ministers and the Secretary of State to consult each other before exercising their powers to give general directions.
- 309 Section 69(3) (Secretary of State's directions for removal of traffic signs), to enable the national authority to exercise the power to direct the removal of traffic signs.
- 310 Section 70(1) (default powers of Secretary of State as to traffic signs), to enable the national authority to exercise the default powers to carry out works in respect of traffic signs in consequence of any failure by a local traffic authority to comply with directions given under sections 65 or 69 and to recover the costs of doing so from the relevant traffic authority.
- 311 Section 71(1) (power to enter land in connection with traffic signs), to enable the national authority to exercise the power to enter any land for the purposes of placing, replacing, converting or removing traffic signs.
- 312 Section 77 (modification of provisions relating to directions where the Secretary of State is the traffic authority), to substitute references to roads for which the Secretary of State is the traffic authority to roads for which the national authority is the traffic authority.
- 313 Section 79 (advances by Secretary of State towards expenses of traffic signs), to enable the national authority to exercise the power to make advances to traffic authorities towards expenses relating to the erection, maintenance, alteration or removal of traffic signs.
- 314 Section 142(1) (general interpretation), to insert a definition of the new term "national authority", which means:
- a. "in relation to a function so far as exercisable within devolved competence, within the meaning of the Scotland Act 1998, means the Scottish Ministers;
  - b. otherwise, the Secretary of State."

315 The effect of this definition is to align the competence of the Scottish Ministers with the legislative competence of the Scottish Parliament (see paragraph 304 for further explanation of the meaning of 'devolved competence' within the Scotland Act 1998). The Secretary of State will continue to exercise functions in Scotland where they are outside the competence of the Scottish Ministers. For example, exempting vehicles being used for defence from obeying traffic signs.

316 This section also amends section 36 of the Road Traffic Act 1988 (offence of failing to comply with traffic sign) to:-

- a. substitute references to the 'national authority' (as defined in section 142(1) of the RTRA 1984) for the 'Secretary of State'; and
- b. require the Scottish Ministers and the Secretary of State to consult each other when exercising their powers to make regulations under section 36(5) which specify any traffic sign for the purpose of the Road Traffic Offenders Act 1988.

## Section 42: Roads: speed limits

317 In consequence of the devolution to the Scottish Parliament of almost all powers to legislate for speed limits in Scotland, this section transfers the relevant functions of the Secretary of State to the Scottish Ministers so far as exercisable within devolved competence, within the meaning of the Scotland Act 1998.

318 Section 54 of that Act provides, inter alia, that a function is outside devolved competence where it makes any provision by subordinate legislation which would be outside the legislative competence of the Parliament if it were included in an Act of the Scottish Parliament.

319 Section 42 amends the following provisions of the RTRA 1984:-

320 Section 81 (general speed limit for restricted roads) to:

- a. enable the national authority to exercise the power by order to increase or reduce the speed limit for motor vehicles on restricted roads;
- b. provide that any such order made by Scottish Ministers is subject to the affirmative procedure; and
- c. require the Scottish Ministers and the Secretary of State to consult each other before making any such order.

321 Section 82 (what roads are restricted roads), to enable the Scottish Ministers to exercise the power to make regulations specifying the classification or type of road in Scotland which is to be a restricted road; and to enable the national authority to exercise the power to prescribe in regulations the manner of publication by a traffic authority of a notice that a special road is not a restricted road.

322 Section 83 (provisions as to directions by a traffic authority under section 82(2)), to provide that any direction by the national authority under section 82(2) (as the traffic authority for a road) must be made by order after giving public notice.

323 Section 84 (speed limits on roads other than restricted roads), to enable the national authority to exercise the powers to make regulations which must be complied with by local authorities when making orders which prescribe speed limits and to authorise exceptions in particular cases.

324 Section 85 (traffic signs for indicating speed restrictions), to:

- a. impose upon the national authority the duty, in the case of a road for which it is the traffic authority, to erect and maintain traffic signs;
- b. enable the national authority to exercise the powers to give general or other directions to local traffic authorities in respect of the erection, maintenance, alteration or removal of traffic signs;
- c. enable the national authority to exercise the default powers to carry out works in respect of traffic signs in consequence of any failure by a local traffic authority to comply with directions and to recover the costs of doing so from the relevant traffic authority;
- d. provide that the power of the Scottish Ministers to give general directions is to be exercisable by Scottish statutory instrument; and
- e. require the Scottish Ministers and the Secretary of State to consult each other before exercising their powers to give general directions.

325 Section 87 (as amended by section 19 of the Road Safety Act 2006), to:

- a. enable the national authority (for definition of 'national authority' see paragraph 314) to exercise the power to make regulations which prescribe the purposes and circumstances in which speed limits do not apply to vehicles other than those used by the emergency services. The power to make regulations to provide exemptions from speed limits in relation to vehicles used in connection with reserved matters in Scotland remains with the Secretary of State.

### Section 43: Roads: parking

326 In consequence of the devolution of the parking of vehicles to the Scottish Parliament of traffic signs, this section transfers the relevant functions of the Secretary of State to the Scottish Ministers in relation to roads in Scotland in so far as they are exercisable within devolved competence, within the meaning of the Scotland Act 1998.

327 This section also provides that before making regulations relating to the parking of vehicles in Scotland, the Secretary of State must consult Scottish Ministers.

### Section 44: Roads: consequential provision etc

328 This section provides that Schedule 2 (Roads: consequential and related amendments) has effect. Schedule 2 makes consequential and related amendments to the RTRA 1984, Road Traffic Act 1988 and to secondary legislation made under the RTRA 1984, the Scotland Act 1998 and the Government of Wales Act 2006.

329 Section 44 also provides that the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) has effect in relation to the RTRA 1984 and the Road Traffic Act 1988 as if the amendments of those Acts by sections 41 and 42 and Schedule 2 were in force immediately prior to the commencement of the Order.

### Section 45: Policing of railways and railway property

330 This section amends Section E2 (rail transport) of Part 2 of Schedule 5 to the Scotland Act 1998 to give the Scottish Parliament competence to legislate for policing of the railways and railway property.

## Section 46: British Transport Police: cross-border public authorities

- 331 This section designates the British Transport Police Authority, the Chief Constable of the British Transport Police, the deputy Chief Constable of the British Transport Police and the assistant Chief Constables of the British Transport Police (“the BTP Bodies”) as cross-border public authorities for the purposes of the Scotland Act 1998 (“the 1998 Act”). The 1998 Act applies to BTP Bodies in the same way as it applies to any cross-border public authority specified in an Order in Council made under section 88(5) of 1998 Act (see section 46(3)), with one adjustment to ensure that this is the case.
- 332 The designation of the BTP Bodies as cross-border public authorities will result in functions in relation to those bodies being modified immediately so that future appointments to the BTP bodies will only be able to be made in consultation with the Scottish Ministers. Other functions in relation to the BTP Bodies will similarly only be able to be exercised following consultation with the Scottish Ministers unless their effect in Scotland would be wholly in relation to reserved matters.
- 333 The designation of the BTP Bodies as cross-border public authorities is envisaged as a first step in the process of devolving greater powers to the Scottish Government. An order could, if required, be made under section 89 of the Scotland Act 1998 to confer further or wider functions on the Scottish Ministers in relation to the BTP Bodies or to make other modifications to constitutional arrangements. In the event that the Scottish Parliament exercises the new legislative competence conferred by section 45 to remove the Scottish aspects of functions of, or relating to, the BTP Bodies, section 90 of the Scotland Act 1998 could then be used to transfer the property and liabilities of the cross-border public authority which will enable the transfer to take place in an orderly manner.
- 334 To ensure that the Scotland Act 1998 applies to the BTP Bodies as it does to other cross-border public authorities section 46(2) provides for the reference in section 88(3) of the Scotland Act 1998 to “pre-commencement enactments” to be read as a reference to the Railways and Transport Safety Act 2003.

## Section 47: Onshore petroleum

- 335 This section amends Section D2 (oil and gas) in Part 2 of Schedule 5 to the Scotland Act 1998 to give the Scottish Parliament competence to legislate for the granting and regulation of licences to search and bore for and get petroleum within the Scottish onshore area. The power to set the consideration payable for such licences is not included in these exceptions and remains reserved. The Scottish Parliament is also given competence to legislate for access to such land for the purposes of searching, boring for and getting petroleum under such licences within the Scottish onshore area.
- 336 The Scottish onshore area is defined in line with the baseline established by any Order in Council under section 1(1)(b) of the Territorial Sea Act 1987 (extension of territorial sea). “Petroleum” is defined in line with the definition of “Petroleum” as provided for in section 1 of the Petroleum Act 1998. For a given licence, the definition of onshore Scotland is that which applied at the time of granting of that licence.

## Section 48: Onshore petroleum: consequential amendments

- 337 This section transfers to the Scottish Ministers certain executive functions exercised currently by the Secretary of State relating to onshore petroleum licensing in the Scottish onshore area (defined as that area of Scotland landward of the “baseline”).

- 338 Subsection (3) amends section 3(1) of the Petroleum Act 1998 (“the Petroleum Act”) to transfer, from the Secretary of State to the Scottish Ministers the powers to grant licences to bore and get petroleum.
- 339 Subsection (4) amends section 3(3) of the Petroleum Act to transfer the powers to determine the terms and conditions, other than consideration payable, under which such licences shall be granted. The determination of consideration payable for the granting of a licence remains a reserved power for the Secretary of State, who shall make such determination with the consent of Treasury.
- 340 Subsection (6) amends section 4(1) of the Petroleum Act to transfer, from the Secretary of State to the Scottish Ministers, the powers to make regulations in relation to the licensing process for the Scottish onshore area. These regulations can prescribe, amongst other matters, model clauses which would be incorporated into a new onshore petroleum licence, unless the Scottish Ministers decide it necessary to amend or exclude model clauses for a particular licence.
- 341 Subsection (7) inserts new subsections (1A) to 4(1C) into section 4 the Petroleum Act. New subsection (1A) precludes Scottish Ministers from prescribing model clauses in relation to any matters under new subsection (1B). New subsection (1B) reserves, for the Secretary of State, regulatory powers to make model clauses in relation to the consideration payable for a licence as well as: (a) the measurement and facilitation of measurement of petroleum obtained from the licensed areas and (b) the keeping of accounts. In addition to the above reservations, subsection (1B) also reserves regulatory powers for the Secretary of State to cancel a licence, where the holder fails to pay consideration or fails to abide by the requirements on the measurement and facilitation of measurement of petroleum obtained from licensed areas and the keeping of accounts, so far as related to consideration.
- 342 New subsection (1C) provides that any model clauses prescribed by the Secretary of State under subsection (1B) shall be incorporated into any licences granted by Scottish Ministers, unless the Secretary of State sees fit to modify or exclude them.
- 343 Subsection (8) amends section 4(3) of the Petroleum Act to limit the powers of the Houses of Parliament to annul section 4 regulations, made by statutory instrument, to those regulations prescribed by the Secretary of State.
- 344 Subsection (9) inserts section 4(3A) into the Petroleum Act to make any section 4 regulations made by the Scottish Ministers subject to annulment by negative procedure in the Scottish Parliament.
- 345 Subsection (10) inserts section 4(4A) which requires the Scottish Ministers to publish notices of licenses granted by them for the Scottish onshore area in the Edinburgh Gazette.
- 346 Subsection (11) amends section 5(9) of the Petroleum Act to transfer, from the Secretary of State to the Scottish Ministers, powers to alter or delete, by instrument subscribed with the licensee, clauses incorporated into a licences granted under section 2 of the Petroleum (Production) Act 1934 in the Scottish onshore area.
- 347 Subsection (12) amends section 5(5A) of the Petroleum Act to transfer, from the Secretary of State to the Scottish Ministers, powers to revert licence rights in onshore Scotland back to the transferor, where rights have been transferred without the Scottish Ministers’ consent. These subsections also transfer the procedures by which the Scottish Ministers must abide by when reverting rights in the Scottish onshore area.

- 348 Subsection (13) amends section 5(5B)(1) of the Petroleum Act to extend the right of the Commissioners of HMRC to disclose information, to the Scottish Ministers, in relation to the transfer of a right granted by a license in the Scottish onshore area. This disclosure is for the purpose of determining whether a transfer in the Scottish onshore area that should have had the Scottish Ministers' consent did have that consent.
- 349 Subsection (14) amends section 7(2) of the Petroleum Act, which determines the effects of the Mines (Working Facilities and Support) Act 1966 when applied to licensing under the Petroleum Act 1998, by specifying that, within sections 4 and 9 of that Act, "the Secretary of State" or "the Minister" shall in those sections refer to the Scottish Ministers for licences granted in the Scottish onshore area.
- 350 Subsection (15) amends section 8 of the Petroleum Act to provide officers appointed by the Scottish Ministers with the same powers to inspect plans of mines as those already enjoyed by officers appointed by the Secretary of State under the Health and Safety at Work etc. Act 1974.
- 351 Subsection (16) inserts section 8(8A) into the Petroleum Act to provide that, for Part I of the Petroleum Act 1998, "the appropriate Minister" shall be the Scottish Ministers for the Scottish onshore area. This also aligns the definition of the Scottish onshore area with the provisions set out by any Order in Council under section 1(1)(b) of the Territorial Sea Act 1987 (extension of territorial sea).
- 352 Subsection amends section 188 (12) of the Energy Act 2004 to add petroleum licensing to the list of energy functions exercisable by the Scottish Ministers for which they may impose charges.
- 353 Subsection (19) amends section 12(1A)(a)(ii) of the Oil Taxation Act 1975 to include the revocation of a licence by the Scottish Ministers to the list of cessation events by which a person ceases to be a licensee in relation to oil fields.
- 354 Subsection (20) amends sub-paragraph 1(2)(a) of Schedule 1 to the Oil Taxation Act 1975 to limit the powers of the Secretary of State for determining oil fields to those areas that are such that the granting of a licence within them, under Part 1 of the Petroleum Act, would fall exclusively to the Secretary of State.
- 355 Subsection (20) amends paragraph 1(2) of Schedule 1 to the Oil Taxation Act 1975 to include the Scottish Ministers as the appropriate authority for the determination of an oil field, where the relevant area is such that the granting of licences within it would fall exclusively to the Scottish Ministers. The subsections also determine the Secretary of State and Scottish Ministers as the joint appropriate authorities for the determination of an oil field, where the relevant area is such that the granting of licences within it would fall in part to the Secretary of State and in part to the Scottish Ministers.
- 356 Subsection (22) amends regulation 2 of The Petroleum (Production)(Landward Areas) Regulations 1995 to introduce a definition of the "Scottish onshore area" that is in line with that of section 8A of the Petroleum Act.
- 357 Subsections (23) and (24) amend regulation 3 of the Petroleum (Production)(Landward Areas) Regulations 1995 to exclude the Scottish onshore area from the applicability of the Regulations in terms of licence applications.

## Section 49: Onshore petroleum: existing licences

- 358 This section grants the power to the Secretary of State to make amendments to the provisions and model clauses of licences that were in existence before the commencement of devolved oil and gas licensing powers. This additional power is limited to those licences already in existence in onshore Scotland and to certain clauses within these, which require amendment in order for the licences to continue to function appropriately in relation to the reserved taxation powers.
- 359 Subsection (1) grants the Secretary of State the power to make any amendments, that the Secretary of State deems necessary or expedient, under sections 47 and 48, to the provisions of an existing licence and to the model clauses that are incorporated or have the effect as if incorporated into such an existing licence.
- 360 The provision also confers on the Secretary of State the power to split cross-border licences, where part of the licence acreage falls within onshore Scotland and the remainder of the acreage falls outwith of onshore Scotland.
- 361 Subsection (3) specifies that the power of the Secretary of State to make amendments to model clauses under subsection (1) is to be exercised by regulations made by statutory instrument.
- 362 Subsection (4) specifies that any such statutory instruments, containing regulations to make amendments to existing licences, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- 363 Subsection (5) defines “existing licences” as those licences granted under section 3 of the Petroleum Act 1998 or under section 2 of the Petroleum (Production) Act 1934 before the commencement of the devolution of licensing powers to the Scottish Ministers for the Scottish onshore area.

## Section 50: Consumer advocacy and advice

- 364 This section amends several reservations in Part 2 of Schedule 5 to the Scotland Act 1998 so that responsibility for consumer advocacy and advice is devolved to the Scottish Parliament.
- 365 Subsections (2) to (4) insert exceptions for consumer advocacy and advice from the reservations in Sections C7 (consumer protection), C8 (product standards, safety and liability) and C9 (weights and measures) This will have the effect of devolving the provision of consumer advocacy or advice by, or by agreement with, a public body or holder of a public office, in relation to those reserved matters.
- 366 Subsections (5) to (7) insert exceptions from consumer advocacy and advice from the reservations in Sections C11 (posts), D1 (electricity) and D2 (oil and gas). This will have the effect of devolving the provision of consumer advocacy and advice by, or by agreement with, a public body or holder of a public office, in relation to those reserved matters, whilst reserving the right to levy energy and postal sector companies in order to fund consumer advocacy and advice. Further, these exceptions do not include conferring or removing functions on the Office of Communications (Ofcom) or the Gas and Electricity Markets Authority (Ofgem). This is clarified by subsection (8), which adds Ofcom and Ofgem to the list of reserved bodies in paragraph 3 of Part 3 of Schedule 5 to the Scotland Act 1998.
- 367 Subsections (9) to (16) make consequential amendments to support the change in funding arrangements that the devolution of consumer advocacy and advice requires.



## Section 51: Functions exercisable within devolved competence: consumer advocacy and advice

368 When competence to legislate was given to the Scottish Parliament by virtue of the Scotland Act 1998, the functions under existing enactments, prerogative and other executive functions, that were within that new competence and exercisable by a Minister of the Crown were transferred to the Scottish Ministers by a general transfer under section 53 of that Act. Other references in existing enactments were also glossed by sections 117 - 122 of the Scotland Act 1998 to take account of the transfer of responsibility to the Scottish Parliament and the Scottish Ministers.

369 Where this Act transfers legislative competence to the Scottish Parliament, provision needs to be made for the functions of a Minister of the Crown that fall within the scope of the newly devolved competence and other appropriate amendments made to legislation. In some instances e.g. speed limits, this is done by transferring functions to the Scottish Ministers by textual amendment of the relevant legislation. However in the case of devolution to the Scottish Parliament by virtue of section 50 this is done by updating the operation of section 53.

370 This section makes provision to ensure that references in enactments immediately preceding the transfer of power to the Scottish Parliament are glossed rather than only transferring functions and glossing references in legislation immediately preceding the coming into force of the Act.

## Section 52: Gaming machines on licensed betting premises

371 By Section B9 of Part 2 of Schedule 5 to the Scotland Act 1998, “betting, gaming and lotteries” are reserved matters.

372 By section 236 of the Gambling Act 2005, the Secretary of State must define four classes of gaming machine, to be known as categories A, B, C and D, and sub-divide category B into sub-categories. The Secretary of State established categories and sub-categories of gaming machine through the Categories of Gaming Machine Regulations 2007 (S.I. 2007/2158).

373 Currently, under the Gambling Act 2005, any person who holds a betting premises licence is authorised to make available up to four gaming machines on the site to which that licence relates. The entitlement, by section 172(8) of the 2005 Act and regulation 6(3)(d) of the 2007 Regulations, is confined to gaming machines of sub-categories B2, B3 and B4, and Categories C and D.

374 This section will insert a specific exception into Section B9 of Part 2 of Schedule 5 to the Scotland Act 1998, so that the Scottish Parliament will have legislative competence to vary the number of certain gaming machines authorised by a betting premises licence. This power is sufficiently broad as to allow the Scottish Parliament to reduce the number of such gaming machines to zero. The Secretary of State’s function to vary the number of those same gaming machines in Scotland will be transferred to the Scottish Ministers. The functions conferred on the Secretary of State by section 236 of the 2005 Act will continue to be reserved.

375 There are three limitations on this devolved competence. First, it is confined to gaming machines for which it is possible to stake more than £10 in respect of a single game; at present, this is possible only with sub-category B2 gaming machines.

376 Secondly, it applies only to a betting premises licence issued on or after the date on which this section comes into force. Nothing in this section empowers the Scottish Parliament or the Scottish Ministers to vary the number of gaming machines authorised by betting premises licences issued before that date.

377 Thirdly, the exception does not include betting premises licences issued in respect of a track.

378 This power may be exercised by Scottish Ministers by way of an Order, which would be subject to the affirmative procedure in the Scottish Parliament.

### Section 53: Abortion

379 This section removes the reservation for abortion by deleting Section J1 of Part 2 of Schedule 5 to the Scotland Act 1998.

380 The effect of this will be that the Scottish Parliament will have the power to amend or repeal the Abortion Act 1967 (the Abortion Act) as it applies in Scotland.

381 The Abortion Act provides the legal framework for abortions to be performed in England, Scotland and Wales.

382 The UK Parliament retains the power to amend or repeal the Abortion Act in England and Wales.

383 The provision in section 3 of the Abortion Act applying to Visiting Forces relates to defence matters and as such will not be within the competence of the Scottish Parliament.

## Part 5: Other Executive Competence

### Section 54: Gaelic Media Service

384 The Gaelic Media Service (operating under the name of MG Alba) has the remit under the Broadcasting Act 1990 ("the 1990 Act") to secure that a wide and diverse range of high quality programmes in Gaelic are broadcast in Scotland. The 1990 Act provides for the Gaelic Media Service's governance and functions. Section 183A of the 1990 Act provides that the members of the Gaelic Media Service (including the chair) are to be appointed by Ofcom and that the approval of the Secretary of State and the Scottish Ministers is required for such appointments. When appointing the members Ofcom must have regard to any guidance issued by the Secretary of State with the agreement of the Scottish Ministers.

385 Subsection (1) of this section amends section 183A of the 1990 Act to provide the appointments are only subject to the approval of the Scottish Ministers (and no longer the Secretary of State) and that the appointment guidance may be issued by the Scottish Ministers (and no longer the Secretary of State). Subsection (2) of this section repeals subsections (4) to (6) of section 17 of the Scotland Act 2012, which added references to the Scottish Ministers into section 183A of the 1990 Act.

### Section 55: Commissioners of Northern Lighthouses

386 This section amends the Merchant Shipping Act 1995 ("the 1995 Act") to provide for additional Ministerial appointments to the Commissioners of Northern Lighthouses (NLB) and to impose duties on the NLB to send the accounts produced under section 218 of the 1995 Act, and any reports produced under section 198(4)(b) of the 1995 Act to the Scottish Ministers. The section imposes a duty on the Scottish Ministers to lay the reports and accounts passed to the Scottish Ministers by the NLB before the Scottish Parliament.

387 The amendments to Schedule 8 of the 1995 Act contained in the section provide that the Commissioners of the NLB will include a person appointed by the Secretary of State (in addition to the person who can be nominated under paragraph (d) of Schedule 8), and an additional person appointed by the Scottish Ministers. The total number of Commissioners will remain the same because the section reduces the number of elected Commissioners from five to three.

### Section 56: Maritime and Coastguard Agency

388 This section amends the Coastguard Act 1925 ("the 1925 Act") and the Merchant Shipping Act 1995 ("the 1995 Act").

389 Subsection (1) amends the 1925 Act to provide that the Secretary of State must consult the Scottish Ministers about strategic priorities of the Secretary of State when exercising functions under the 1925 Act in relation to activities of the Coastguard in Scotland (which includes activities of the Coastguard in Scotland's territorial waters). These functions, which are conferred on the Board of Trade by section 1 of the 1925 Act, are now exercisable by the Secretary of State for Transport.

390 Subsection (2) amends section 292 of the 1995 Act to provide that the Secretary of State must consult the Scottish Ministers about strategic priorities of the Secretary of State when exercising functions under the 1995 Act in relation to the protection of people on ships in Scotland, and the safety standards which apply to both ships and people on ships in Scotland (including in relation to Scotland's territorial waters).

## Section 57: Rail: franchising of passenger services

- 391 The Railways Act 1993 ("the 1993 Act") provides that the bodies and persons listed in section 25(1)(a) to 25(1)(f) (public sector operators) shall not be a franchisee. Accordingly, those bodies and persons listed in section 25(1) of the 1993 Act may not bid for, or operate, passenger rail services under a franchise agreement in Great Britain.
- 392 Subsection (3) of the section will have the effect of lifting this prohibition in relation to Scottish franchise agreements. It will allow a public sector operator to be a franchisee in relation to a franchise agreement for the provision of services that begin and end in Scotland (Scotland-only services) and such other cross-border services that are designated by the Scottish Ministers to be provided under that same franchise agreement.
- 393 Subsection (4) of the section provides that the disapplication of section 25(1) of the 1993 Act in relation to Scottish franchise agreements will apply only in relation to an invitation to tender issued by the Scottish Ministers under powers set out in section 26(2) of the 1993 Act on or after subsection (3) comes into force.

## Section 58: Fuel poverty: support schemes

- 394 Under the Energy Act 2010 ("the 2010 Act") the Secretary of State has powers to make support schemes for the purposes of reducing fuel poverty. This Act amends the 2010 Act to enable the Scottish Ministers to exercise many of those powers in relation to support schemes made in relation to Scotland for the purposes of reducing fuel poverty through obligations on gas and electricity suppliers.
- 395 This section amends the 2010 Act by inserting a new section 14A to enable the Scottish Ministers to exercise a range of powers for the purpose of support schemes in relation to Scotland. It also makes consequential changes to section 9 (schemes for reducing fuel poverty) and section 31 (Orders and regulations) of the 2010 Act.
- 396 All of the powers under section 9 of the 2010 Act in relation to obligations on suppliers are transferred to the Scottish Ministers with the exception of: powers to determine the licensed gas or electricity suppliers to whom the scheme applies; powers to determine the aggregate amount of benefits to be provided in any specified period and the total amount of benefits to be provided by any one scheme supplier; and powers relating to the reconciliation of supplier costs. These relate to the scale and apportionment of the obligations, and the obligated parties.
- 397 Before exercising the powers that are transferred to them by virtue of this section, the Scottish Ministers must have consulted with, and obtained the agreement of, the Secretary of State.
- 398 The Secretary of State may exercise the powers that are transferred to the Scottish Ministers by virtue of this section, if the Scottish Ministers agree. The Secretary of State can intervene and exercise the powers without the agreement of the Scottish Ministers in the circumstances set out in subsections (7), (9) or (11) of the new s.14A.
- 399 The Secretary of State may exercise these intervention powers under one of three conditions:
- a. If, after consulting the Scottish Ministers, the Secretary of State considers it necessary to ensure a scheme is made in Scotland with the same start and end times as a scheme made or to be made in relation to England and Wales,
  - b. Where a scheme made in relation to Scotland, alone or in conjunction with a scheme made or to be made by the Secretary of State in relation to England and Wales, is likely to cause detriment to the United Kingdom (including consideration of the costs imposed on suppliers by virtue of schemes) or adversely affect the ability of the United Kingdom to comply with any international agreement or arrangement in

relation to climate change or energy efficiency. The Secretary of State may only exercise this power after the Scottish Ministers have failed to comply with a written request to make specified modifications to prevent these effects within a specified time, or

- c. The Secretary of State makes or intends to make changes to a support scheme which would result in a significant change in the costs incurred by suppliers, and the Scottish Ministers have not made requested modifications to a scheme made in relation to Scotland.

## Section 59: Energy company obligations

- 400 Under the Gas Act 1986 (“the 1986 Act”) and the Electricity Act 1989 (“the 1989 Act”) the Secretary of State has powers to impose obligations on gas and electricity suppliers in Great Britain, for the purposes of promoting reductions in carbon emissions and home-heating costs. This Act amends those Acts to enable the Scottish Ministers to exercise many of those powers in relation to the promotion by gas and electricity suppliers of reductions in carbon emissions and home-heating costs in Scotland.
- 401 This section amends the 1986 Act by inserting new sections 33BCA and 33BDA and the 1989 Act by inserting new sections 41AA and 41BA to enable the Scottish Ministers to exercise a range of powers in relation to obligations imposed on licenced gas and electricity suppliers to promote reductions in carbon emissions or home heating costs in relation to Scotland.
- 402 Section 33BC of the 1986 Act contains the powers to impose obligations on gas suppliers to promote reductions in carbon emissions. Section 33BD of the 1986 Act and sections 41A and 41B of the 1989 Act contain similar powers to impose obligations on gas and electricity suppliers to promote reductions in home-heating costs and to impose obligations on electricity suppliers to promote reductions in carbon emissions.
- 403 Powers are conferred on the Scottish Ministers to specify how suppliers may meet their obligations through measures carried out in Scotland. Most of the powers under sections 33BC and 33BD of the 1986 Act and under sections 41A and 41B of the 1989 Act are transferred to the Scottish Ministers for the purpose of obligations imposed by the Secretary of State in relation to Scotland. Specific powers that are not transferred to the Scottish Ministers are: powers to determine whether there should be an obligation and to specify the obligation period; powers to specify the suppliers on whom the obligation is imposed; powers to determine how other persons that become suppliers after the start of the obligation period are treated; powers to set the criteria for distributing the obligation between individual suppliers; powers to alter a supplier’s share of the obligation during an obligation period; and powers to impose obligations on gas transporters or electricity distributors. These relate to the scale and apportionment of the obligations, and the obligated parties.
- 404 Before exercising the powers that are transferred to them by virtue of this section, the Scottish Ministers must have consulted with, and obtained the agreement of, the Secretary of State. The Scottish Ministers will also be under a duty to consult the Gas and Electricity Markets Authority, Citizens Advice Scotland, suppliers and other persons they consider appropriate. Where part of an overall target has been apportioned to Scotland, the Scottish Ministers will be under a duty to exercise their powers in the way they think most likely to secure that the costs of the obligation relating to Scotland, when expressed as a proportion of the total costs of the obligation across Great Britain, do not exceed the share of the overall target apportioned to Scotland. The Secretary of State’s power to set and apportion overall carbon emissions reduction and home-heating cost reduction targets is conferred by sections 103 and 103A of the Utilities Act 2000 as amended by section 59.

405 The Secretary of State may exercise the powers that are transferred to the Scottish Ministers by virtue of this section, if the Scottish Ministers agree. The Secretary of State can also intervene and exercise the powers without the agreement of the Scottish Ministers in the circumstances set out in subsection (11) of the new sections inserted by this section.

406 The Secretary of State may exercise these intervention powers where the provision made for the obligation in relation to Scotland, alone or in conjunction with the obligation in relation to England and Wales, is likely to: (a) cause detriment to the United Kingdom (including consideration of the costs likely to be incurred by suppliers under the obligations); (b) adversely affect the ability of the United Kingdom to comply with any international agreement or arrangement in relation to climate change or energy efficiency; or (c) result in costs incurred by suppliers that are not broadly equivalent in relation to England & Wales and Scotland. The Secretary of State may only intervene on these grounds after the Scottish Ministers have failed to comply with a written request to make specified modifications within a specified time to prevent these effects.

### Section 60: Apportionment of targets

407 This section amends the Utilities Act 2000 (“the 2000 Act”). Where the Secretary of State has set an overall carbon emissions reduction target for the purpose of an energy company obligation, subsection (3) enables the Secretary of State to apportion that target between England and Wales and Scotland. Subsection (6) makes similar provision in relation to the apportionment of any overall home-heating cost reduction target.

408 Where an overall carbon emissions reduction target has been apportioned, subsection (4) enables provision to be made by the Secretary of State for a supplier to elect that a measure carried out in Scotland is to be treated instead as carried out in England and Wales. The consent of the Scottish Ministers is required for provision enabling measures carried out in England & Wales to be treated as carried out in Scotland. Subsection (7) makes similar provision in relation to any overall home-heating cost reduction target.

409 Subsection (10) enables the Scottish Ministers to use the powers in section 103B(1)(b) and (c) of the 2000 Act to require suppliers and the administrator of the obligation to provide the Scottish Ministers with information enabling them to review the operation of any orders made by them using the powers under 33BC or 33BD of the Gas Act 1986 or under sections 41A or 41B of the Electricity Act 1989 and to maintain a measures record. Subsection (12) enables this information to be shared with the Secretary of State and the Welsh Ministers.

410 Subsection (14) ensures that the general restriction on the disclosure of information in section 105 of the 2000 Act does not apply if the disclosure is made to facilitate the performance of the functions of the administrator of the obligation.

### Section 61: Renewable electricity incentive schemes: consultation

411 This section inserts a new section 90C in the Scotland Act 1998. It places a requirement on the Secretary of State to consult the Scottish Ministers in two types of situation. Firstly, before establishing any new scheme to incentivise the generation of electricity using renewable sources, where that scheme applies in Scotland. Secondly, before making substantive amendments to existing schemes. The section provides that the Secretary of State is not required to consult the Scottish Ministers on levies in connection with such schemes, or on minor or technical or administrative changes.

## Section 62: Offshore renewable energy installations

- 412 This section amends the Energy Act 2004 ("the 2004 Act") to enable the Scottish Ministers to exercise functions in relation to declaring safety zones around, and the decommissioning of, offshore renewable energy developments wholly in Scottish waters or in a Scottish part of a Renewable Energy Zone ("REZ").
- 413 Subsections (2) to (5) amend section 95 of the 2004 Act (safety zones around renewable energy installations) to provide the Scottish Ministers with a discretionary power to issue a notice to declare safety zones around a renewable energy installation wholly in Scottish waters or in a Scottish part of a REZ and to determine which activities are permitted within a safety zone, and which vessels may enter or remain within a safety zone. Where such an installation is proposed to be, or is, extended outside Scottish waters or a Scottish part of a REZ the Secretary of State will exercise the functions in relation to declaring safety zones in respect of that part of the installation, unless the Scottish Ministers and the Secretary of State agree that the Scottish Ministers should do so.
- 414 Subsection (5) inserts a new subsection (4A) in section 95 of the 2004 Act to provide that, before issuing a notice which relates to an area outside Scottish waters or the Scottish part of a REZ, the Scottish Ministers must consult the Secretary of State.
- 415 Subsections (6) to (8) amend section 96 of the 2004 Act (prohibited activities in a safety zone) to provide the Scottish Ministers with the power to make regulations setting out general permissions allowing vessels to enter safety zones and carry out activities.
- 416 Subsections (17) to (19) amend Schedule 16 to the 2004 Act (applications and proposals for notices under section 95) to make provision for applications and proposals for notices declaring safety zones to be made to the Scottish Ministers.
- 417 The 1982 United Nations Convention on the Law of the Sea (UNCLOS) places an obligation on contracting parties to ensure that renewable energy installations in a REZ are decommissioned. Chapter 3 of the 2004 Act created a common legal regime for offshore renewable energy developments in territorial and internal waters or a REZ.
- 418 Subsections (9) to (12) amend Chapter 3 of the 2004 Act (decommissioning of offshore installations) to provide that the Scottish Ministers will exercise functions in relation to decommissioning of renewable energy installations wholly in Scottish waters or in a Scottish part of a REZ and those parts of a related electric line in such waters. These functions include the discretionary power to impose an obligation on a responsible person to submit a costed decommissioning programme. The Scottish Ministers may approve such a programme or, where they consider it to be inadequate, prepare a suitable decommissioning programme and recover the costs from the responsible person. Where such an installation is proposed to be, or is, extended outside Scottish waters or a Scottish part of a REZ the Secretary of State will exercise the functions in relation to decommissioning in respect of that part of the installation, unless the Scottish Ministers and the Secretary of State agree that the Scottish Ministers should do so.
- 419 Subsection (13) amends section 111 of the 2004 Act (regulations about decommissioning) to provide the Scottish Ministers with the power to make regulations relating to decommissioning of such renewable energy installations and related electric lines.

## Section 63: References to Competition and Markets Authority

- 420 This section amends section 132 of the Enterprise Act 2002 ("the 2002 Act"). Section 132 of the 2002 Act confers on the "appropriate Minister" a power to refer a market or markets for investigation if the "appropriate Minister" has reasonable grounds for suspecting that one or more features of the market (or features occurring in a number of markets) are preventing, restricting or distorting competition in the supply or acquisition of specified goods or services. Subsection (5) defines the "appropriate Minister" as either the Secretary of State acting alone or the Secretary of State acting jointly with other Ministers of the Crown. The "appropriate Minister" may only exercise this power where additionally he, she or they are either dissatisfied with the Competition and Markets Authority's (CMA's) decision not to make a reference (subsection (1)) or are satisfied that the CMA is aware of whatever evidence has led the "appropriate Minister" to form a suspicion and is not likely to reach a decision as to whether or not to launch a market study (to determine whether a reference is appropriate) within a reasonable period of time (subsections (2) and (3)). The "appropriate Minister" may make market investigation references only as a reserve power.
- 421 Section 63 amends the definition of "appropriate Minister" in section 132(5) of the 2002 Act so that it includes the Scottish Ministers, acting jointly with the Secretary of State, or jointly with the Secretary of State and one or more other Ministers of the Crown.



## Part 6: Miscellaneous

### Section 64: Gas and Electricity Markets Authority

422 This section amends section 5 of, and inserts a new section 5XA into, the Utilities Act 2000 ("2000 Act").

423 Section 5 of the 2000 Act requires the Gas and Electricity Markets Authority ("the Authority") to send its annual report to the Secretary of State, and imposes a duty on the Secretary of State to lay that report before both Houses of Parliament. The section imposes a new requirement on the Authority to send the annual report to the Scottish Ministers, and new subsection (5A) of section 5 requires the Scottish Ministers to lay a copy of each report before the Scottish Parliament.

424 New section 5XA(1) requires the Comptroller and Auditor General to send the certified accounts, and report on the Comptroller and Auditor General's accounts, to the Authority each year. Subsection (2) requires the Authority to send the certified account and report to the Scottish Ministers, and subsection (3) requires the Scottish Ministers to lay copies of those documents before the Scottish Parliament.

### Section 65: Office of Communications

425 Ofcom is the UK-wide independent communications regulator overseeing television, radio, telecommunications, mobiles, postal services and the airwaves. It was established by the Office of the Communications Act 2002 ("the 2002 Act").

426 Section 1 of the 2002 Act provides that the Secretary of State appoints the chairperson and other members of Ofcom. Subsections (1) to (3) of this section amend section 1 of the 2002 Act to provide that the Scottish Ministers shall appoint one member of Ofcom and, before doing so, they must consult the Secretary of State. Subsection (4) ensures that the member appointed by the Scottish Ministers has the same functions as other non-executive members of Ofcom in the appointment of any executive members of Ofcom.

427 The procedures adopted by the Secretary of State when making appointments to Ofcom are monitored by the Commissioner for Public Appointments in accordance with the Public Appointments Order in Council 2014. In particular, the code of practice published by the Commissioner on the principle of selection on merit for public appointments. Subsection (10) of this section amends the Order in Council to add the Scottish Ministers to the definition of an 'appointing authority' and therefore brings the Scottish Ministers appointment of a member of Ofcom within the ambit of the Order.

428 The Schedule to the 2002 Act makes further provision about Ofcom including qualification for membership, tenure of office, accounts and audit and annual reports. Subsection (5) of this section amends the application of the Schedule in relation to the member of Ofcom appointed by the Scottish Ministers. The functions relating to ensuring that a person being appointed to Ofcom does not have any conflict of interest and the functions relating to a member's resignation or removal from office are conferred on the Scottish Ministers. The member may only be removed from office by the Scottish Ministers following consultation with the Secretary of State.

429 Subsections (7) to (8) of this section amend the Schedule to the 2002 Act to require the Comptroller and Auditor General to send a copy of Ofcom's statement of accounts the Comptroller and Auditor General's report to the Scottish Ministers and for the Scottish

Ministers to lay those documents before the Scottish Parliament. Similarly, subsection (9) amends the Schedule to the 2002 Act to require Ofcom to send its annual report to the Scottish Ministers and for the Scottish Ministers to lay the report before the Scottish Parliament.

### Section 66: Bodies that may be required to attend before Parliament

430 This section inserts a new section 23A into the Scotland Act 1998 (“the 1998 Act”). It applies, with modifications, section 23 of the 1998 Act which gives the Scottish Parliament the power to require persons and UK Ministers to appear before it to give evidence or produce documents in relation to any subject for which the Scottish Government has general responsibility. The section gives the Scottish Parliament the power to compel witnesses and documents from the bodies specified in subsection (2) in relation to the functions exercised by those bodies that are discharged in relation to Scotland. These bodies are the Commissioners of Northern Lighthouses, the Office of Communications, and the Gas and Electricity Markets Authority. Because of the modifications made by this section to section 23 of the 1998 Act, the Scottish Parliament will be able to compel persons from the specified bodies to give evidence and produce documents in relation reserved matters. UK Ministers will remain compellable only on the basis in section 23 i.e. only where they are exercising a function which the Scottish Government has general responsibility for.

431 Subsection (1) applies section 23 of the 1998 Act and sets out that the Scottish Parliament’s power to require persons to attend its proceedings to provide evidence and produce documents extends to the bodies specified in subsection (2) in relation to the functions of those bodies that are exercised in relation to Scotland.

432 Subsection (2) sets out the three bodies in relation to which the requirements outlined in subsection (1) can be imposed.

### Section 67: Destination of fines, forfeitures and fixed penalties

433 This section adds a provision to the Scotland Act 1998 which allows the Secretary of State, with the consent of the Treasury, to make regulations to modify Acts or subordinate legislation, where sums are required or authorised to be paid into the Consolidated Fund.

434 The Secretary of State is empowered to modify legislation to direct the sum into the Scottish Consolidated Fund, rather than the Consolidated Fund.

435 Once legislation is modified by the Secretary of State through regulations; fines, forfeitures, and fixed penalties imposed by Scottish Courts will be routed to the Scottish Consolidated Fund, and retained by the Scottish Government.

## Part 7: General

### Section 68: Subordinate legislation under functions exercisable within devolved competence

- 436 This section ensures that where functions transferred to the Scottish Ministers by section 53 of the Scotland Act 1998, as glossed by sections 9, 32 and 51 of this Act, include powers to make delegated legislation, the procedure applicable follows that set out by the Scottish Parliament in the Interpretation and Legislative Reform (Scotland) Act 2010 (ILRA).
- 437 Section 53 of the Scotland Act 1998, as glossed by sections 9, 32 and 51 of this Act, transfers functions exercisable within devolved competence by virtue of sections 3, 22, 23, 24, 25, 26, 27, 31 and 50 of this Act from a Minister of the Crown to the Scottish Ministers. Some of the functions transferred will include the power to make delegated legislation, but that delegated legislation will be subject to procedure in the UK Parliament. Accordingly, adjustment is needed to apply Scottish Parliament procedure to those transferred functions.
- 438 In 2010, the Scottish Parliament passed ILRA which makes provision for scrutiny of devolved subordinate legislation. This section ensures that where a transferred function is exercisable by statutory instrument, it will be exercisable by Scottish statutory instrument. If no provision is made for the transferred function to be exercisable by statutory instrument, then the function is not exercisable by Scottish statutory instrument. Further, this section glosses references to the parliamentary scrutiny applicable to a transferred delegated power. For example, references to subordinate legislation being “subject to annulment in pursuance of a resolution” will be read as subject to the negative procedure in the Scottish Parliament.

### Section 69: Transfers of property etc to the Scottish Ministers

- 439 Section 69 amends section 60(3) of the Scotland Act 1998. Section 60 confers a power to provide for (a) the transfer to the Scottish Ministers of any property belonging to a Minister of the Crown or government department, (b) the Scottish Ministers to have rights or interests in relation to such property and (c) the transfer to the Scottish Ministers of any liabilities to which a Ministers of the Crown or government department is subject. The scope of the power is limited by subsection (3) of that section to any transfer or sharing of functions of a Minister of the Crown by virtues of section 53, 63 or 89 of the Scotland Act 1998 or any other circumstances which the person making the legislation considers it appropriate to do so for the purposes of the Scotland Act 1998.
- 440 The amendment to subsection (3) will allow transfer of property, rights or interests in relation to such property and liabilities, to the Scottish Ministers in connection with the transfer or sharing of functions of a Minister of the Crown to the Scottish Ministers by virtue of this Act. This Act provides for the transfer or sharing of functions:
- a. by way of general transfer of functions (see the gloss of section 53 by sections 9, 32 and 51;
  - b. by textual amendment where legislative competence is also transferring;
  - c. by textual amendment where there is no transfer of legislative competence; and
  - d. where the consequential power in section 71 is used to transfer a function to the Scottish Ministers.

441 Without an amendment to section 60, the power in that section could not be used following a transfer of functions in the last three class of cases. The first category would be within the scope of the existing power as section 53 is glossed.

### Section 70: Transitional provision

442 A number of the sections in this Act provide for the transfer of functions from a Minister of the Crown to the Scottish Ministers. At the time of the transfer of the functions to the Scottish Ministers, there may be ongoing matters in relation to the exercise of that function e.g. legal proceedings against a Minister of the Crown. This section provides continuity at the point of transfer, so that anything in the process of being done by or in relation to a Minister of the Crown may be carried on by or in relation to the Scottish Ministers. And anything already done by or in relation to a Minister of the Crown has effect as if done by or in relation to the Scottish Ministers.

### Section 71: Power to make consequential, transitional and saving provisions

443 This section provides a regulation making power to make consequential amendments and transitional and saving provisions.

### Section 72: Commencement

444 This section details the commencement arrangements for the Act (see paragraph 460).

### Section 73: Short title

445 This section states that this Act may be cited as the Scotland Act 2016.

## Schedules

### Schedule 1: Disapplication of UK aggregates levy: further amendments

446 This schedule makes a number of consequential amendments to the Finance Acts 2001 and 2011 to reflect the disapplication of UK aggregates levy to Scotland.

### Schedule 2: Roads: consequential and related amendments

447 This schedule makes consequential and related amendments to the Road Traffic Regulation Act 1984 (“RTRA 1984”), the Road Traffic Act 1988 and to secondary legislation made under the RTRA 1984, the Scotland Act 1998 and the Government of Wales Act 2006.

448 Paragraphs 1 to 18 amend the RTRA 1984 as follows:

- a. section 15 (duration of orders etc. under section 14), by substituting references to the “national authority” for references to the “Secretary of State”;
- b. section 16 (supplementary provision as to orders etc under section 14), by substituting references to the “national authority” for references to the “Secretary of State”;
- c. section 17 (traffic regulation on special roads), by omitting procedural provisions which are rendered otiose by procedural amendments made by this Schedule to section 34 (regulations);
- d. section 24 (Secretary of State to establish crossings on certain roads), by substituting references to the “national authority” for references to the “Secretary of State”;
- e. section 25(6)(b) (meaning of crossing in section 25 includes a crossing established by the Secretary of State under section 24), by substituting references to the “national authority” for references to the “Secretary of State”;
- f. section 28 (stopping of vehicles at school crossings), by substituting references to the “national authority” for references to the “Secretary of State”;
- g. section 86 (speed limits for particular classes of vehicles), by substituting 'relevant authority' for 'national authority' in each place and omitting subsection (9);
- h. section 88 (temporary speed limits), by substituting 'relevant authority' for 'national authority' in each place;
- i. section 124(1) (purposes of Schedule 9 etc), by substituting references to the “national authority” for references to the “Secretary of State”;
- j. section 131 (application of road traffic enactments to Crown roads), by substituting references to the Secretary of State with references to the relevant authority (as defined by the amended section) so as to transfer to the Scottish Ministers the power to apply road traffic enactments to Crown roads in Scotland in relation to functions exercisable within devolved competence;
- k. section 134 (regulations), by making general procedural provision in relation to regulations made under the RTRA 1984 and other minor consequential amendments;
- l. section 142(1), by omitting the definition of “the Ministers” which is otiose;

- m. schedule 9 (special provisions as to certain orders), by inserting references to the “Scottish Ministers” in addition to the references to the Secretary of State or substituting references to the “national authority” for references to the “Secretary of State”, as appropriate, and making other related minor consequential amendments, in the following provisions:
- i. paragraph 1 (directions in relation to certain orders);
  - ii. paragraph 2(b) (directions prohibiting certain orders);
  - iii. paragraph 3(1) (power of Secretary of State to make order instead of authorised authority);
  - iv. paragraph 4 (arrangements for making order of the Secretary of State effective);
  - v. paragraph 6(1) (transfer of operation of parking place to local authority from Secretary of State);
  - vi. paragraph 7 (variation or revocation of order by Secretary of State);
  - vii. paragraph 8 (matters as to which Secretary of State is to be satisfied before making order);
  - viii. paragraph 9 (circumstances in which paragraph 8 does not apply);
  - ix. paragraph 12A (disapplication of Article 2 of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999);
  - x. paragraph 13(1) (cases where consent is required);
  - xi. paragraph 15 (Secretary of State’s power to add to or remove from orders for which consent is required);
  - xii. paragraph 16 (consent to order with modifications);
  - xiii. paragraph 17 (general consent);
  - xiv. paragraph 18 (orders to be by statutory instrument);
  - xv. paragraph 20(1) (consultation);
  - xvi. paragraph 21 (regulations as to procedure for orders of local authorities);
  - xvii. paragraph 24 (regulations as to procedure for orders of Secretary of State etc);
  - xviii. paragraph 26 (objections to exercise of reserve power under paragraph 2);
  - xix. paragraph 28 (power to vary or revoke order not affected by related exercise of a reserve power);
  - xx. paragraph 29 (power to vary or revoke an order under paragraph 7 not affected by paragraph 8); and
  - xxi. paragraph 32 (consultation with traffic commissioners).

449 Paragraph 19 amends section 195 Road Traffic Act 1988 to make clear that any regulations made by Scottish Ministers under sections 20(5), 36(5) and 40(1) are subject to the negative procedure in the Scottish Parliament.

- 450 Paragraphs 20 to 22 amend the Road Traffic (Temporary Restrictions) Procedure Regulations 1992 (S.I. 1992/1215) by substituting references to the “national authority” for references to the “Secretary of State”.
- 451 Paragraphs 23 to 25 amend the Zebra, Pelican and Puffin Pedestrian Crossings Regulations and General Directions 1997 (S.I. 1997/2400) by substituting references to the “national authority” for references to the “Secretary of State”.
- 452 Paragraph 26 makes minor consequential amendments to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).
- 453 Paragraphs 27 to 29 amend the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999 (S.I. 1999/1750) by omitting the entries relating to the RTRA 1984 and secondary legislation made under that Act, together with section 36(5) of the RTA 1988. These entries will become otiose in consequence of the amendments made by other sections in the Act.
- 454 Paragraphs 30 to 32 amend the Traffic Signs Regulations and General Directions 2002 (S.I. 2002/3113) by substituting references to the “national authority” for references to either the “Secretary of State” or the “Secretary of State or the Scottish Ministers”.
- 455 Paragraph 33 amends the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2005 (S.I. 2005/849) by omitting references to certain functions so far as they are exercisable by virtue of section 22C of the RTRA 1984. These references will become otiose in consequence of the amendments made by sections in this Act.
- 456 Paragraph 34 includes a provision which means that if the Secretary of State replaces the current regulations and general directions on traffic signs, the new provisions can, if the Scottish Ministers consent, apply in relation to Scotland, in addition to England and Wales. Replacement Traffic Signs Regulations and General Directions (TSRGD) are currently being prepared for spring 2016. This power can only be used once, and will only be used if the traffic sign provisions are commenced before the TSRGD 2016 is made.
- 457 Once section 19 of the Road Safety Act 2006 which amends section 87 of the Road Traffic Regulation Act 1984 is commenced, the Secretary of State will have the power to make regulations which prescribe the purposes and circumstances in which vehicles are exempt from speed limits. Paragraph 35 of Schedule 2 to this Act provides that in relation to the first statutory instrument made in exercise of this power, the Secretary of State may, as well as making provision in relation to vehicles used on roads in England, make provision in relation to vehicles used on roads in Scotland otherwise than in connection with reserved matters. The Secretary of State is required to have the consent of the Scottish Ministers before exercising the power to make regulations in this way.
- 458 When making provision under paragraph 35 of Schedule 2 to this Act, the Secretary of State may also exercise one or more of the traffic signs powers mentioned in paragraph 34(3) to make provision in relation to roads in Scotland. The Secretary of State is required to have the consent of the Scottish Ministers before exercising his powers in this way.
- 459 The Secretary of State may only exercise the powers referred to in paragraph 34 of Schedule 2 to this Act if he or she could have exercised them but for the amendments made by sections 41 and 42 and Part 1 of Schedule 2 to this Act.

## Commencement

460 Commencement of the provisions of this Act is specified in section 72. Sections 1, 36(1), (5), (6) and (9) to (12) and Part 7 of the Act came into force on the day on which this Act was passed. The other provisions of section 36 come into force on the date specified under section 90B(20) of the 1998 Act. The remainder of the provisions will come into force either 2 months from the day on which this Act was passed, or on such a day as the Secretary of State (or in the case of sections 20, 21 and 67, the Treasury) may appoint by regulations.

## Related documents

461 The following documents are relevant to this Act and can be read at the stated locations:

- Scotland Act 1998: <http://www.legislation.gov.uk/ukpga/1998/46>
- Scotland Act 2012: <http://www.legislation.gov.uk/ukpga/2012/11>
- The Smith Commission, 2014: <https://www.smith-commission.scot/smith-commission-report/>
- Scotland in the United Kingdom: An enduring settlement, 2015: <https://www.gov.uk/government/publications/scotland-in-the-united-kingdom-an-enduring-settlement>
- The agreement between the Scottish Government and the United Kingdom Government on the Scottish Government's fiscal framework, 2016: <https://www.gov.uk/government/publications/the-agreement-between-the-scottish-government-and-the-united-kingdom-government-on-the-scottish-governments-fiscal-framework>



## Annex A - Hansard References

462 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	28 May 2015	<a href="#">Vol. 569 Col. 200</a>
Second Reading	8 June 2015	<a href="#">Vol. 596 Col. 916</a>
Public Bill Committee Day 1	15 June 2015	<a href="#">Vol. 597 Col. 24</a>
Public Bill Committee Day 2	29 June 2015	<a href="#">Vol. 597 Col. 1231</a>
Public Bill Committee Day 3	30 June 2015	<a href="#">Vol. 597 Col. 1339</a>
Public Bill Committee Day 4	6 July 2015	<a href="#">Vol. 598 Col. 62</a>
Report and Third Reading	9 November 2015	<a href="#">Vol. 602 Col. 46</a>
<i>House of Lords</i>		
Introduction	10 November 2015	<a href="#">Vol. 765 Col. 1935</a>
Second Reading	24 November 2015	<a href="#">Vol. 767 Col. 571</a>
Committee of the whole House Day 1	8 December 2015	<a href="#">Vol. 767 Col. 1440</a> and <a href="#">Vol. 767 Col. 1524</a>
Committee of the whole House Day 2	19 January 2016	<a href="#">Vol. 768 Col. 653</a> and <a href="#">Vol. 768 Col. 732</a>
Committee of the whole House Day 3	22 February 2016	<a href="#">Vol. 769 Col. 12</a> and <a href="#">Vol. 769 Col. 57</a>
Report Day 1	24 February 2016	<a href="#">Vol. 769 Col. 272</a> and <a href="#">Vol. 769 Col. 356</a>
Report Day 2	29 February 2016	<a href="#">Vol. 769 Col. 627</a>
Third Reading	21 March 2016	<a href="#">Vol. 769 Col. 2070</a>
Commons Consideration of Lords Amendments	23 March 2016	<a href="#">Vol. 138 Col. 1682</a>
Royal Assent	23 March 2016	House of Commons <a href="#">Vol. 138 Col. 1714</a>
		House of Lords <a href="#">Vol. 769 Col. 2520</a>

*These Explanatory Notes relate to the Scotland Act 2016 (c. 11) which received Royal Assent on 23 March 2016*

## Annex B - Progress of Bill Table

463 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 1	Clause 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 1	Clause 2	Clause 2	Clause 2	Clause 2	Clause 2
Section 1	Clause 3	Clause 3	Clause 3	Clause 3	Clause 3
Section 1	Clause 4	Clause 4	Clause 4	Clause 4	Clause 4
Section 1	Clause 5	Clause 5	Clause 5	Clause 5	Clause 5
Section 1	Clause 6	Clause 6	Clause 6	Clause 6	Clause 6
Section 1	Clause 7	Clause 7	Clause 7	Clause 7	Clause 7
Section 1	Clause 8	Clause 8	Clause 8	Clause 8	Clause 8
Section 1			Clause 9	Clause 9	Clause 9
Section 1	Clause 9	Clause 9	Clause 10	Clause 10	Clause 10
Section 1	Clause 10	Clause 10	Clause 11	Clause 11	Clause 11
Section 1	Clause 11	Clause 11	Clause 12	Clause 12	Clause 12
Section 2	Clause 12	Clause 12	Clause 13	Clause 13	Clause 13
Section 2	Clause 13	Clause 13	Clause 14	Clause 14	Clause 14
Section 2	Clause 14	Clause 14	Clause 15	Clause 15	Clause 15
Section 2	Clause 15	Clause 15	Clause 16	Clause 16	Clause 16
Section 2	Clause 16	Clause 16	Clause 17	Clause 17	Clause 17
Section 2	Clause 17	Clause 17	Clause 18	Clause 18	Clause 18
Section 2	Clause 18	Clause 18	Clause 19	Clause 19	Clause 19
Section 2					Clause 20
Section 2					Clause 21
Section 3	Clause 19	Clause 19	Clause 20	Clause 20	Clause 22
Section 3	Clause 20	Clause 20	Clause 21	Clause 21	Clause 23
Section 3	Clause 21	Clause 21	Clause 22	Clause 22	Clause 24
Section 3	Clause 22	Clause 22	Clause 23	Clause 23	Clause 25
Section 3	Clause 23	Clause 23	Clause 24	Clause 24	Clause 26
Section 3			Clause 25	Clause 25	Clause 27
Section 3			Clause 26	Clause 26	Clause 28
Section 3	Clause 24	Clause 24	Clause 27	Clause 27	Clause 29
Section 3	Clause 25	Clause 25	Clause 28	Clause 28	Clause 30

*These Explanatory Notes relate to the Scotland Act 2016 (c. 11) which received Royal Assent on 23 March 2016*

<b>Section of the Act</b>	<b>Bill as Introduced in the Commons</b>	<b>Bill as amended in Committee in the Commons</b>	<b>Bill as introduced in the Lords</b>	<b>Bill as amended in Committee in the Lords</b>	<b>Bill as amended on Report in the Lords</b>
Section 3	Clause 26	Clause 26	Clause 29	Clause 29	Clause 31
Section 3	Clause 27	Clause 27	Clause 30	Clause 30	Clause 32
Section 3	Clause 28	Clause 28	Clause 31	Clause 31	Clause 33
Section 3	Clause 29	Clause 29	Clause 32	Clause 32	Clause 34
Section 3	Clause 30	Clause 30	Clause 33	Clause 33	Clause 35
Section 4	Clause 31	Clause 31	Clause 34	Clause 34	Clause 36
Section 4	Clause 32	Clause 32	Clause 35	Clause 35	Clause 37
Section 4			Clause 36	Clause 36	Clause 38
Section 4	Clause 33	Clause 33	Clause 37	Clause 37	Clause 39
Section 4	Clause 34	Clause 34	Clause 38	Clause 38	Clause 40
Section 4	Clause 35	Clause 35	Clause 39	Clause 39	Clause 41
Section 4	Clause 36	Clause 36	Clause 40	Clause 40	Clause 42
Section 4	Clause 37	Clause 37	Clause 41	Clause 41	Clause 43
Section 4	Clause 38	Clause 38	Clause 42	Clause 42	Clause 45
Section 4	Clause 39	Clause 39	Clause 43	Clause 43	Clause 46
Section 4	Clause 40	Clause 40	Clause 45	Clause 45	Clause 47
Section 4	Clause 41	Clause 41	Clause 46	Clause 46	Clause 48
Section 4	Clause 42	Clause 42	Clause 47	Clause 47	Clause 49
Section 4	Clause 43	Clause 43	Clause 48	Clause 48	Clause 50
Section 4	Clause 45	Clause 45	Clause 49	Clause 49	Clause 51
Section 4			Clause 50	Clause 50	Clause 52
Section 5	Clause 46	Clause 46	Clause 51	Clause 51	Clause 53
Section 5	Clause 47	Clause 47	Clause 52	Clause 52	Clause 54
Section 5	Clause 48	Clause 48	Clause 53	Clause 53	Clause 55
Section 5	Clause 49	Clause 49	Clause 54	Clause 54	Clause 56
Section 5	Clause 50	Clause 50	Clause 55	Clause 55	Clause 57
Section 5	Clause 51	Clause 51	Clause 56	Clause 56	Clause 58
Section 5	Clause 52	Clause 52	Clause 57	Clause 57	Clause 59
Section 5	Clause 53	Clause 53	Clause 58	Clause 58	Clause 60
Section 5	Clause 54	Clause 54	Clause 59	Clause 59	Clause 61
Section 5	Clause 55	Clause 55	Clause 60	Clause 60	Clause 62
Section 6	Clause 56	Clause 56	Clause 61	Clause 61	Clause 63
Section 6	Clause 57	Clause 57	Clause 62	Clause 62	Clause 64
Section 6	Clause 58	Clause 58	Clause 63	Clause 63	Clause 65
Section 6			Clause 64	Clause 64	Clause 66

*These Explanatory Notes relate to the Scotland Act 2016 (c. 11) which received Royal Assent on 23 March 2016*

<b>Section of the Act</b>	<b>Bill as Introduced in the Commons</b>	<b>Bill as amended in Committee in the Commons</b>	<b>Bill as introduced in the Lords</b>	<b>Bill as amended in Committee in the Lords</b>	<b>Bill as amended on Report in the Lords</b>
Section 7	Clause 59	Clause 59	Clause 65	Clause 65	Clause 67
Section 7	Clause 60	Clause 60	Clause 66	Clause 66	Clause 68
Section 7	Clause 61	Clause 61	Clause 67	Clause 67	Clause 69
Section 7	Clause 62	Clause 62	Clause 68	Clause 68	Clause 70
Section 7	Clause 63	Clause 63	Clause 69	Clause 69	Clause 71
Section 7	Clause 64	Clause 64	Clause 70	Clause 70	Clause 72
Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1
Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2
Schedule 2					Part 1
Schedule 2					Part 2

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