

SCOTLAND BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Lords Amendments to the Scotland Bill, as brought from the House of Lords on 24 April 2012. They have been prepared by the Scotland Office in order to assist the reader of the Bill and the Lords Amendments and to help inform debate on the Lords Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These notes, like the Lords Amendments themselves, refer to HL Bill 79, the Bill as first printed for the Lords.
3. These notes need to be read in conjunction with the Lords Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Lords Amendments.
4. All the Lords Amendments were in the name of the Minister except for Lords Amendments 10 and 11 which were supported by the Government.

COMMENTARY ON LORDS AMENDMENTS

Lords Amendment 1

5. Lords Amendment 1 is a minor technical amendment to clause 3 which would replace the textual amendment made in that clause to section 113 of the Scotland Act 1998. It improves the drafting but achieves the same effect.

Lords Amendment 2

6. Lords Amendment 2 would remove clause 7 which makes provision in relation to the partial suspension of Acts of the Scottish Parliament which are subject to scrutiny by the Supreme Court. This clause permits a new limited reference procedure under which a Bill may be given Royal Assent where only part of the Bill is subject to a reference to the Supreme Court under section 33 of the 1998 Act.

These notes relate to the Lords Amendments to the Scotland Bill as brought from the House of Lords on 24 April 2012 [Bill 334]

Lords Amendments 3 and 4

7. Lords Amendment 3 would remove clause 10 which makes provision for the continued effect of provisions where legislative competence is conferred on the Scottish Parliament for a limited period only. It must be read with Lords Amendment 4, which seeks to make similar but expanded provision.

8. Lords Amendment 4 would replace clause 10 and would apply where there is an alteration to the matters which are reserved matters or to Schedule 4, the effect of which is that a provision of an Act of the Scottish Parliament ceases to be within legislative competence. The new clause would protect that provision, so that it does not by reason of the alteration in the Parliament's competence cease to have effect (unless an enactment provides otherwise).

Lord Amendments 5 and 26

9. Lords Amendments 5 and 26 would remove clause 12 and Schedule 2, in relation to insolvency, which has the effect of giving to the UK Parliament the sole power to legislate in respect of certain elements of the process for the winding up of companies in Scotland.

Lords Amendment 6

10. Lords Amendment 6 would remove clause 13 which amends Section G2 of Part 2 of Schedule 5 to the Scotland Act 1998 to give to the UK Parliament the sole power to legislate for regulating all health professionals in Scotland and not just those regulated by the enactments listed in the reservation in Section G2.

Lords Amendments 7 and 8

11. Lords Amendments 7 and 8 would make a small extension to clause 15: all references to the "Scottish Executive" in the Scotland Act 1998 would be substituted with references to the "Scottish Government", including the one place where "Scottish Executive" is not preceded by "the".

Lords Amendment 9

12. Lords Amendment 9 would remove clause 17 which relates to questions of whether acts or failures to act by the Lord Advocate, when acting as the head of the system of criminal prosecution in Scotland, are compatible with Convention rights and Community law. Provisions on the same issues would be made by the new clauses inserted by Lords Amendments 19 to 22.

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Lords Amendments 10 and 11

13. Lords Amendments 10 and 11 would amend clause 22 to change the title of the ‘Scottish Crown Estate Commissioner’ to the ‘Crown Estate Commissioner with special responsibility for Scotland’.

Lords Amendments 12 to 16

14. Lords Amendment 14 would amend clause 25 to devolve to the Scottish Ministers the regulation-making power contained in section 86 of the Road Traffic Regulation Act 1984 (“the 1984 Act”). This power would allow the Scottish Ministers to vary the provisions of Schedule 6 to the 1984 Act so as to set speed limits for particular classes of vehicles on roads in Scotland (for example, for cars towing caravans or for goods vehicles) so that such vehicles would be subject to a different speed limit in Scotland than in England and Wales.

15. Lords Amendments 12 and 13 are consequential on Lords Amendment 14 and would ensure that speed limits set by Scottish Ministers in regulations made under section 86 of the 1984 Act would fall within the definition of the “Scottish national speed limit” for the purposes of specifying signs for that limit.

16. Lords Amendments 15 and 16 are consequential on the provision made in Amendment 14.

Lords Amendment 17

17. Lords Amendment 17 would remove clause 27 which permits a single piece of subordinate legislation, made by UK Ministers or following consideration by the UK Parliament and dealing with the observation or implementation of international obligations, to have effect throughout the United Kingdom, irrespective of whether or not it deals with matters falling within devolved competence.

Lords Amendment 18

18. Lords Amendment 18 would insert a new clause requiring the Secretary of State to publish a report on the implementation and operation of Part 3 of the Bill on finance within one year of the Bill becoming an Act and thereafter an annual report until a year after the tax and borrowing powers are fully transferred to the Scottish Parliament. Copies of such reports must be laid before both Houses of Parliament and sent to Scottish Ministers, who must lay the reports before the Scottish Parliament.

19. The clause would also require Scottish Ministers to make and lay reports of the same kind before the Scottish Parliament on an annual basis and to provide a copy of each report to the Secretary of State to lay before both Houses of Parliament.

20. The clause would also set out the areas that each report must include. These are: an update on all aspects of progress towards the commencement of provisions

in Part 3 of the Bill since the previous report, detail of any steps towards commencement which the maker of the report proposes should be taken, an assessment of the operation of the provisions which have been commenced, an assessment of the operation of powers to devolve taxes to the Scottish Parliament or changes to the powers of the Scottish Ministers to borrow, or of any other changes to the finance provisions in this Bill, the effect of transferring tax powers on the Scottish block grant and any other matters concerning sources of revenue for the Scottish Administration which the maker of the report considers should be brought to the attention of the UK or Scottish Parliaments.

Lords Amendments 19 to 23

21. Lords Amendments 19 to 23 provide a new appeal right to the Supreme Court on compatibility issues. The new appeal right would only apply to questions raised in Scottish criminal proceedings.

22. Lords Amendment 19 would amend the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”). It would insert a definition of a “compatibility issue” as a question raised in criminal proceedings as to:

(a) whether a public authority has acted in way that is unlawful under section 6(1) of the Human Rights Act 1998 or incompatible with European Union law;

(b) whether an Act of the Scottish Parliament, or a provision of such an Act, is incompatible with the European Convention on Human Rights or with EU law.

23. The Amendment would give the Advocate General for Scotland a right to take part in criminal proceedings so far as they relate to a compatibility issue. The Amendment would also amend section 288A of the 1995 Act to allow the Advocate General for Scotland, in certain circumstances, to refer a compatibility issue to the High Court for their opinion following the conclusion of trial proceedings.

24. Lords Amendment 20 would insert a new section into the 1995 Act providing powers for compatibility issues to be referred to the High Court and to the Supreme Court in certain circumstances. A lower court would be able to refer a compatibility issue to the High Court, acting as an appeal court. The Lord Advocate and the Advocate General for Scotland could require a lower court to refer a compatibility issue to the High Court, acting as an appeal court. The High Court could then determine the issue itself or refer the issue to the Supreme Court. If the High Court, acting as an appeal court, were considering a compatibility issue, other than on a reference, then the High Court could refer the compatibility issue to the Supreme Court. In these circumstances the Lord Advocate or Advocate General for Scotland could require the High Court to refer the compatibility issue to the Supreme Court.

25. Lords Amendment 21 would insert a further new clause. Subsection (2) of that clause would amend section 57(3) of the Scotland Act 1998 so that acts or failures to act by the Lord Advocate in prosecuting any offence, or as head of the

system of criminal prosecutions in Scotland, are not rendered *ultra vires* by virtue of section 57(2) of the 1998 Act.

26. Subsection (3) of the clause would make amendments to section 102 of the Scotland Act 1998 so that the Supreme Court would only have power to determine compatibility issues and would then have to remit the matter back to the High Court.

27. Subsection (4) would amend the definition of a “devolution issue” in paragraph 1 of Schedule 6 to the Scotland Act 1998 so that a matter which is a compatibility issue cannot also be a devolution issue.

28. Subsections (5) and (6) would amend the 1995 Act to provide a right to appeal a compatibility issue from the High Court, acting as an appeal court, to the Supreme Court. Such an appeal could only be made with the permission of the High Court or the Supreme Court (although such permission would not be needed if the compatibility issue had been referred to the High Court by the lower court at the request of the Lord Advocate or Advocate General for Scotland). An application would have to be made to the High Court for permission to appeal within 28 days of the determination of the appeal or such longer period as the Court considers equitable. If the High Court refuses permission, an application to the Supreme Court would have to be made within 28 days of the date on the High Court’s refusal of permission. Again the time limit can be extended if the Court considers this equitable.

29. Lords Amendment 21 would provide that the new appeal right to the Supreme Court can only apply to the determination of a compatibility issue. The Supreme Court may reformulate the compatibility issue but it can only do this for the purpose of determining the compatibility issue. The powers of the Supreme Court would only be able to be exercised to determine the compatibility issue and once the Court has done this it would have to remit the proceedings to the High Court.

30. Lords Amendment 22 would amend Schedule 6 to the Scotland Act 1998 to provide for time limits for appeals to the Supreme Court in relation to devolution issues arising in criminal proceedings. An application would have to be made to the High Court for permission to appeal within 28 days of determination of the appeal or such longer period as the Court considers equitable. If the High Court refuses permission, an application to the Supreme Court would have to be made within 28 days of the date on the High Court’s refusal of permission. Again the time limit can be extended if the Court considers this equitable. The time limits would be the same as those that would apply in relation to compatibility issue appeals to the Supreme Court in criminal proceedings by virtue of Amendment 21.

31. Lords Amendment 23 would insert a new clause requiring the Secretary of State to arrange a review of the provision made by the clauses to be inserted by Lords Amendments 19 to 22. The review would take place within 3 years of the new appeal right for compatibility issues coming into force, but could take place earlier if the Secretary of State considered this to be appropriate. The Amendment would also give

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the Secretary of State power to make an order amending the provision that would be made by Lords Amendments 19 to 22 and to make further provision about these matters. The first order made after the conclusion of the review would have to take account of the review. An order made by the Secretary of State would be subject to the affirmative resolution procedure.

Lords Amendments 24 and 25

32. Lords Amendments 24 and 25 make consequential amendments to clause 41 as a result of the provisions on the role of the Lord Advocate in Scottish criminal proceedings being moved to Part 4 of the Bill by Lords Amendments 19 to 23.

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