

SCOTLAND BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Scotland Bill as introduced in the House of Commons on 28 May 2015 (Bill 3).

- These Explanatory Notes have been prepared by the Scotland Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill. So where a provision of the Bill does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

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Overview of the Bill

- 1 The Scotland Bill will deliver the Smith Commission Agreement, which was published in November 2014 having gained all-party agreement in Scotland.
- 2 The Bill is an enabling Bill and the majority of the provisions in the Bill set out the powers that are being transferred to the Scottish Parliament and or the Scottish Ministers. In particular the Scotland Bill amends sections of the Scotland Act 1998 and rebalances the devolved and reserved responsibilities between the administrations. The Bill 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 the Bill:
 - declares that a Scottish Parliament and a Scottish Government are considered permanent parts of the UK's constitutional arrangements, and that the UK Parliament will not normally legislate in devolved areas 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 the 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 Government 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 increases the financial accountability of the Scottish Parliament. A new fiscal framework will be agreed for Scotland to accompany the further powers included in this Bill, in order to set and coordinate sustainable fiscal policy for the UK as a whole. This will give the Scottish Government the tools to manage the powers in this Bill while ensuring consistency with the fiscal framework in the rest of the UK. It is intended that that framework will be negotiated in parallel to the passage of this Bill.

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. The UK Government produced draft clauses and a command paper that indicated how the Agreement would be implemented in January 2015.
- 7 The policy objective of the Bill is to implement the Smith Commission Agreement. This will increase the Scottish Parliament's ability to make autonomous choices that benefit the people of Scotland; and to be accountable for those decisions. The Bill will devolve a wide range of powers to the Scottish Parliament and Scottish Government.

Legal background

- 8 The Bill is an enabling Bill and the majority of the provisions in the Bill set out the powers that are being transferred to the Scottish Parliament and or the Scottish Ministers. In particular the Scotland Bill amends sections of the Scotland Act 1998 and rebalances the devolved and reserved responsibilities between the administrations. The Bill 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 The Bill will have UK extent and will require 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. Given the nature of the Bill, it is not anticipated that any issues will arise in relation to the Scottish Government sponsoring a Legislative Consent Motion.

Commentary on provisions of Bill

- 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 Act. For the purposes of this Bill, 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. Reserved matters are defined in Schedule 5 to the Scotland Act. Reserved matters are areas of law where the UK Parliament has exclusive competence to legislate. For example, the Scottish Parliament cannot not 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 the reservation of oil and gas. In that case, the Scottish Parliament can legislate for the manufacture of gas. This Bill alters Schedule 5 of the Scotland Act (see Parts 1 – 4) to give the Scottish Parliament more powers to legislate. This is done by amending the reservation 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 Bill also addresses the transfer of functions to the Scottish Ministers.

Part 1: Constitutional Arrangements

Chapter 1: The Scottish Parliament and the Scottish Government

Clause 1: The Scottish Parliament and the Scottish Government

- 12 Clause 1 amends section 1 and section 44 of the Scotland Act 1998 (“the 1998 Act”). It inserts new subsections which provide that a Scottish Parliament and a Scottish Government are recognised as permanent parts of the United Kingdom’s constitutional arrangements.
- 13 Subsection (1) inserts a new subsection into section 1 of the 1998 Act which provides that a Scottish Parliament is recognised as a permanent part of the United Kingdom’s constitutional arrangements.
- 14 Subsection (2) inserts a new subsection into section 44 of the 1998 Act which provides that a Scottish Government is recognised as a permanent part of the United Kingdom’s constitutional arrangements. The remainder of subsection (2) re-formats section 44 of the 1998 Act.

Chapter 2: The Sewel convention

Clause 2: The Sewel convention

- 15 This clause inserts subsection (8) into section 28 of the 1998 Act so it is recognised in statute 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 for devolved matters in Scotland without the consent of the Scottish Parliament.
- 16 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

Clause 3: Elections

- 17 Clause 3 splits the B3 reservation into two parts: section B3(A) and section B3(B).
- 18 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.
- 19 New section B3(B) reserves certain matters in relation to elections for membership of the Scottish Parliament and local government elections in Scotland.
- 20 Paragraph 1 reserves the subject-matter of sections 2(2A), 2(2B) and 12A of the Scotland Act 1998.
- 21 Paragraph 2 reserves:
 - a. the combination of polls at elections or referendums that are outside the legislative

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- 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 .
- 22 Paragraph 3 reserves the timing of ordinary local government elections in Scotland where the poll at such an election would otherwise be held on the same day as a Scottish Parliamentary ordinary general election.
- 23 The reservation 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.
- 24 The reservation 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.
- 25 The reservation covers controlled expenditure and campaign expenditure, but only in relation to elections that are combined with elections which are not within the legislative competence of the Scottish Parliament.
- 26 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.

Clause 4: Power to make provision about elections

- 27 This clause substitutes new sections 12 and 12A of the Scotland Act 1998 (“the 1998 Act”).
- 28 Section 12
- 29 The executive functions given to the Scottish Ministers under the new subsection 12(1) include those 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) as well as those 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). These powers have most recently been exercised by the Scottish Ministers in relation to the Scottish Parliament (Elections etc.) Order 2010 (S.I. 2010 No.2999).
- 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 but only where:
 - i. the poll at an ordinary general Scottish Parliamentary election takes place on the same day as a poll at a local government by-election in Scotland;

- ii. the poll at a Scottish Parliamentary by-election takes place on the same day as a poll at an ordinary local government election in Scotland;
 - iii. the poll at a Scottish Parliamentary by-election takes place on the same day as a poll at a local government by-election in Scotland;
 - iv. the poll at an extraordinary general Scottish Parliamentary election takes place on the same day as a poll at an ordinary local election in Scotland; or
 - v. the poll at an extraordinary general Scottish Parliamentary election takes place on the same day as a poll at a local government by-election in Scotland.
- 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 excludes from the executive competence conferred on the Scottish Ministers by this clause, any provision about the use of the Individual Electoral Registration Digital Service for applications for registration or for verifying information contained in applications for registration. The new subsection 12(8) provides for the meaning of the 'digital service'. Regulation 3(1) of the Representation of the People (Scotland) Regulations 2001 states that 'digital service' means the Individual Electoral Registration Digital Service, which is the digital service provided by the Lord President of the Council for the purpose of processing online applications under sections 10ZC and 10ZD of the Representation of the People Act 1983 and for the purpose of verifying information under regulation 29ZA of that Act. Clause 6 separately provides for certain functions of the Secretary of State relating to the Individual Electoral Registration Digital Service, in respect of elections to the Scottish Parliament and local government elections in Scotland, to be exercisable by the Scottish Ministers concurrently with the Secretary of State, subject to the agreement of the Secretary of State.
- 33 Subsection (5) 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.
- 34 Subsection (5)(a) of new section 12 enables the established statutory procedures for elections to be applied, subject to any necessary alterations.
- 35 Subsection (5)(b) of new section 12 enables consequential modification of any legislative provision relating to the registration of Scottish Parliamentary or local government electors.
- 36 Subsection (6) of new section 12 provides that the return of a member at an election to the Scottish Parliament may be questioned only under Part III (legal proceedings) of the Representation of the People Act 1983, as applied and modified by an order under subsection (1).

- 37 Subsection (7) of new section 12 enables the Scottish Ministers to make orders as regards the designation of regional returning officers.
- 38 Section 12A
- 39 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.
- 40 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.
- 41 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.
- 42 Subsection (5)(a) of new section 12A enables the established statutory procedures for elections to be applied, subject to any necessary alterations.
- 43 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.
- 44 Subsection (2) of the clause 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.

Clause 5: Timing of elections

- 45 Subsections (1) to (3), amend section 2 of the 1998 Act, by providing that section 2(2) 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, or within the two months before (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.
- 46 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 can make an order specifying the alternative day on which the poll shall be held. This is to ensure that a Scottish Parliamentary ordinary general election cannot be held on the same day as, or within the two months before the other specified polls, as this could impact upon participation levels at those polls. It also means that the timetables for these elections do not overlap to the extent which could cause confusion for voters if, for example, poll cards for the later poll issued to electors shortly before polling day for the earlier poll.
- 47 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).
- 48 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 or within two months before, a UK Parliamentary general election or a European Parliamentary general

election.

- 49 Subsection (6) provides that an order made by the Scottish Ministers under subsection (2B) will be subject to the affirmative procedure in the Scottish Parliament.
- 50 Subsections (7) to (9) amend section 43 of the Representation of the People Act 1983 by inserting new subsections (1ZA), (1ZB), (1ZC) and (1ZD).
- 51 New subsection (1ZA) 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 (1ZB) provides that subsection (1ZA) does not apply to a local government election in Scotland which is to fill a casual vacancy.
- 53 New subsection (1ZC) 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.
- 54 New subsection (1ZD) provides that an order made by the Scottish Ministers will be subject to the affirmative procedure in the Scottish Parliament.

Clause 6: Electoral registration: the digital service

- 55 Subsection (2) amends section 53 of the Representation of the People Act 1983 (“the 1983 Act”) to provide for certain functions of the Secretary of State relating to the Individual Electoral Registration Digital Service (“the Digital Service”), so far as they are exercisable in relation to Scotland, to be exercisable by the Scottish Ministers concurrently with the Secretary of State. 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 the Secretary of State, and (c) by Scottish Statutory Instrument subject to the negative procedure in the Scottish Parliament. New subsection (14) of section 53 of the 1983 Act modifies section 53(5) to (7) of that Act so that the requirements there (such as consultation) apply in relation to the exercise by the Scottish Ministers of the power contained in paragraph 1A of Schedule 2 to the 1983 Act.
- 56 Subsection (3) confers a new regulation making power which enables the Secretary of State or the Scottish Ministers to prescribe in regulations, in relation to elections to the Scottish Parliament and local government elections in Scotland, new categories of persons who may use the Digital Service (i.e. in addition to those categories of persons who were able to use the Digital Service on the date of commencement of clause 6. Insofar as these functions are exercisable by the Scottish Ministers they: (i) are exercisable concurrently with the Secretary of State; (ii) may only be made with the agreement of the Secretary of State; and (iii) are exercisable by Scottish Statutory Instrument subject to the negative procedure in the Scottish Parliament.

Clause 7: Expenditure in connection with elections

- 57 This clause amends section 155 and section 156 of the Political Parties, Elections and Referendums Act 2000 (PPERA), so that certain powers of the Secretary of State to vary sums in PERA transfer to the Scottish Ministers.
- 58 Subsection (3) 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 PERA so that the Secretary of State will no longer have such power where the sum relates to an election the conduct of which is in the legislative competence of the Scottish Parliament.

- 59 Subsection (4) inserts a new subsection (1A) into section 155 to allow Scottish Ministers to vary

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sums in Part 5 and Part 6 of and Schedules 9, 10 or 11 to PPERA where the sum relates to an election the conduct of which is in the legislative competence of the Scottish Parliament.

- 60 Subsection (5) amends subsection 155(2) to provide that these sums can only be varied by the Scottish Ministers to take into account inflation or on the recommendation of Electoral Commission.
- 61 In relation to the sums in Schedule 11 to PPERA, subsection (6) of clause 7 inserts a new subsection in section 155 that has the effect of requiring Scottish Ministers to vary these sums to take account of inflation in each session of the Scottish Parliament over 2 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.
- 62 Subsection (8) inserts new subsection (2A) into section 156 of PPERA so that any order made by Scottish Ministers under section 155(2)(b) of PPERA would be subject to the negative procedure in the Scottish Parliament.
- 63 Subsection (9) has the effect that any order made by Scottish Ministers under section 155(2)(a) of PPERA will not be subject to any Parliamentary procedure.
- 64 Subsection (10) has the effect that an order by the Scottish Ministers under section 155 of PPERA may contain consequential incidental, supplementary or transitional provisions or savings, and may make different provision for different cases.
- 65 Subsection (11) 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 PPERA.

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

- 66 This clause 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.
- 67 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.
- 68 Subsections (3) to (5) amend Schedule 1 to the 1998 Act so that the Local Government Boundary Commission for Scotland will report to 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 for 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.

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- 69 Subsections (6) and (8) make minor consequential textual amendments to Schedule 1 which are required as a result of these changes.
- 70 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).

Clause 9: Minor and consequential amendments: elections etc

- 71 This clause makes minor changes to existing legislation which are consequential to the changes made by this Part of the Bill or which are otherwise obsolete.
- 72 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). The effect of this Order is replaced by the amendment to section B3 in Part 2 of Schedule 5 to the 1998 Act and by clause 4.

Chapter 4: Legislation by the Parliament

Clause 10: Super-majority requirement for certain legislation

- 73 Clause 10 requires certain types of electoral legislation to be passed by a two-thirds majority of the Scottish Parliament.
- 74 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 voted on whether, in his view, the provisions of the Bill relate to a protected subject matter. The Presiding Officer must make a statement to this effect.
- 75 Subsection (5) inserts new subsections (4) and (5) of section 31 to the 1998 Act which set out when a provision of a Bill relates to a protected subject matter for the purpose of the clause. 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 changed 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.
- 76 Subsection (6) inserts a new section 31A of the 1998 Act which provides that a Bill which the Presiding Officer has decided 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.
- 77 Subsection (7) 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 on the question of whether a Bill, or a provision of a Bill, relates to a protected subject matter.
- 78 Subsection (8) 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 a provision of a Bill relates to a protected subject matter.
- 79 Subsection (2) of new section 32A provides that such a reference must 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.
- 80 Subsections (11) and (12) amend section 36 of the 1998 Act to provide for the circumstances in which standing orders shall provide that a Bill may be reconsidered should the Supreme Court

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decide whether a Bill or a provision of a Bill relates to a protected subject matter.

- 81 Subsection (14) inserts new subsections (7) and (8) into section 36 of the 1998 Act. New subsection (7) has the effect that, whether a Bill has been amended on reconsideration under new subsections (4)(aa) or (4A) or not, the Bill is subject to a final stage at which it can be approved or rejected. By new subsection (8), various references to the passing of a Bill in the 1998 Act are to be read as references to the approval of the Bill. Among other things, this means that the provisions of this clause relating to Bills also apply to Bills that undergo reconsideration and approval.

Clause 11: Scope to amend Scotland Act 1998

- 82 Clause 11 amends Schedule 4 of the Scotland Act 1998.
- 83 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, sections of the 1998 Act is extended to sections which relate to the operation of the Scottish Parliament and Scottish Government.
- 84 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; and certain proceedings of the Parliament.
- 85 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.
- 86 The effect of new sub-paragraph 4(2)(c) of Schedule 4 will be that 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 (taxation) is also unchanged.
- 87 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 (miscellaneous and general) in relation to matters including the remuneration of members of the Parliament and Executive and arrangements for investigating complaints of maladministration.
- 88 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 (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.
- 89 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 Scotland Act 1998, which makes provision for the constituencies and regions for elections to the Scottish Parliament and the number of regional members of the Scottish Parliament.
- 90 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

These Explanatory Notes relate to the Scotland Bill as introduced in the House of Commons on 28 May 2015 (Bill 3)

to the Scotland Act 1998, which makes provision about the Scottish Parliamentary Corporate Body, including matters such as the property, staff and business of the Scottish Parliamentary Corporate Body.

- 91 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 Scotland Act 1998, 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.
- 92 Subsection 9(3) will amend the type of procedure to which orders under section 97 of the 1998 Act are subject.

Part 2: Tax

Chapter 5: Income tax

Clause 12: Power of Scottish Parliament to set rates of income tax

- 93 This clause 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.
- 94 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.
- 95 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.
- 96 Subsection (4) omits the requirement that a Scottish rate resolution specify only one rate.
- 97 Subsection (5) provides that all rates set by the Scottish Parliament must be a whole or half number or zero.
- 98 Subsection (6) amends the title of Section 80C Scotland Act 1998 to reflect the changes made by subsection (2).
- 99 Subsection (8) makes a consequential amendment of section 80A(1)(a) of that Act (overview of Part 4A).
- 100 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.
- 101 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).
- 102 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.
- 103 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).

- 104 Subsection (14) provides that the amendments made by the clause come into force on a day appointed by the Treasury by regulations.
- 105 Subsection (15) provides that the amendments made by the clause have effect in relation to a tax year appointed by the Treasury by regulations and subsequent tax years.
- 106 Subsection (16) provides that the day set under subsection (14) must precede the tax year set by subsection (15).

Clause 13: Amendments of Income Tax Act 2007

- 107 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.
- 108 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.
- 109 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.
- 110 Subsection (5) omits the provisions in ITA that provide the calculation of Scottish basic, higher and additional rates.
- 111 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.
- 112 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.
- 113 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.
- 114 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.
- 115 Subsection (13) updates the definition provision in ITA to reflect the changes made by clause 12 and this clause 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.
- 116 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.
- 117 Subsection (15) provides that the amendments made by clause 11 have effect from the tax year set by Treasury regulations as set out by clause 12 of this Bill.

Clause 14: Consequential amendments: income tax

- 118 This clause makes amendments to statute in consequence of clauses 12 and 13.
- 119 Subsection (1) amends section 110(2) 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.

- 120 Subsections (2) to (7) 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.
- 121 Currently individuals who pay Income Tax at the higher rate also pay CGT at the higher rate of 28%. As CGT remains a reserved matter so to ensure that the tax applies equally to all UK individuals, subsections (2) to (7) 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 the CGT rate of 28% will apply to a Scottish Income Tax payer if their income exceeds the UK Income Tax higher rate threshold.
- 122 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.
- 123 Subsections (8) to (11) provide the Treasury with the power, by regulations, to make consequential, transitional or saving provision in connection with clauses 12 and 13.

Chapter 6: Value added tax

Clause 15: Assignment of VAT

- 124 Clause 15 makes amendments to the Scotland Act 1998 (“the Scotland Act”) and to the Commissioners for Revenue and Customs Act 2005 (“the CRCA”).
- 125 Section 64 of the Scotland Act makes provision for the Scottish Consolidated Fund and for payments to be made into and from the fund. Clause 15(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.
- 126 Clause 15(3) inserts a new section, section 64A, into the Scotland Act.
- 127 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.
- 128 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.
- 129 Section 64A(3) outlines the calculation of the first 10 percentage points of the attributable standard rate VAT.
- 130 Section 64A(4) outlines the calculation of the first 2.5 percentage points of the attributable reduced rate VAT.
- 131 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.

132 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 clause 15(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.

133 Clause 15(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.

134 Section 19 of the CRCA provides that it is an offence to disclose information in contravention of section 18(1) the CRCA. Clause 15(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

135 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. Clauses 16 and 17 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.

Clause 16: Tax on carriage of passengers by air

136 This clause, along with clause 18 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.

137 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.

138 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.

Clause 17: Tax on commercial exploitation of aggregate

139 This clause, along with clause 18 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.

140 This clause 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 clause leaves the terms 'aggregate' and 'commercial exploitation' undefined, so that the Scottish

Parliament may decide its own definitions.

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

142 In new section 80M:

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

144 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.

145 Subsection (2) of this clause 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.

Clause 18: Devolved taxes: further provision

146 This clause makes a minor consequential amendment to the Scotland Act 1998 (“SA 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.

Part 3: Welfare Benefits and Employment Support

Clause 19: Disability, industrial injuries and carer's benefits

147 This clause 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 new benefits or other payments and to determine the structure and value of such provision.

148 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.

149 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 enable the payment of benefit in situations where a person is terminally ill. This definition 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 clause 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 clause 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 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 care by a person aged 16 or over who is not in full-time education and not gainfully employed. The care being given must be of a “regular and substantial” nature and provided to someone normally receiving a disability benefit as defined above. This definition covers Carer’s Allowance currently paid by the UK Government.

- 150 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.
- 151 The definition of “excluded benefit” also ensures that lump sum payment schemes for people with the diseases specified in the definition remain reserved.
- 152 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 “carer’s benefit” and “industrial injuries benefit”.

Clause 20: Benefits for maternity, funeral and heating expenses

- 153 This clause amends the reservation on social security schemes, set out in Section F1 in Part 2 of Schedule 5 to the Scotland Act 1998, to give the Scottish Parliament legislative competence over provision of financial assistance for the purposes of meeting maternity expenses, funeral expenses and expenses for heating incurred due to cold weather.
- 154 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 and conditions of entitlement or to replace these benefits entirely.
- 155 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. Clause 22 makes specific provision for the transfer of competence in relation to discretionary housing payments).
- 156 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 does not have competence over the funds themselves. Exclusion (c) ensures that the provision of Budgeting Loans out of the Social Fund remains reserved.
- 157 Subsection (4) removes interpretation provisions that are no longer needed.

Clause 21: Discretionary payments: top-up of reserved benefits

- 158 Clause 21 inserts Exception 5 in Section F1 (social security schemes) in Part 2 of Schedule 5 to the Scotland Act 1998.
- 159 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.
- 160 The Exception provides that where a person is in receipt of a reserved benefit that is subject to a reduction (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.

Clause 22: Discretionary housing payments

161 This clause 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”).

162 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)

163 The clause 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. Where assistance with housing costs through DHP is to be provided on a regular basis, the amount of that assistance cannot exceed either their housing benefit-eligible rent or the total amount towards their housing costs that could be met by another reserved benefit. 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.

Clause 23: Discretionary payments and assistance

164 Clause 23 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.

165 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.

166 The second limb of Exception 7 provides that where a person is in receipt of a benefit that is subject to a reduction (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.

167 As is the case now, 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.

Clause 24: Universal credit: cost of claimants who rent accommodation

168 This clause gives the Scottish Ministers regulation-making powers for Scotland in respect of the housing costs within Universal Credit for claimants who rent their home.

- 169 Subsection (1) enables the Scottish Ministers to make regulations on the matters set out in subsection (2). 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.
- 170 Subsection (2) sets out the scope of the regulation-making powers. Under subsection (2)(a), the Scottish Ministers can make regulations to amend the way in which the housing costs for Universal Credit are calculated for claimants who rent accommodation. Under subsection (2)(b), the Scottish Ministers can make regulations which enable the housing costs to be paid to someone on behalf of a claimant such as the claimant's landlord.
- 171 Subsection (3)(a) defines a claimant who "rents" accommodation as a person who is liable to make rent payments for that accommodation. Subsection (3)(b) defines "rent payments" by reference to the definition in paragraph 2 of Schedule 1 to the Universal Credit Regulations 2013. This includes payments of rent, payments for a licences or other permission to occupy accommodation, mooring charges payable for a houseboat, for caravan or mobile home accommodation, payments in respect of the site on which the accommodation stands, and contributions by residents towards maintaining alms-houses.
- 172 Subsection (4) requires the Scottish Ministers, before making regulations under this section, to consult with the Secretary of State about the practicality of implementing them and to obtain the Secretary of State's agreement as to when any change made by the regulations will start to have effect.
- 173 Subsection (5) provides that the Secretary of State cannot make any regulations under this section without first consulting with the Scottish Ministers.
- 174 Subsection (6) provides that regulations made by the Scottish Ministers under this section will be subject to the negative resolution procedure in the Scottish Parliament.

Clause 25: Universal credit: persons to whom, and time when, paid

- 175 This clause gives the Scottish Ministers regulation-making powers for Scotland to provide for alternative payment arrangements in relation to Universal Credit.
- 176 Subsection (1) enables the Scottish Ministers to make regulations on the matters set out in subsection (2). 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.
- 177 Subsection (2) sets out the scope of this regulation-making power. The Scottish Ministers can make regulations dealing with the persons to whom payments of Universal Credit can be made and the frequency of those payments.
- 178 Subsection (3) requires the Scottish Ministers, before making regulations under this section, to consult with the Secretary of State about the practicability of implementing them and to obtain the Secretary of State's agreement as to when any change made by the regulations will start to have effect.
- 179 Subsection (4) provides that the Secretary of State cannot make any regulations under this section without first consulting with the Scottish Ministers.
- 180 Subsection (5) provides that regulations made by the Scottish Ministers under this section will be subject to the negative resolution procedure in the Scottish Parliament.

Clause 26: Employment support

- 181 This clause amends the reservation on job search and employment support set out in section H3 of Schedule 5 to the Scotland Act 1998.
- 182 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.
- 183 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.
- 184 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.
- 185 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.
- 186 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 this Bill are no longer exercisable by Ministers of the Crown in or as regards Scotland.

Clause 27: Functions exercisable within devolved competence

- 187 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 to take account of the transfer of responsibility to the Scottish Parliament and Scottish Ministers.
- 188 Where this Bill 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 clauses 19, 20, 21, 22, 23 and 26 this is done by updating the operation of section 53.
- 189 As the devolution to the Scottish Parliament of many of the welfare provisions will take place at different dates, the clause 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 Bill.

Clause 28: Universal credit: supplementary

190 This section provides that section 117 of the Scotland Act 1998 applies where the Scottish Ministers make regulations under clause 24 and clause 25. This means that all relevant enactments will be read so that references to a Minister of the Crown are read as being, or including, references to the Scottish Minister.

Clause 29: Information-sharing

191 This clause provides for the sharing of data between the Secretary of State and the Scottish Ministers.

192 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.

193 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.

194 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.

195 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).

Clause 30: Extension of unauthorised disclosure offence

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

197 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.

198 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 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.

199 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.

200 Therefore this clause 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

Clause 31: Crown Estate

201 Clause 31 (Crown Estate) 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.

202 Currently, the management of the Crown Estate is a reserved matter. Clause 31 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.

203 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, clause 31 effects devolution by means of a transfer of functions.

204 In overview, clause 31 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).

205 These matters are explained in more detail below.

206 *New section 90B and the transfer scheme*

207 Clause 31(1) inserts new section 90B (the Crown Estate) into the Scotland Act 1998.

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- 208 New section 90B(1) enables the Treasury to make a scheme transferring all the existing Scottish functions of the Commissioners to the transferee.
- 209 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 zone¹. 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)).
- 210 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(6) and (7)). 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(5)).
- 211 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(8)). The transfer will take effect subject to this provision (new section 90B(9)).
- 212 The scheme will be made as a statutory instrument and it must be agreed with the Scottish Ministers (new section 90B(13) and (14)). The scheme may make additional provision in accordance with new section 90B(10), which could include (for example) conferring a power of direction on the Secretary of State in respect of matters of defence or national security.
- 213 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(11)). The transfer scheme will have the effect of transferring the Commissioners' functions under the Crown Estate Act 1961 to the transferee. Clause 31(5) makes provision modifying the Crown Estate Act 1961 in its application to the transferee for these purposes².
- 214 The scheme will be subject to the usual draft affirmative procedure before both Houses of Parliament (also known as the type C procedure) (clause 31(3)). 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 known as the type I procedure) provided there is no amendment of primary legislation, no retrospective provision (under new section 90B(15)) and no amendment made under new section 90B(8) (clause 31(4)).
- 215 New section 90B(12) 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.
- 216 *Other aspects of clause 31*
- 217 As mentioned above, clause 31(5) 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

1 The terms "Scotland" and "the Scottish zone" are defined in section 126(1) of the Scotland Act 1998.

2 See note of the effect of clause 31(7) in this respect.

the functions by the transferee before the transfer takes place (allowing the new arrangements to take effect immediately on transfer), clause 31(7) 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 (clause 31(8))³.

- 218 Once the transfer scheme takes effect, the Scottish Parliament will have competence to legislate about the management of the Scottish assets⁴. Clause 31(2) 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.
- 219 Clause 31(10) includes a restriction both on the power in clause 31(7) and the Scottish Parliament's competence to legislate about the management of the Crown Estate. Under section 1(3) of the Crown Estate Act 1961 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. By means of this function the Crown Estate is (in effect) held in trust for the Sovereign. Clause 31(10) requires this function to be maintained after devolution.
- 220 Clause 31(11) 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.
- 221 Subsections (12) and (13) of clause 31 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.
- 222 Subsections (1), (3), (4) and (7) to (10) of clause 31 will come into force on Royal Assent. All other subsections will come into force at the same time as the transfer scheme.

Clause 32: Equal opportunities

- 223 This clause amends the reservation of equal opportunities in Section L2 in Part 2 of Schedule 5 of the Scotland Act 1998 to give the Scottish Parliament more competence to legislate for equalities.
- 224 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 replaced with the two Equality Acts that currently house equality legislation. This amendment does not change the scope of the reservation.
- 225 Subsection (3) sets out the new exceptions to the reservation. The exceptions specify that:
- a. the Scottish Parliament may impose socio-economic duties (as provided for in Part 1 of

3 Clause 31(9) applies certain sections in the Scotland Act 1998 to this power.

4 New section 90B(4) makes provision to ensure that the Scottish Parliament has competence to legislate about the management of the Scottish assets in relation to the Scottish zone.

the Equality Act 2010) on public authorities in Scotland exercising devolved or mainly devolved functions, subject to the approval of the Scottish Parliament;

- b. in relation to Scottish functions of Scottish or cross-border public authorities, the Scottish Parliament may introduce protections and requirements that supplement but do not modify the existing provisions of the Equality Acts;
- c. the Scottish Parliament may also replicate or apply to new legislation provided for above, any part or provision of the Equality Acts, provided that this does not affect how these provisions currently operate.

226 Subsection (5) provides for a number of amendments to the Equality Act 2010 (the 2010 Act).

227 Subsection (6) inserts a new subsection (7A) into section 2 of the 2010 Act that clarifies that the duty on the Scottish Ministers to consult a Minister of the Crown prior to, for example, adding a body to section 1 so that it is subject to the socio-economic duty, only applies to the extent that the body is outside devolved competence – for example, a cross-border authority.

228 Subsection (7) clarifies that when the Scottish Ministers wish to specify an authority to be subject to the public sector equality duty, while they must still consult the Equality and Human Rights Commission, they are no longer required to obtain the consent of a Minister of the Crown. Instead they must inform such a Minister after the authority has been added to Schedule 19 (Public authorities) of the Equality Act 2010. Schedule 19 lists those public authorities which are subject to the public sector equality duty. 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.

229 Subsection (9) amends section 216 (commencement) of the 2010 Act. New subsection (4) of 216 enables the Scottish Ministers to commence Part 1 of the Equality Act 2010 (Socio-economic inequalities) by order, on a date of their choosing.

Clause 33: Tribunals

230 Clause 33 amends Part 3 of Schedule 5 to the Scotland Act 1998 (the 1998 Act) by inserting new paragraph 2A. Schedule 5 defines “reserved matters” for the purposes of the 1998 Act. Reserved matters are referred to in several sections in the 1998 Act. It is of importance in section 29 which sets out the limits on the legislative competence of the Scottish Parliament. One of those limitations is legislating in relation to reserved matters.

231 Part 1 of Schedule 5 sets out general reservations, Part 2 sets out specific, subject related reservations and Part 3 sets out general provisions that apply to Schedule 5. If a matter is reserved under Part 1 or 2 of Schedule 5, then any legislation providing for appeals, for example, relating to that reserved matter is also reserved. Accordingly, the Scottish Parliament cannot legislate for tribunals in relation to the exercise of functions relating to reserved matters.

232 Paragraph 2A will allow tribunal functions relating to reserved matters in Scottish cases to be exercised by specified tribunals in Scotland that only have functions in or as regard Scotland. Paragraph 2A does not reserve any functions of a tribunal that do not relate to reserved matters in Part 1 or 2 or otherwise change the existing position in relation to those tribunal functions.

233 Paragraph 2A does not apply to any matters where the Scottish Parliament already has devolved competence. The Scottish Parliament already has the competence to legislate in respect of such devolved matters. An example here is the rights of appeal in relation to criminal injuries compensation. The Scottish Parliament can legislate for its own Criminal Injuries Compensation Scheme and could remove the responsibility for determining appeals

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from decisions made under that Scheme from where it currently sits, which is in the reserved First-tier Tribunal.

- 234 There are currently two tribunal systems in Scotland. Those tribunals which are reserved to the UK Government and, in most cases, administered by Her Majesty's Courts and Tribunals Service (HMCTS), such as social security, immigration, and those already devolved in Scotland and administered by the Scottish Courts and Tribunals Service (SCTS), such as the Lands Tribunal for Scotland. The SCTS has recently started to bring existing devolved tribunals in Scotland into the new Unified Tribunals Structure being created under the Tribunals (Scotland) Act 2014. This process is not currently expected to be completed until 2023.
- 235 Experience from the ongoing process of the transfer of tribunals into the Scotland's newly established tribunal system demonstrates the practical need to anticipate that it will take some time for all tribunals dealing with reserved matters to transfer over to Scottish tribunals. The Scottish Tribunals and Administrative Justice Advisory Committee report Scotland in the United Kingdom: An enduring settlement also mentions the legislative and administrative significance of this task. The Order in Council process enables implementation of the transfer of reserved tribunals to Scotland to be dealt with in tranches.
- 236 As set out in the Command Paper Scotland in the United Kingdom: An enduring settlement, the UK Government acknowledges that the application of clause 33 will need to be developed in collaboration with the Scottish Government and the judiciary in both Scotland and England & Wales. However, 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, it is probable that this could involve an extended process. As such, paragraph 2A necessarily permits the detail of what limits, constraints and requirements will need to be put in place in respect of each particular tribunal to be developed as and when the Scottish Government and the devolved tribunal system in Scotland are ready to take over.
- 237 Subsection (1) adds a new paragraph 2A to Part 3 of Schedule 5 to the 1998 Act.
- 238 New paragraph 2A(1) contains the general proposition that Schedule 5 to the 1998 Act does not prevent the Scottish Parliament from legislating to transfer to Scottish tribunals functions relating to reserved matters. The Scottish Parliament can only transfer those functions that are exercisable in relation to Scottish cases. What constitutes a "Scottish case" for a particular tribunal function will be set out in an Order in Council (see sub-paragraph (11)).
- 239 The proposition in sub-paragraph (1) is qualified by sub-paragraph (2) which excludes functions relating to reserved matters of the tribunals listed in that sub-paragraph. These tribunals are the First-tier Tribunal and the Upper Tribunal, both of which were established by the Tribunals, Courts and Enforcement Act 2007 (the 2007 Act), employment tribunals and the Employment Appeal Tribunal, tribunals listed in Schedule 1 to the Tribunals and Inquiries Act 1992 and other 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).
- 240 Sub-paragraph (3) clarifies that sub-paragraphs 2(c) and (d) also include any tribunal added to the relevant schedule after paragraph 2A comes into force. In addition, any new appeal rights that are conferred on the reserved First-tier Tribunal or the Upper Tribunal or to the employment tribunal or employment appeal tribunal after the commencement of clause 33 would be automatically subject to sub-paragraph (2) by virtue of sub-paragraphs (2)(a) and (2)(b).
- 241 The effect of sub-paragraph (2) together with sub-paragraphs (8) - (9) is that there are no tribunal functions relating to reserved matters that can be transferred by the Scottish

Parliament to a Scottish tribunal under sub-paragraph (1).

- 242 Sub-paragraph (4) provides a power to make Orders in Council. An Order in Council would specify all or some of the functions of a tribunal listed in sub-paragraph (2) that can be transferred to a Scottish tribunal in so far as the functions are exercisable in relation to Scottish cases. Once the Order in Council specifies the functions and the Scottish tribunal, the Scottish Parliament can legislate to transfer those functions to the Scottish Tribunal. It is a two-stage process. Once approved, any change to the terms of the Order in Council would require a further Order in Council.
- 243 Sub-paragraph (5) provides that an Order in Council made under sub-paragraph (4) may make any provision that is considered necessary or expedient for the purposes or in consequence of the transfer to the Scottish tribunal of the specified functions. This reflects the Smith Commission Agreement that states the underlying substantive rights and duties governing matters heard by reserved tribunals in Scotland should remain reserved. Therefore, specific conditions may need to be included when a particular tribunal transfers in order to ensure that the operation of the functions in respect of that tribunal relevant to the delivery of the reserved policy remain consistent.
- 244 Sub-paragraph (6)(a) identifies some of the matters that may be included in an Order in Council under sub-paragraph (5). These include modifying the functions that are being transferred, imposing conditions or restrictions and specifying the categories of Scottish cases to which the transfer applies. The power to impose conditions or restrictions in sub-paragraph (6)(a)(ii) provides that “conditions or restrictions” may include those relating to the composition of the Tribunal (i.e. by whom cases may be heard), the rules of procedure applied by it and to its staff or accommodation.
- 245 Sub-paragraph (6)(b) identifies some of the purposes for which provisions may be included in the Order in Council under sub-paragraph (5). These include securing consistency in relation to matters of practice and procedure between the Scottish tribunal and the tribunals that continue to deal with cases arising in other parts of the United Kingdom. The purposes mentioned in sub-paragraph (6)(b)(ii) also includes the promotion of judicial co-operation in the interests of consistency in the determination of cases in different parts of the United Kingdom.
- 246 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 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.
- 247 Sub-paragraph (7) clarifies that sub-paragraph (6) does not exhaustively describe, or otherwise limit, the provision which can be made by an Order in Council under sub-paragraph (5).
- 248 Sub-paragraph (8) provides that the power to transfer a tribunal does not apply to the functions of the Pathogens Access Appeal Commission, the Proscribed Organisations Appeal Commission, the Special Immigration Appeals Commission, a tribunal established by section 65(1) of the Regulation of Investigatory Powers Act 2000 and any other reserved tribunal with functions relating to national security, interception of communications, official secrets and terrorism that are reserved by Section B8 of Part 2 of Schedule 5.
- 249 Sub-paragraph (9) provides that the power to transfer a tribunal does not apply to a regulator, or a person or body that exercises functions on behalf of a regulator. This reflects the policy set out in paragraph 6.3.6 of the Command Paper Scotland in the United Kingdom: An enduring

settlement which confirmed that the UK Government did not intend to use Paragraph 2A to transfer competence where a particular tribunal was an integral part of a national regulatory body operating in a reserved area where it deals with appeals linked to its regulatory functions. Examples of this are the Civil Aviation Authority and the Office of the Rail Regulator.

- 250 Sub-paragraph (10) provides that the power to transfer a tribunal does not apply to the Comptroller-General of Patents, Designs and Trade Marks, where similar considerations apply. In this case, while not a regulator, the Comptroller-General is a national decision making body which operates in a reserved area which also provides an appellate function intrinsically linked to that decision making function.
- 251 Sub-paragraph (11) defines key terms used in paragraph 2A.
- 252 It defines “regulator” for the purposes of sub-paragraph (8) as a person or a body that has regulatory functions as defined in section 32 of the Legislative and Regulatory Reform Act 2006.
- 253 It provides that, as referred to in sub-paragraph (4), the definition of what constitutes a “Scottish case” for a particular tribunal will be set out in the relevant Order in Council. This means that different definitions could apply to different tribunals, depending on the nature of the work undertaken. For example, the definition of a Scottish case in relation to welfare benefit appeals is likely to be very different to that for competition appeals.
- 254 It also defines “Scottish tribunal” for the purposes of paragraph 2A as a tribunal that has functions in respect of Scotland only, and the definition of “specified” provides that this means specified by an Order in Council. Accordingly, functions may only be transferred by Order in Council under sub-paragraph (4) to a tribunal which has functions in respect of Scotland only, and only the tribunal named in the relevant Order in Council will be able to exercise the functions transferred.
- 255 Sub-paragraph (12) provides that the Order in Council making powers conferred under clause 33 are in addition to, and do not limit, the powers conferred by sections 30 and 113 of the Scotland Act 1998.
- 256 Subsection (2) amends Schedule 7 to 1998 Act to set out the approval mechanism required for an Order in Council made under new paragraph 2A of Schedule 5 to that Act. No recommendation can be made to Her Majesty in Council to make an Order in Council under the powers conferred by paragraph 2A until a draft of the Order in Council has been laid before and approved by the UK and Scottish Parliament.
- 257 Subsections (3) to (7) insert two additional reserved tribunals into the list of tribunals in Schedule 1 of 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. This will ensure that any transfer of the functions of these tribunals will be able to be taken forward in a managed and structured way in accordance with the agreed implementation approach that will be developed in conjunction with the Scottish Government and the judiciary in Scotland and England and Wales.

Clause 34: Roads

- 258 Paragraph (c) of Section E1 (specific reservations: road transport) of Part II 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).

259 This clause amends Section E1 as follows.

260 It substitutes a new paragraph (c) which provides that only 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 vehicles used in connection with any other reserved matter, or to the training of the drivers of emergency vehicles.

261 It adds the subject matter of section 36 of the Road Traffic Act 1988 ("the RTA 1988") (offence of failing to comply with a traffic sign) to the list of exceptions to the reserved matters.

262 It inserts an interpretative provision to the effect that the reference to section 87 of the RTRA 1984 is to be construed as a reference to that section as at the date on which clause 34 comes into force (and correspondingly dis-applying paragraph 5(1) of Part 3 of Schedule 5 to the 1998 Act).

Clause 35: Roads: traffic signs etc

263 In consequence of the devolution to the Scottish Parliament of traffic signs, this clause transfers the relevant functions of the Secretary of State to the Scottish Ministers in relation to roads in Scotland.

264 This clause amends the following provisions of the RTRA 1984:

265 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.

266 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.

267 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.

268 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.

269 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.

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- 270 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.
- 271 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.
- 272 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.
- 273 Section 142(1) (general interpretation), to insert a definition of the new term “national authority”, which means:
- a. in relation to roads in England and Wales, the Secretary of State; and
 - b. in relation to roads in Scotland, the Scottish Ministers.
- 274 The clause also amends section 36 of the RTA 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 RTOA 1988.
- 275 Finally, a consequential amendment is made to section 195 (regulations) of the RTA 1988 in respect of the Parliamentary procedure applicable to regulations made by the Scottish Ministers under section 36(5) of that Act.

Clause 36: Roads: speed limits

- 276 In consequence of the devolution to the Scottish Parliament of almost all powers to legislate for speed limits in Scotland, this clause transfers the relevant functions of the Secretary of State to the Scottish Ministers in relation to roads in Scotland.
- 277 This clause amends the following provisions of the RTRA 1984:-
- 278 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.
- 279 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.
- 280 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.

281 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.

282 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.

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

- a. enable the “relevant authority” 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; and
- b. define the new term “relevant authority”, which means:
 - i. the Scottish Ministers in relation to vehicles used on roads in Scotland, except vehicles used in connection with reserved matters; and
 - ii. otherwise, the Secretary of State.

Clause 37: Roads: consequential provision etc

284 This clause provides that Schedule 2 (roads: consequential and related amendments) has effect. Schedule 2 makes consequential and related amendments to the RTRA 1984 and to secondary legislation made under the RTRA 1984, the Scotland Act 1998 and the Government of Wales Act 2006.

Clause 38: Policing of railways and railway property

285 This clause 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.

Clause 39: British Transport Police: cross-border public authorities

286 This clause facilitates the devolution of executive competence in relation to the policing of railways in Scotland by specifying as cross-border public authorities the British Transport Police Authority, the Chief Constable of the British Transport Police, the deputy Chief

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Constable of the British Transport Police and the assistant Chief Constables of the British Transport Police (“the BTP Bodies”). The Scotland Act 1998 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 the Scotland Act 1998 (see clause 38(3)), although one modification is needed to ensure that this is the case.

287 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 British Transport Police Authority or to the offices of Chief Constable, Deputy Chief Constable and Assistant Chief Constables will only be able to be made in consultation with Scottish Ministers. Other functions in relation to the BTP Bodies will similarly only be able to be exercised in consultation with the Scottish Ministers unless their effect on Scotland would be wholly in relation to reserved matters.

288 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 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 clause 37 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.

289 To ensure that the Scotland Act 1998 applies to the BTP Bodies as it does to other cross-border public authorities clause 38(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.

Clause 40: Onshore oil and gas

290 This clause amends Section D2 (oil and gas) in Part 2 of Schedule 5 to the Scotland Act to give the Scottish Parliament competence to legislate for the granting 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 petroleum within the Scottish onshore area.

291 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” for the purposes of matters to be devolved or reserved under the Scotland Act is defined in line with the definition of “Petroleum” as provided for in section 1 of the Petroleum Act 1998.

292 Clause 40 and all of the provisions therein are subject to a commencement power and will come into force on such day as the Secretary of State appoints by regulations made by statutory instrument.

Clause 41: Onshore petroleum: consequential amendments

293 This clause transfers to 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”).

294 Subsections (1), (2) and (3) amend section 3(1) of the Petroleum Act 1998 to transfer, from the

- Secretary of State to Scottish Ministers the powers to grant licences to bore and get petroleum.
- 295 Subsections (1), (2) and (4) amend section 3(3) 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.
- 296 Subsections (1), (2) and (5) insert subsection (5) into the Petroleum Act 1998 to define “the appropriate Minister” as being the Scottish Ministers in relation to the Scottish onshore area and the Secretary of State otherwise.
- 297 Subsections (1), (6) and (7) provide for amendment section 4(1) of the Petroleum Act 1998 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.
- 298 Subsections (1), (6) and (8) insert sections 4(1A) and 4(1B) into the Petroleum Act 1998 to reserve, 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. The powers of the Scottish Ministers do not, therefore, extend to the drafting of model clauses on the above matters or to the modification or exclusion of such clauses.
- 299 Subsections (1), (6) and (9) amend section 4(3) of the Petroleum Act 1998 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.
- 300 Subsections (1), (6) and (10) insert section 4(3A) into the Petroleum Act 1998 to make any section 4 regulations made by the Scottish Ministers subject to annulment by negative procedure in the Scottish Parliament.
- 301 Subsections (1), (6) and (11) insert section 4(4A) which requires Scottish Ministers to publish notices of licenses granted by them for the Scottish onshore area in the Edinburgh Gazette.
- 302 Subsections (1) and (12) amend section 5(9) of the Petroleum Act 1998 to transfer, from the Secretary of State to 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.
- 303 Subsections (1) and (13) amend section 5(5A) of the Petroleum Act 1998 to transfer, from the Secretary of State to 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 Scottish Ministers must abide by when reverting rights in the Scottish onshore area.
- 304 Subsections (1) and (14) amend section 5(5B)(1) of the Petroleum Act 1998 to extend the right of the Commissioners of HMRC to disclose information, to 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.
- 305 Subsections (1) and (15) amend section 7(2) of the Petroleum Act 1998, 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 section 4 of that Act, “the Minister” shall refer to Scottish Ministers for licences granted in the Scottish onshore area.

- 306 Subsections (1) and (16) amend section 8 of the Petroleum Act 1998 to provide officers appointed by 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.
- 307 Subsections (1) and (17) insert section 8(8A) into the Petroleum Act 1998 to align 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).
- 308 Subsections (1) and (18) amend section 118 (12) of the Energy Act 2004 to add petroleum licensing to the list of energy functions exercisable by Scottish Ministers for which they may impose charges.
- 309 Subsections (19) and (20) amend 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.
- 310 Subsections (19) and (21) amend 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 1998, would fall exclusively to the Secretary of State.
- 311 Subsections (19) and (21) amend paragraph 1(2) of Schedule 1 to the Oil Taxation Act 1975 to include 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 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.
- 312 Subsections (22) and (23) amend 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 1998.
- 313 Subsections (23), (24) and (25) 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.
- 314 Clause 41 and all of the provisions therein are subject to a commencement power and will come into force on such day as the Secretary of State appoints by regulations made by statutory instrument.

Clause 42: Onshore oil and gas: existing licences

- 315 This clause 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.
- 316 Subsection (1) grants the Secretary of State the power to make any amendments, that the

Secretary of State deems necessary or expedient, 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.

317 Subsection (2) specifies that the power to make amendments, awarded to the Secretary of State by means of subsection (1), is to be exercised by regulations made by statutory instrument.

318 Subsection (3) 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.

319 Subsection (4) defines “existing licences” as those licences granted under section 2 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 Scottish Ministers for the Scottish onshore area.

Clause 43: Consumer advocacy and advice

320 This clause 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.

321 Part 2 of Schedule 5 is separated into Sections with each Section setting out the reserved matter. Paragraphs 1 to 3 of Part 2 set out rules to interpreting Part 2 of Schedule 5. Paragraph 3 makes it clear that an exception under one Section does not affect any other Section. The provision of consumer advocacy and advice is not a discrete reservation under a single Section. It falls within the scope of a number of reservations in different Sections.

322 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 the reserved matter.

323 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 the reserved matter. However, this exception does not include conferring or removing functions from 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.

324 Subsections (9) to (15) make consequential amendments to support the change in funding arrangements that the devolution of consumer advocacy and advice requires.

Clause 44: Functions exercisable within devolved competence

325 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 to take account of the transfer of responsibility to the Scottish Parliament and Scottish Ministers.

326 Where this Bill 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 clause 43 this is done by updating the operation of section 53.

327 This clause 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 Bill.

328 Identical provision is made by clause 27 for functions devolved to the Scottish Ministers by virtue of clauses 19, 20, 21, 22, 23 and 26.

Clause 45: Gaming machines on licensed betting premises

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

330 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, as amended).

331 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.

332 This clause 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, and the Scottish Ministers executive 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 Ministers to reduce the number of such gaming machines to zero. The functions conferred on the Secretary of State by section 236 of the 2005 Act will continue to be reserved.

333 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.

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

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

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

Part 5: Other Executive Competence

Clause 46: Gaelic Media Service

These Explanatory Notes relate to the Scotland Bill as introduced in the House of Commons on 28 May 2015 (Bill 3)

337 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.

338 Subsection (1) of this clause 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 clause repeals subsections (4) to (6) of section 17 of the Scotland Act 2012, which added references to Scottish Ministers into section 183A of the 1990 Act.

Clause 47: Commissioners of Northern Lighthouses

339 This clause 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 clause imposes a duty on the Scottish Ministers to lay the reports and accounts passed to them by the NLB before the Scottish Parliament.

340 The amendments to Schedule 8 of the 1995 Act contained in the clause 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 clause reduces the number of elected Commissioners from five to three.

Clause 48: Maritime and Coastguard Agency

341 This clause amends the Coastguard Act 1925 ("the 1925 Act") and the Merchant Shipping Act 1995 ("the 1995 Act").

342 Subsection (1) amends the 1925 Act to provide that the Secretary of State must consult the Scottish Ministers about his or her strategic priorities 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.

343 Subsection (2) amends section 292 of the 1995 Act to provide that the Secretary of State must consult the Scottish Ministers about his or her strategic priorities 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).

Clause 49: Rail: franchising of passenger services

344 The Railways Act 1993 ("the 1993 Act") provides that the bodies and persons listed in subsections 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.

These Explanatory Notes relate to the Scotland Bill as introduced in the House of Commons on 28 May 2015 (Bill 3)

345 Subsection (3) of the clause 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 Scottish Ministers to be provided under that same franchise agreement.

346 Subsection (4) of the clause 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.

Clause 50: Fuel poverty: support schemes

347 Under the Energy Act 2010 (“the 2010 Act”) the Secretary of State has powers to make support schemes in relation to Great Britain, for the purposes of reducing fuel poverty. This Bill amends the 2010 Act to enable the Scottish Ministers to exercise many of those powers in relation to support schemes for the purposes of reducing fuel poverty in relation to Scotland through obligations on gas and electricity suppliers.

348 This clause amends the 2010 Act by inserting a new section 14A to enable the Scottish Ministers to exercise a range of powers to make one or more support schemes for the purposes of reducing fuel poverty 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.

349 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 how support schemes are to be applied to licensed gas or electricity suppliers; 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; powers for determining the amount of any benefit provided under the scheme; and powers relating to the reconciliation of supplier costs. These relate to the scale and apportionment of the obligations, and the obligated parties.

350 Before exercising the powers that are transferred to them by virtue of this clause, the Scottish Ministers must have consulted with, and obtained the agreement of, the Secretary of State. The Scottish Ministers are subject to the same requirement as the Secretary of State, to obtain the consent of the Treasury before making a scheme using the powers in section 9 of the 2010 Act.

351 The Secretary of State may exercise the powers that are transferred to the Scottish Ministers by virtue of this clause, 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 (6), (8) or (10) of the new s.14A.

352 The Secretary of State may exercise these intervention powers under one of three conditions:

- a. (i) 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. (ii) 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. (iii) 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.

Clause 51: Energy company obligations

353 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 Bill 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.

354 This clause 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.

355 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.

356 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.

357 Before exercising the powers that are transferred to them by virtue of this clause, 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.

358 The Secretary of State may exercise the powers that are transferred to the Scottish Ministers by virtue of this clause, 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 (7) of the new sections inserted by this clause.

359 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.

Clause 52: Apportionment of targets

360 This clause 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.

361 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.

362 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 1986 Act or under sections 41A or 41B of the 1989 Act and to maintain a measures record. Subsection (12) enables this information to be shared with the Secretary of State and the Welsh Ministers.

363 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.

Clause 53: Renewable electricity incentive schemes: consultation

364 This clause 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 such schemes in place. The clause 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.

Clause 54: Offshore renewable energy installations

365 This clause 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").

366 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.

367 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.

368 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.

369 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.

370 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.

371 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.

372 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.

Clause 55: References to Competition and Markets Authority

373 This clause 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.

374 Clause 55 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

Clause 56: Gas and Electricity Markets Authority

375 This clause amends section 5 of, and inserts a new section 5XA into, the Utilities Act 2000 (“2000 Act”).

376 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 clause 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.

377 New section 5XA(1) requires the Comptroller and Auditor General to send the certified accounts, and report on its 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.

Clause 57: Office of Communications

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

379 Section 1 of the 2002 Act provides that the Secretary of State appoints the chairman and other members of Ofcom. Subsections (1) to (3) of this clause 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.

380 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 (9) of this clause 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.

381 The Schedule to the 2002 Act makes further provision about Ofcom including qualification for membership, tenure of office, accounts & audit and annual reports. Subsection (4) of this clause 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 for 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.

382 Subsections (6) to (7) of this clause amend the Schedule to the 2002 Act to require the Comptroller and Auditor General to send a copy of Ofcom’s statement of accounts and his

report to the Scottish Ministers and for the Scottish Ministers to lay those documents before the Scottish Parliament. Similarly, subsection (8) 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.

Clause 58: Bodies that may be required to attend before the Parliament

383 This clause 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 clause 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 the clause 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.

384 Subsection (1) applies section 23 of the 1998 Act and sets out that the Scottish Parliament’s power to require persons to attend before 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.

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

Part 7: General

Clause 59: Subordinate legislation under functions exercisable within devolved competence

386 This clause ensures that where functions transferred to the Scottish Ministers by section 53, as glossed by clauses 27 and 44, 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).

387 Section 53, as glossed by clauses 27 and 44, transfers functions exercisable within devolved competence by virtue of clauses 19, 20, 21, 22, 23, 26 and 43 from a Minister of the Crown to the Scottish Ministers. Some of the functions transferred will include power to make delegated legislation but that delegated legislation will be subject to the procedure in the Parliament. Accordingly, adjustment is needed to apply Scottish Parliament procedure to those transferred functions.

388 In 2010, the Scottish Parliament passed ILRA which makes provision for scrutiny of devolved subordinate legislation. This clause 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, it 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.

Clause 60: Transfers of property etc to the Scottish Ministers

389 Clause 60 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 of sharing of functions of a Minister of the Crown by virtue of section 53, 63 or 89 of the Scotland Act 1998 or any other circumstances which the person making the legislation consider it appropriate to do so for the purposes of the Scotland Act 1998.

390 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 the Bill. The Bill provides for the transfer or sharing of functions:

- a. by way of general transfer of functions (see the gloss of section 53 by clauses 27 and 44;
- 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 clause 62 is used to transfer a function to the Scottish Ministers.

391 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.

Clause 61: Transitional provision

392 A number of the clauses in the Bill 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 clause 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.

Clause 62: Power to make consequential, transitional and saving provisions

393 This clause provides a regulation making power to make consequential amendments and transitional and saving provisions.

Clause 63: Commencement

394 This clause details the commencement arrangements for the Bill.

Clause 64: Short title

395 This clause states that the Act may be cited as the Scotland Act 2015.

Schedules

Schedule 1: Disapplication of UK aggregates levy: further amendments

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

Schedule 2: Roads: consequential and related amendments

397 This schedule makes consequential and related amendments to the RTRA 1984 and to secondary legislation made under the RTRA 1984, the Scotland Act 1998 and the Government of Wales Act 2006.

398 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 omitting a procedural provision which is rendered otiose by a procedural amendment made by this Schedule to section 34 (regulations) and omitting the definition of “national authority” which is rendered otiose by the new definition of “national authority” inserted by clause 34 in section 142(1) (general interpretation);
- h. section 88 (temporary speed limits), by omitting the definition of “national authority” which is rendered otiose by the new definition of “national authority” inserted by clause 34 in section 142(1) (general interpretation);
- 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

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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).

399 Paragraphs 19 to 21 amend the Road Traffic (Temporary Restrictions) Procedure Regulations

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1992 (S.I. 1992/1215) by substituting references to the “national authority” for references to the “Secretary of State”.

400 Paragraphs 22 to 24 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”.

401 Paragraph 25 makes a minor consequential amendment to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).

402 Paragraphs 26 to 28 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 sections 33 to 35 and Schedule 2.

403 Paragraphs 29 to 31 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”.

404 Paragraph 32 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 33 to 35 and Schedule 2.

Commencement

405 Commencement of the provisions of the Bill is specified in clause 63. Sections 1, 2, 31(1) to (4), 59 and 60 of the Bill come into force on the day on which the Act is passed. Sections 31(5) to (12) come into force on the date specified under section 90B(14) of the 1998 Act. The remainder of the provisions come into force either 2 months from the day on which the Act is passed, or on such a day as the Secretary of State may appoint by regulations.

Financial implications of the Bill

406 The Scotland Bill is a piece of constitutional, enabling legislation which itself does not trigger immediate financial implications. It will be for the Scottish Parliament to determine how they will use the devolved powers, and assess the financial impact of their policy choices.

Parliamentary approval for financial costs or for charges imposed

407 The Bill will require a money resolution to cover payments made by the Secretary of State by virtue of clause 15 (which inserts section 64(2A) in the Scotland Act 1998 providing for assignment of VAT). The Bill will also require a ways and means resolution, for charges that may be imposed under the amendments made by clause 12 providing for the Scottish Parliament to set Scottish rates for the purposes of the Income Tax Act 2007, and for charges that may be imposed by the devolved taxes for which clauses 16 and 17 provide.

Related documents

408 The following documents are relevant to the Bill 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-a-n-enduring-settlement>

Annex A - Territorial extent and application

409 To the extent the Bill amends the Scotland Act 1998, it has the same extent as that Act – UK extent. To the extent that the Bill amends other legislation, it has the same extent as that legislation.

SCOTLAND BILL

EXPLANATORY NOTES

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