

SCOTLAND BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

What these notes do

- 1 These Explanatory Notes relate to the Lords Amendments to the Scotland Bill as brought from the House of Lords on 21 March 2016.
- 2 These Explanatory Notes have been prepared by the Scotland Office in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords amendments themselves, refer to HL Bill 73, the Bill as first printed for the Lords.
- 4 These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- 5 All the Lords Amendments were tabled in the name of the Minister.

Commentary on Lords amendments

Lords Amendments to Clause 3: Elections

Lords Amendments 1, 2, 3 and 4

- 6 Lords Amendments 1 and 4 would clarify what is reserved in section B3 of Schedule 5 to the Scotland Act 1998, as set out in clause 3 of the Bill, to take account of the amendments made to the reservation by the Scotland Act 1998 (Modification of Schedules 4 and 5) Order 2015 (SI 2015/1764).
- 7 Lords Amendments 2 and 3 would amend the reservation in section B3 of Schedule 5 to the Scotland Act 1998, as set out in clause 3 of the Bill, as it relates to the timing of ordinary local government elections in Scotland. The amendments would replace the part of reservation that refers to 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 an ordinary general election for the Scottish Parliament, with clearer wording.

Lords Amendments to Clause 4: Power to make provision on elections

Lords Amendment 5

- 8 Lords Amendment 5 would remove part of the provision contained in new section 12 of the Scotland Act 1998, as inserted by clause 4 of the Bill, which provides that the power under new section 12 does not allow the Scottish Ministers to make provision about any Digital Service provided by a Minister of the Crown for the registration of electors (“the Digital Service”).

- 9 Provision about the Digital Service is excluded from the power conferred on the Scottish Ministers by new section 12 of the Scotland Act 1998. Subsection (1) of that section provides that the powers conferred on the Scottish Ministers are aligned with the legislative competence of the Scottish Parliament i.e. the Scottish Ministers can only make provision that would be within the legislative competence of the Scottish Parliament.
- 10 Clause 6 of the Bill separately provides for certain functions of the Secretary of State relating to the 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.

Lords Amendments to Clause 5: Timing of elections

Lords Amendment 6, 7, 8, 9, 10, 11 and 12

- 11 Lords Amendment 6 would make a small change to the wording in clause 5(2) of the Bill to ensure that the provision is clearly drafted.
- 12 Lords Amendment 7 would amend clause 5 to remove provisions from section 2 of the Scotland Act 1998 which were inserted by the Scotland Act 1998 (Modification of Schedules 4 and 5) Order 2015 (SI 2015/1764), as provision made by this Order overlaps with provision made by the Bill.
- 13 Lords Amendments 8, 9, 10, 11 and 12 would amend clause 5 of the Bill to improve the drafting of the new provisions to be inserted into section 43 of the Representation of the People Act 1983. These provisions relate to the reservation of the timing of ordinary local government elections where they clash with the date of an ordinary general election to the Scottish Parliament, and provide a mechanism for the Scottish Ministers to change the date of the local government election where such a clash occurs. Lords Amendments 8, 9, 10, 11 and 12 would ensure that these provisions are clearly drafted.

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

Lords Amendment 13

- 14 Responsibility for reviewing the constituency and regional boundaries in relation to membership of the Scottish Parliament is to transfer from the Boundary Commission for Scotland to the Local Government Boundary Commission for Scotland. Subsection (2) of clause 8 replaces references to the Boundary Commission for Scotland within Schedule 1 to the Scotland Act 1998 with references to the Local Government Boundary Commission for Scotland in order to provide for this transfer of functions between the two Commissions.
- 15 Clause 8(2) as drafted changes some, but not all, of the references to the Boundary Commission for Scotland in Schedule 1 to the 1998 Act. Lords Amendment 13 would address this by providing that all references to the Boundary Commission for Scotland in Schedule 1 to the Scotland Act 1998 are to be replaced with references to the Local Government Boundary Commission for Scotland.

Lords Amendments to Clause 10: Minor and consequential amendments: elections etc

Lords Amendment 14, 15 and 16

- 16 Lords Amendment 14 would remove provision inserted into Schedule 4 to the Scotland Act 1998 by the Scotland Act 1998 (Modification of Schedules 4 and 5) Order 2015 (SI 2015/1764), and Lords Amendment 16 would revoke this Order, as provision made by this Order overlaps with provision made by the Bill.
- 17 Lords Amendment 15 would remove a reference in clause 10 of the Bill to a provision in the Scottish Parliament (Elections etc.) Order 2010 (SI 2010/2999) which is no longer needed as the Scottish Parliament (Elections etc.) Order 2015 (SI 2015/425) made by Scottish Ministers, and which came into force on 16 December 2015, revoked the 2010 Order.

Lords Amendments to Clause 11: Super-majority requirement for certain legislation

Lords Amendments 17, 18, 19 and 20

- 18 Lords Amendments 17, 18, 19 and 20 would provide for a Bill to be submitted for Royal Assent without the need for reconsideration by the Scottish Parliament if, on a reference, the Supreme Court confirms the Presiding Officer's decision that the Bill did not need to pass by a super-majority.

Lords Amendments to Clause 13: Regulations to be made by Statutory Instrument

Lords Amendment 21

- 19 Lords Amendment 21 stipulates that a Treasury Order, made under Clause 13, setting the commencement date for the extension of income tax powers to the Scottish Parliament, must be made by way of a Statutory Instrument.
- 20 As initially drafted the Bill allowed for the commencement of the powers by way of a Treasury Order but did not stipulate that the Order itself must be made by way of a Statutory Instrument. Making the Order by way of Statutory Instrument ensures that the Order is a public document; numbered, printed and published by TSO, and laid before Parliament in a manner that facilitates anyone who is interested being able to find it relatively easily.

Lords Amendments after Clause 19: Devolved taxes: further provision

Lords Amendment 22

- 21 Lords Amendment 22 would insert a new clause into the Bill and in doing so, implement part of the agreement reached between the UK Government and the Scottish Government on February 23rd on a new Fiscal Framework for the Scottish Government. That agreement was published online on February 25th under the title "The Agreement between the Scottish Government and the United Kingdom Government on the Scottish Government's fiscal framework". That Agreement itself implements the Smith Commission report.
- 22 Lords Amendment 22 make changes to the provisions on Borrowing by Scottish Ministers from the Secretary of State set out in section 60 of the Scotland Act 1998:

- a. It expands the circumstances where the Scottish Government can borrow to cover forecast error regarding welfare payments and also to cover for a Scotland-specific negative economic shock.
- b. It increases the amount the Scottish Government can borrow for resource expenditure from £500 million to £1.75 billion.
- c. It increases the amount the Scottish Government can borrow for capital expenditure from £2.2 billion to £3 billion.

Lords Amendments after Clause 19: Devolved taxes: further provision

Lords Amendments 23

- 23 Lords Amendment 23 would insert a new clause into the Bill and in doing so, implement part of the agreement reached between the UK Government and the Scottish Government on February 23rd on a new Fiscal Framework for the Scottish Government. That agreement was published online on February 25th under the title “The Agreement between the Scottish Government and the United Kingdom Government on the Scottish Government’s fiscal framework”. That Agreement itself implements the Smith Commission report. These amendments also reflect the conclusions of the “HM Treasury review of the Office for Budget Responsibility” by Sir Dave Ramsden published in September 2015.
- 24 Lords Amendment 23 make changes to the provisions on Provision of Information to the Treasury set out in section 96 of the Scotland Act 1998:
 - a. It enables the Office of Budget Responsibility to obtain such Scottish public finances information as may reasonably be required to fulfill its statutory duty. This information would be used to produce forecasts and any supporting analysis.

Lords Amendments to Clause 21: Benefits for maternity, funeral and heating expenses

Lords Amendment 24

- 25 Clause 21 gives the Scottish Parliament legislative competence in relation to the provision of financial assistance for maternity and funeral expenses and expenses incurred due to cold weather. Such assistance is currently paid from the social fund as Sure Start Maternity Grants, Funeral Payments, Cold Weather Payments and Winter Fuel Payments. The Scottish Parliament will be able to make their own arrangements regarding the type of assistance to be provided for these areas.
- 26 The social fund itself is not being transferred and will continue to be administered by the UK Government in England and Wales (and, in Scotland, in connection with budgeting loans).
- 27 Lords Amendment 24 is a technical amendment to ensure that executive competence is transferred to Scottish Ministers and will allow them to make payments of these particular benefits from the Scottish Consolidated Fund as well as exercise the relevant regulation making powers.

Lords Amendments to Clauses 27 and 28: Universal Credit: costs of claimants who rent accommodation; and Universal Credit: persons to whom and time when paid

Lords Amendments 25, 26 and 27

- 28 Once legislative competence has been given to the Scottish Parliament for provisions in Part 3 of the Bill, the Scottish Parliament may establish separate scrutiny bodies to consider legislative proposals made by the Scottish Government (within the scope of that legislative competence).
- 29 Lords Amendments 25, 26 and 27 to clauses 27 and 28 relate to Universal Credit. They clarify the intention that where regulations are made by Scottish Ministers under the new powers, the Scottish procedure for negative instruments applies. These technical amendments deal with the way existing social security legislation applies after the transfer of powers under the Bill.

Lords Amendment after Clause 30: Functions exercisable within devolved competence

Lords Amendments 28

- 30 Lords Amendment 28 would insert a new clause to the Bill, which would clarify that the established role of the Social Security Advisory Committee (SSAC) and the Industrial Injuries Advisory Council (IIAC) will remain unchanged.
- 31 The role of the Social Security Advisory Committee is to advise on relevant matters relating to Social Security and secondary legislation and the Industrial Injuries Advisory Council (IIAC) advises on matters relating to industrial injuries benefit and its administration. Both are established bodies that will continue to advise the Secretary of State for Work and Pensions and not Scottish Ministers.

Lords Amendments to Clause 31: Universal Credit: supplementary

Lords Amendments 29

- 32 Clause 31 is a technical provision that requires legislation relating to Universal Credit to be read as if references to the Secretary of State were references to Scottish Ministers. As Universal Credit remains a reserved benefit administered by the Department for Work and Pensions, this clause is not required and at Committee stage in the Lords, clause 31 was disagreed to.
- 33 Lords Amendment 29 would remove Clause 31 from the Bill.

Lords Amendments to Clause 35: Equal Opportunities

Lords Amendment 30, 31, 32, 33, 34, 35 and 36

- 34 Lords Amendment 30, together with Lords Amendments 31 to 36 which would be consequential to it, is a technical amendment that would remove an unnecessary reference in clause 35 to the Equality Act 2006 (the 2006 Act).
- 35 The 2006 Act contains provisions relating to the operation of the Equality and Human Rights Commission (EHRC). As set out in the Scotland Act 1998, the EHRC is a reserved body. This means that the Scottish Parliament cannot modify its constitution or its functions.

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- 36 It was therefore unnecessary to include reference to the 2006 Act in the exception to the equal opportunities reservation, contained in subsection (3) of clause 35. Due to the EHRC's existing reserved status, the Scottish Parliament are not able to replicate or supplement the provisions of the 2006 Act and to avoid any misunderstanding, the Lords Amendments would therefore remove reference to it in clause 35.

Lords Amendments to Clause 38: Roads

Lords Amendments 37, 38 and 41

- 37 Clause 38 devolves speed limits to the Scottish Parliament, including the power to legislate to provide exemptions from speed limits for vehicles used in connection with devolved matters on Scottish roads such as vehicles used for policing. Clause 38 continues to reserve this power to the UK Parliament in so far as it as it relates to vehicles used in connection with reserved matters, such as special forces.
- 38 Lords Amendment 37 removes the words “vehicles used in connection with any other reserved matter” as they are unnecessary because, even without these words, exempting vehicles used for reserved purposes would still be reserved. A vehicle used in connection with defence is reserved because defence is a reserved matter and the United Kingdom Parliament can continue to exempt such vehicles from speed limits in Scotland.
- 39 Lords Amendment 38 excepts the subject matter of the parking of vehicles on roads from the general reservation of the Road Traffic Act 1988.
- 40 Lords Amendment 41 amends the interpretation provision in clause 38 of the Bill. This amendment is made to devolve to the Scottish Parliament the subject matter of section 87 of the Road Traffic Regulation Act 1984 as amended by section 19 of the Road Safety Act 2006. This amendment is necessary because commencement of section 19 of the Road Safety Act is likely to take place after commencement of clause 38 of the Scotland Bill.

Lords Amendments 39 and 40

- 41 Lords Amendments 39 and 40 are minor drafting consequential amendments.

Lords Amendments to Clause 39: Roads: traffic signs

Lords Amendments 42

- 42 The effect of clause 39 is to provide the Scottish Ministers with competence to make regulations and give general directions in relation to road traffic signs and pedestrian crossings.
- 43 Lords Amendment 42 amends the definition of "national authority" to clarify that, in relation to a function so far as exercisable within devolved competence, within the meaning of the Scotland Act 1998, it refers to the Scottish Ministers.

Lords Amendments 43

- 44 Lords Amendments 43 removes a reference to regulations made by Scottish Ministers being subject to the negative procedure. It is replaced by amendment 46.

Lords Amendment to Clause 40: Roads: speed limits

Lords Amendment 44 and 45

- 45 Clause 40 transfers the relevant functions of the Secretary of State under the Road Traffic Regulation Act regarding speed limits to the Scottish Ministers so far as exercisable within devolved competence.
- 46 Lords Amendment 44 changes a reference from 'relevant authority' to 'national authority'.
- 47 Lords Amendment 45 deletes the definition of 'relevant authority' in this section of the Bill.
- 48 Once clause 40 (which extends to Scottish Ministers the power to prescribe speed limit exemptions) of the Scotland Bill is in force, the Scottish Ministers will have the power to make regulations providing speed limit exemptions so far as exercisable within devolved competence.

Lords Amendment after Clause 40: Roads: speed limits

Lords Amendment 46

- 49 Lords Amendment 46 would insert a new clause into the Bill to transfer the functions of the Secretary of State under the Road Traffic Act 1998 in relation to parking of vehicles on roads in Scotland to the Scottish Ministers in so far as exercisable within their devolved competence.

Lords Amendment to Clause 41: Roads: consequential provisions etc

Lords Amendment 47

- 50 Clause 41 gives effect to schedule 2. Lords Amendment 47 removes text the substance of which sits more appropriately in schedule 2.

Lords Amendments to Clause 45: Onshore Petroleum: Consequential Amendments

Lords Amendment 48

- 51 Lords Amendment 48 would leave out clause 45(5) of the Scotland Bill which defines, for Part 1 of the Petroleum Act 1998, 'the appropriate Minister' in relation to the Scottish onshore area and in relation to other areas. Clause 45(5) is made redundant by virtue of clause 45(17) of the Scotland Bill, which also provides the same definition of 'appropriate Minister'.

Lords Amendment 49

- 52 Lords Amendment 49 would remove previous new subsections (1A) and (1B) of section 4 of the Petroleum Act 1998 which were inserted by clause 45(8) of the Scotland Bill.
- 53 The amendment would insert new subsections (1A) to (1C) into section 4 of the Petroleum Act 1998 by amending clause 45(8) of the Scotland Bill. New subsection (1A) of section 4 of the Petroleum Act 1998 precludes Scottish Ministers from prescribing model clauses in relation to any matters under new subsection (1B) of that section.
- 54 The amendment would insert a new subsection (1B) into section 4 of the Petroleum Act 1998 which retains, 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

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measurement, of petroleum obtained from the licensed areas and (b) the keeping of accounts. In addition to the above reservations, the new subsection (1B) would also reserve regulatory powers for the Secretary of State to cancel a licence, where the holder fails to pay consideration or fails to abide by the requirements on the measurement and facilitation of measurement of petroleum obtained from the licensed areas and the keeping of accounts, so far as related to consideration.

- 55 The amendment would also insert new subsection (1C) into section 4 of the Petroleum Act 1998 to provide that any model clauses prescribed by the Secretary of State under subsection (1B) of that section shall be incorporated into any licences granted by Scottish Ministers, unless the Secretary of State sees fit to modify or exclude them.

Lords Amendments to Clause 65: Subordinate legislation under functions exercisable within devolved competence

Lords Amendments 50, 51 and 52

- 56 Lords Amendment 50, 51 and 52 would amend clause 65 of the Bill to ensure that Westminster Parliament procedure is converted into Scottish Parliament procedure in relation to secondary legislation that the Scottish Ministers will be able to make using the welfare foods powers transferred to them by clauses 25 and 30 of the Bill.

Lords Amendments to Clause 68: Power to make consequential, transitional and saving provision

Lords Amendments 53, 54, 55 and 56

- 57 Clause 68 of the Bill confers on the Secretary of State the power to make consequential, transitional and saving provision by regulations. Lords Amendments 53, 54, 55 and 56 would have the effect of restricting the power to make consequential etc. provision so that the power to amend future enactments, future prerogative instruments, any other future instruments or documents and Welsh and Northern Irish legislation (whenever made) will only be available in relation to Part 3 of the Bill. These amendments therefore limit the scope of the power to make consequential, transitional and saving provision as it applies to Parts 1, 4, 5 and 6 of the Bill.

Lords Amendments to Clause 69: Commencement

Lords Amendments 57

- 58 Lords Amendment 57 would provide that clauses 3 to 12 would not commence automatically two months after Royal Assent, but would come into force on such a day as the Secretary of State may appoint by regulations made by statutory instrument.

Lords Amendment 58

- 59 Amendment 58 provides that the new clause on borrowing comes into force on such a day as the Treasury may appoint by regulations made by statutory instrument.

Lords Amendment 59

- 60 Amendment 59 provides that the new clause on the Office of Budget Responsibility comes into force on such a day as the Treasury may appoint by regulations made by statutory instrument.

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Lords Amendments to Schedule 2: Roads: consequential and related amendments

Lords Amendment 60, 61 and 62

- 61 This Schedule makes consequential amendments to the Road Traffic Regulation Act 1984. It also makes consequential and related provision with respect to various traffic sign powers.
- 62 Lords Amendment 60 substitutes 'relevant authority' for 'national authority' in section 86 (speed limits for different classes of vehicles) and section 88 (temporary speed limits).
- 63 Lords Amendment 61 makes clear that regulations made by Scottish Ministers under the specified sections of the Road Traffic Act 1988 are subject to the negative parliamentary procedure in the Scottish Parliament. It replaces the reference removed by Lords Amendment 43.
- 64 Lords Amendment 62 would mean that the Secretary of State could, with the Scottish Ministers' consent, make a set of GB wide regulations exempting vehicles used for various purposes from speed limit and traffic signs.
- 65 A considerable amount of work has already taken place to develop a new set of regulations to prescribe speed limit exemptions. If they are to be truly effective, changes to relevant traffic signs regulations will also be needed. Traffic signs are already being devolved to the Scottish Parliament in other clauses of the Bill. Work on traffic signs regulations has also been part of a long term project to bring in GB-wide revised regulations.
- 66 These amendments will enable the Secretary of State, with Scottish Ministers' consent, to make a single set of regulations which are GB-wide in their application and allow vehicles used for various purposes connected with devolved matters to have exemptions from both speed limits and certain road signs and general directions such as "keep left" and red traffic lights. The aim is to assist stakeholders and avoid duplication of work already carried out by the Department of Transport, benefitting everyone who needs to travel at speed on roads.

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