

Scotland Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Scotland Office, are published separately as HL Bill 79 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Lord Wallace of Tankerness has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Scotland Bill are compatible with the Convention rights.

Scotland Bill

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B I L L

TO

Amend the Scotland Act 1998 and make provision about the functions of the Scottish Ministers; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

THE PARLIAMENT AND ITS POWERS

The Scottish Parliament

1 Administration of elections

- (1) Section 12 of the 1998 Act (power to make provision about elections) is amended as follows. 5
- (2) In subsection (1) –
- (a) for “Secretary of State” substitute “Scottish Ministers”;
 - (b) after paragraph (a) insert “and”;
 - (c) omit paragraph (c) and the “and” before it. 10
- (3) In subsection (2) –
- (a) after “subsection (1)(a)” insert “does not include provision that may be made by the Secretary of State under section 12A but, subject to that.”;
 - (b) for paragraph (a) substitute –
“ (a) about supplying or otherwise dealing with a register of electors,”; 15
 - (c) omit paragraph (b);
 - (d) after paragraph (c) insert “and”;
 - (e) in paragraph (d) after “other elections” insert “, if the conduct of the other election falls within the legislative competence of the Parliament.”; 20
 - (f) omit paragraphs (e) and (f).

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- (4) Omit subsection (3).
- (5) In subsection (4) omit paragraphs (b) and (c).
- (6) In subsection (6) for “Secretary of State” substitute “Scottish Ministers”.
- (7) After that subsection insert –
- “(7) Before making an order under this section the Scottish Ministers must consult the Secretary of State.” 5
- (8) In the heading of the section after “Power” insert “of the Scottish Ministers”.
- (9) After that section insert –
- “12A Power of the Secretary of State to make provision about elections**
- (1) The Secretary of State may by regulations make provision – 10
- (a) about the registration of electors,
- (b) for modifying the application of section 7(1) where the poll at an election for the return of a constituency member is abandoned (or notice of it is countermanded),
- (c) for modifying section 8(7) to ensure the allocation of the correct number of seats for the region, and 15
- (d) as to the return of members of the Parliament otherwise than at an election.
- (2) The provision that may be made under subsection (1)(a) includes –
- (a) provision for disregarding alterations in a register of electors, and 20
- (b) other provision about, or for purposes connected with, the content of a register or the effect of registration,
- but subject to that it does not include provision about supplying or otherwise dealing with a register. 25
- (3) The provision that may be made under subsection (1)(d) includes, in particular, provision modifying section 10(4) and (5).
- (4) Regulations under subsection (1) may –
- (a) apply, with or without modifications or exceptions, any provision made by or under the Representation of the People Acts or the European Parliamentary Elections Act 2002 or by any other enactment relating to parliamentary elections, European Parliamentary elections or local government elections, and 30
- (b) so far as may be necessary in consequence of any provision made by this Act or regulations under subsection (1), modify any provision made by any enactment relating to the registration of parliamentary electors or local government electors. 35
- (5) Before making regulations under this section the Secretary of State must consult the Scottish Ministers.” 40

2 Combination of polls at Scottish Parliamentary and other reserved elections

- (1) Section 15 of the Representation of the People Act 1985 (combination of polls at parliamentary, European Parliamentary and local elections) is amended as follows.
- (2) In subsection (1) –
 - (a) after paragraph (b) omit “or”;
 - (b) after paragraph (c) insert –
 - “(d) a Scottish Parliamentary general election and a parliamentary general election; or
 - (e) a Scottish Parliamentary general election and a European Parliamentary general election.”
- (3) In subsection (3), after “includes” insert “Scottish Parliamentary elections and”.
- (4) After subsection (3) insert –

“(3A) But subsection (2) does not confer power on a returning officer to determine that a Scottish Parliamentary election and a local government election in Scotland are to be taken together.”
- (5) After subsection (5A) insert –

“(5B) Before making provision under subsection (5) in connection with the combination of polls where one of the elections is a Scottish Parliamentary election or a local government election in Scotland, the Secretary of State must consult the Scottish Ministers.”
- (6) In the heading of the section before “European” insert “Scottish Parliamentary,”.

3 Supplementary and transitional provision about elections

- (1) In section 113 of the 1998 Act (subordinate legislation: scope of powers) for subsection (1) substitute –
 - “(1) References in this section to a power are –
 - (a) to an open power,
 - (b) to any other power to make subordinate legislation conferred by this Act which is exercisable by Her Majesty in Council or by a Minister of the Crown, and
 - (c) except in subsection (9), to the power of the Scottish Ministers to make an order under section 12,and include a power as extended by this section.”
- (2) Schedule 7 to the 1998 Act is amended as follows.
- (3) In paragraph 1 –
 - (a) in the entry for section 12(1) for “Type C” substitute “Type L”;
 - (b) after that entry insert –

“Section 12A | Type C”.

- (4) In paragraph 2 at the end insert—
 “**Type L:** The legislation shall be subject to the affirmative procedure.”
- (5) In section 7 of the Political Parties, Elections and Referendums Act 2000 (Electoral Commission to be consulted on changes to electoral law), in subsection (2)(g) after “12(1) or (6)” insert “or regulations under section 12A(1)”. 5
- (6) In section 8 of that Act (powers with respect to elections exercisable only on Commission recommendation) in subsection (2) for “the Secretary of State” substitute “the person on whom the function is conferred”. 10
- (7) An order made before the commencement of section 1 under section 12(1) of the 1998 Act has effect after that commencement as if made by the Scottish Ministers, to the extent that they would have power to do so.
- (8) To the extent that subsection (7) does not apply, any provision of such an order— 15
 (a) continues to have effect, but
 (b) may be revoked by regulations under section 12A(1).
- (9) A reference to the Secretary of State in such an order is to be read as a reference to the Scottish Ministers.
- (10) Without prejudice to subsections (7) to (9), section 1 does not affect the validity of anything done by or in relation to a Minister of the Crown before that section comes into force. 20
- (11) Anything (including legal proceedings) which, at the time when that section comes into force, is in the process of being done by or in relation to a Minister of the Crown under an order under section 12(1) may be continued by or in relation to the Scottish Ministers. 25
- (12) Anything done by or in relation to a Minister of the Crown for the purposes of or in connection with a function under such an order, if in force at the time when section 1 comes into force, has effect as if done by or in relation to the Scottish Ministers in so far as that is required for continuing its effect after that time. 30
- 4 Presiding Officer and deputies**
- (1) Section 19 of the 1998 Act (Presiding Officer) is amended as follows.
- (2) In subsection (1), omit “at its first meeting”.
- (3) After subsection (1) insert— 35
 “(1A) The Parliament must do so—
 (a) before it conducts any other proceedings, except the taking by its members of the oath of allegiance (see section 84), and
 (b) in any event, within the period of 14 days beginning immediately after the day of the poll at the election. 40
- (1B) The Parliament may, at any time, elect from among its members one or more additional deputies.”

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- (4) After subsection (2) insert –
“(2A) But standing orders may make provision for additional deputies to hold office for a shorter time than provided by subsection (2).”
- (5) In subsection (3), after “deputy” insert “elected under subsection (1)”.
- (6) In Schedule 3 to that Act (standing orders), for paragraph 5 substitute – 5
“5 (1) The standing orders shall include provision for ensuring that the available officers do not all represent the same political party.
(2) The available officers are –
(a) the Presiding Officer and the deputies appointed under section 19(1), except in the case where one or more of them is unable to act and there is at least one additional deputy; 10
(b) in that case, such of the Presiding Officer and deputies as are for the time being able to act.”
- 5 Scottish Parliamentary Corporate Body**
- In section 21 of the 1998 Act (Scottish Parliamentary Corporate Body) in subsection (2)(b) before “four” insert “at least”. 15
- 6 Bills: statements as to legislative competence**
- In section 31(1) of the 1998 Act (statement by member of the Parliament in charge of a Bill), for “A member of the Scottish Executive” substitute “A person”. 20
- 7 Partial suspension of Acts subject to scrutiny by Supreme Court**
- (1) The 1998 Act is amended as follows.
- (2) Section 32 (submission of Bills for Royal Assent) is amended as follows.
- (3) In subsection (2)(b) for “any such reference has been made” substitute “a general reference has been made in relation to the Bill under section 33”. 25
- (4) In subsection (3)(b) for “a reference” substitute “a general reference”.
- (5) In section 33 (scrutiny of Bills by the Supreme Court), after subsection (3) insert –
“(4) A person who makes a reference shall notify the Presiding Officer of it.
(5) A person who makes a reference may specify in it any provisions of the Bill which that person considers are unaffected by the reference (the “unaffected provisions”). 30
(6) In this Act –
“limited reference” means a reference under subsection (1) in which unaffected provisions are specified; 35
“general reference” means any other reference under that subsection.”

(6) After section 33 insert –

“33A Effect of limited reference under section 33 to Supreme Court

- (1) This section applies where the Advocate General, the Lord Advocate or the Attorney General makes a limited reference in relation to a Bill for an Act of the Scottish Parliament. 5
- (2) The provisions of the Act which are affected by the reference do not come into force (despite any provision made by or under the Act) except in accordance with an order made by the Scottish Ministers under subsection (6).
- (3) For the purposes of this section all the provisions of the Act are affected by the reference, except those specified in the reference as the unaffected provisions. 10
- (4) The Presiding Officer shall publish notice of the reference and of the effect of subsection (2) – 15
- (a) in the Edinburgh Gazette, and
- (b) in such other ways as the Presiding Officer considers appropriate.
- (5) The Queen’s Printer for Scotland may publish notice of the reference and of the effect of subsection (2) in such ways as the Queen’s Printer for Scotland considers appropriate. 20
- (6) If the Supreme Court decides that any provisions of the Act affected by the reference are within the legislative competence of the Parliament, the provisions come into force in accordance with an order made by the Scottish Ministers under this subsection.
- (7) Subsection (6) applies – 25
- (a) despite any provision made by or under the Act, but
- (b) subject to any order made by the Court regarding the coming into force of the provisions in question.
- (8) The Court may in particular – 30
- (a) order that any provision is not to come into force until such time as the Court appoints;
- (b) prohibit the Scottish Ministers from making an order under subsection (6) until such time as the Court appoints;
- (c) require such persons as the Court considers appropriate to take such steps as the Court considers appropriate to bring the Court’s judgment to the attention of persons affected by it.” 35
- (7) In section 34(1) (ECJ references), in paragraph (a) for “a reference” substitute “a general reference”.
- (8) In section 35(3) (period during which Secretary of State may intervene) in paragraph (c) for “a reference” substitute “a general reference”. 40
- (9) In section 36(4) (opportunity for reconsideration of Bill), in paragraph (b) for “a reference” substitute “a general reference”.
- (10) In Schedule 7 (procedure for subordinate legislation), in paragraph 1, at the

appropriate place insert –

“Section 33A(6) | Type J”.

8 Members’ interests

- (1) Section 39 of the 1998 Act (members’ interests) is amended as follows.
- (2) For subsections (5) to (7) substitute – 5
 - “(4A) Any requirement or prohibition (however expressed) imposed by provision made in pursuance of subsections (2) to (4) may be subject to such exceptions as are specified in the provision.
 - (5) Provision may be made for – 10
 - (a) excluding a member from the proceedings of the Parliament,
 - (b) imposing on a member such other sanctions as the Parliament considers appropriate,if the member fails to comply with, or contravenes, any provision made in pursuance of subsections (2) to (4) or this subsection.
 - (5A) Provision made under subsection (5) may include provision that a sanction is not to be imposed in such circumstances as are specified in the provision. 15
 - (6) Provision made under subsection (5) may include provision that the member is guilty of an offence.
 - (7) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.” 20
- (3) After the commencement of subsection (2), subsections (5) to (7) as originally enacted continue to have effect until the coming into force of the first provision made in pursuance of those subsections as substituted by subsection (2).

9 Constituencies, regions and regional members 25

- (1) In the Scottish Parliament (Constituencies) Act 2004, omit section 1(2) and (3) and Schedule 2 (modification of Schedule 1 to the 1998 Act).
- (2) Schedule 1 contains – 30
 - (a) amendments reproducing the effect of the modifications contained in Schedule 2 to the Scottish Parliament (Constituencies) Act 2004, and
 - (b) other minor amendments of Schedule 1 to the 1998 Act.

Legislative competence

10 Continued effect of provisions where legislative competence conferred for limited period

- In section 30 of the 1998 Act (legislative competence: supplementary) after subsection (4) insert – 35
- “(5) Subsection (6) applies where an Order in Council under this section –

-
- (a) makes any modification of Schedule 4 or 5, and
- (b) also provides for that modification to cease to have effect (whether on a specified date or otherwise).
- (6) The Order may provide that any provision of an Act of the Scottish Parliament which will be within the legislative competence of the Parliament by virtue of the modification is to continue to have effect after the modification ceases to have effect. 5
- (7) Subsections (5) and (6) do not limit section 113(4) or (5).”
- 11 Air weapons**
- In Part 2 of Schedule 5 to the 1998 Act, in Section B4 (specific reservations: firearms) at the end insert – 10
- “Exception*
- The regulation of air weapons within the meaning given by section 1(3)(b) of the Firearms Act 1968 (which is subject to the following which remain powers of the Secretary of State – 15
- (a) the power to make rules under section 53 of that Act for the purposes of that provision (specially dangerous weapons requiring firearms certificate), and
- (b) the power to make an order under section 1(4) of the Firearms (Amendment) Act 1988 (specially dangerous weapons to be prohibited).” 20
- 12 Insolvency**
- (1) In Part 2 of Schedule 5 to the 1998 Act, Section C2 (specific reservations: insolvency) is amended as follows.
- (2) In the first paragraph, in sub-paragraph (c) omit “other than the power to sist proceedings,”. 25
- (3) After that paragraph insert –
- “Those matters include the following formerly excepted matters –
- (a) the process of winding up, including the person having responsibility for the conduct of a winding up or any part of it, and that person’s conduct of it or of that part, 30
- (b) the effect of winding up on diligence, and
- (c) avoidance and adjustment of prior transactions on winding up.”
- (4) In the Exceptions omit – 35
- (a) the first paragraph (process, effect on diligence, and prior transactions), and
- (b) the second paragraph (social landlords).
- (5) Schedule 2 makes amendments in connection with the reservation of formerly devolved insolvency matters. 40

13 Regulation of the health professions

- (1) In Part 2 of Schedule 5 to the 1998 Act, Section G2 (specific reservations: health professions) is amended as follows.
- (2) In the definition of “The health professions”, after paragraph (i) insert—

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“and any other profession concerned (wholly or partly) with the physical or mental health of individuals, except any profession regulated by the Regulation of Care (Scotland) Act 2001 (asp 8).”
- (3) In section 51 of the Dentists Act 1984 (exercise of powers conferred on Privy Council)—

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(a) after subsection (3)(a) insert—

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“(aa) approving regulations under section 36A(2) (professions complementary to dentistry),
(ab) approving rules under section 36L (insurance),”;
(b) in subsection (3)(d), after “dental care professionals” insert “, including rules made under that Schedule as applied (with modifications) by paragraph 4(7) of Schedule 4A (registration appeals: dental care professionals register)”;
(c) omit subsections (4) and (5).
- (4) In article 42 of the Health Professions Order 2001 (S.I. 2002/254) (exercise of power by the Privy Council)—

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(a) in paragraph (3), for the words after “shall” substitute “be subject to annulment in pursuance of a resolution of either House of Parliament”;
(b) omit paragraph (3A).
- (5) In article 70 of the Pharmacy Order 2010 (S.I. 2010/231) (Privy Council procedures etc), in paragraphs (2) and (3), omit “or of the Scottish Parliament”. 25
- (6) In the Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009 (S.I. 2009/1182), omit paragraph 11(b) of Schedule 1 (amendments to Dentists Act 1984).

14 Antarctica

- (1) In Part 2 of Schedule 5 to the 1998 Act, under Head L (miscellaneous) at the end insert—

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“**L7. Antarctica**
Regulation of activities in Antarctica.

35

Interpretation
“Antarctica” has the meaning given by section 1 of the Antarctic Act 1994.”
- (2) The provision inserted by subsection (1) is to be regarded as having been included in Schedule 5 to the 1998 Act since the day on which that Schedule came into force.

PART 2

MINISTERS AND THEIR POWERS

*The Scottish Ministers***15 The Scottish Government**

- (1) The Scottish Executive is renamed the Scottish Government. 5
- (2) Accordingly, in the 1998 Act—
- (a) for “the Scottish Executive” in each place substitute “the Scottish Government”;
- (b) in the heading to section 81 and the italic cross-heading preceding it, for “Executive” substitute “Government”. 10
- (3) Subsection (2) does not apply to section 31(1) of the 1998 Act (as to which, see section 6 of this Act).
- (4) Unless the context requires otherwise, any reference to the Scottish Executive in any enactment, instrument or other document made before the date on which this section comes into force (except the enactments mentioned in subsections (2) and (3)) is to be read as a reference to the Scottish Government. 15

16 Exercise of power to make Order disqualifying persons from membership of the Parliament

- (1) The 1998 Act is amended as follows.
- (2) In section 112 (subordinate legislation: general), after subsection (5) insert— 20
- “(6) Section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (functions exercisable by Scottish statutory instrument) applies to the function of making an Order in Council under section 15(1) or (2).”
- (3) In section 92 (Queen’s Printer for Scotland), after subsection (4) insert— 25
- “(4A) For the purposes of subsection (4)(c), the function of Her Majesty of making an Order in Council under section 15(1) or (2) (power to specify persons disqualified from membership of the Parliament) is to be regarded as being exercisable within devolved competence.”
- (4) In section 104 (power to make provision consequential on legislation of, or scrutinised by, the Parliament), after subsection (2) insert— 30
- “(3) For the purposes of subsection (2)(c), the function of Her Majesty of making an Order in Council under section 15(1) or (2) (power to specify persons disqualified from membership of the Parliament) is to be regarded as being exercisable within devolved competence.” 35
- (5) In Schedule 4 (enactments etc protected from modification), in paragraph 11 (general exceptions: subordinate legislation), after sub-paragraph (3) insert—
- “(4) For the purposes of sub-paragraph (3)(c), the function of Her Majesty of making an Order in Council under section 15(1) or (2) (power to specify persons disqualified from membership of the Parliament) is to be regarded as being exercisable within devolved competence.” 40

17 The Lord Advocate: Convention rights and Community law

- (1) The 1998 Act is amended as follows.
- (2) In section 57(3) (Community law and Convention rights: excepted acts of the Lord Advocate), omit the words after paragraph (b).
- (3) After section 98 insert – 5
“98A The Lord Advocate and Convention rights etc: criminal appeals
 - (1) This section applies to an act or failure to act of the Lord Advocate –
 - (a) in prosecuting any offence, or
 - (b) in the capacity of head of the system of criminal prosecution in Scotland. 10
 - (2) In this section “compatibility” means the compatibility of such an act or failure to act with any of the Convention rights or with Community law.
 - (3) For the purpose of determining any question relating to compatibility, an appeal shall lie to the Supreme Court against a determination by a court of two or more judges of the High Court of Justiciary. 15
 - (4) An appeal under this section lies from such a court only with the permission of that court or, failing such permission, with permission of the Supreme Court.
 - (5) Where the High Court’s determination was on an appeal under section 106 of the Criminal Procedure (Scotland) Act 1995 (appeal from solemn proceedings), subsections (3) to (3D) of that section apply in accordance with subsections (7) and (8) below. 20
 - (6) Where the High Court’s determination was on an appeal under subsection (2) of section 175 of that Act (appeal from summary proceedings), subsections (5) to (5D) of that section apply in accordance with subsection (7) and (8) below. 25
 - (7) The subsections of the 1995 Act referred to in subsections (5) and (6) above (appeal to be on grounds of miscarriage of justice) apply to the Supreme Court in relation to an appeal under this section as they apply to the High Court in relation to any appeal. 30
 - (8) But an alleged miscarriage of justice may not be brought under review of the Supreme Court by virtue of subsection (7) except for the purpose of determining a question relating to compatibility.
 - (9) In relation to an appeal under this section, the Supreme Court has all the powers of the court below and may (in consequence of determining a question relating to compatibility) –
 - (a) affirm, set aside or vary any order or judgment made or given by that court;
 - (b) remit any issue for determination by that court; 40
 - (c) order a new trial or hearing.”
- (4) In paragraph 1 of Schedule 6 (devolution issues), after sub-paragraph (f) insert –
“But a question whether an act or failure to act is, or would be, incompatible with any of the Convention rights or with Community 45

law is not a devolution issue if it is an act or failure to act of the Lord Advocate in prosecuting any offence or in the capacity of head of the systems of criminal prosecution and investigation of deaths in Scotland.”

- (5) The Criminal Procedure (Scotland) Act 1995 is amended as follows. 5
- (6) In sections 112(6), 121(5)(a), 121A(5), 122(4) and (5) and 177(8), for “paragraph 13(a) of Schedule 6 to the Scotland Act 1998” substitute “section 98A of the Scotland Act 1998 or paragraph 13(a) of Schedule 6 to that Act”.
- (7) In section 124(2) – 10
- (a) for “and paragraph 13(a) of Schedule 6 to the Scotland Act 1998” substitute “, section 98A of the Scotland Act 1998 and paragraph 13(a) of Schedule 6 to that Act”;
- (b) after “appeal under” insert “section 98A of that Act or”.
- (8) In section 288A – 15
- (a) in subsection (1) omit “in pursuance of paragraph 6 of Schedule 6 to the Scotland Act 1998 (devolution issues)”;
- (b) for subsection (2) substitute – 20
- “(2) Where the Advocate General for Scotland was a party in pursuance of paragraph 6 of Schedule 6 to the Scotland Act 1998 (devolution issues), the Advocate General may refer to the High Court for their opinion any devolution issue which has arisen in the proceedings.
- (2A) Whether or not subsection (2) applies, the Advocate General for Scotland may refer to the High Court for their opinion any question which has arisen in the proceedings as to whether an act or failure to act of the Lord Advocate in prosecuting in the proceedings or in the capacity of head of the system of criminal prosecution in Scotland was incompatible with any of the Convention rights or with Community law. 25
- (2B) If a reference is made under subsection (2) or (2A) the Clerk of Justiciary shall send to the person acquitted or convicted and to any solicitor who acted for that person at the trial a copy of the reference and intimation of the date fixed by the Court for a hearing.”;
- (c) in subsection (6) after “(2)” insert “or (2A)”. 30
- (9) In section 288B(1) – 35
- (a) for “paragraph 13(a) of Schedule 6 to the Scotland Act 1998” substitute “section 98A of the Scotland Act 1998 or paragraph 13(a) of Schedule 6 to that Act”;
- (b) omit “of a devolution issue”. 40
- 18 Time limit for human rights actions against Scottish Ministers etc**
- (1) In section 100 of the 1998 Act the following (as inserted by the Convention Rights Proceedings (Amendment) (Scotland) Act 2009) (asp 11) are omitted – 45
- (a) subsections (3A) to (3E);
- (b) in subsection (4), the words “Subject to subsection (3D),”.

-
- (2) The Convention Rights Proceedings (Amendment) (Scotland) Act 2009 (asp 11) is repealed.
- (3) Omit paragraph 4A of Schedule 4 to the 1998 Act.
- (4) The Scotland Act 1998 (Modification of Schedule 4) Order 2009 (S.I. 2009/1380) is revoked. 5
- (5) Subsections (1) to (4) above do not apply to any proceedings brought before this section comes into force.
- (6) After subsection (3) of section 100 of the 1998 Act insert –
- “(3A) Subsection (3B) applies to any proceedings brought by virtue of this Act against the Scottish Ministers or a member of the Scottish Government in a court or tribunal on the ground that an act of the Scottish Ministers or a member of the Scottish Government is incompatible with the Convention rights. 10
- (3B) Proceedings to which this subsection applies must be brought before the end of – 15
- (a) the period of one year beginning with the date on which the act complained of took place, or
- (b) such longer period as the court or tribunal considers equitable having regard to all the circumstances, 20
- but that is subject to any rule imposing a stricter time limit in relation to the procedure in question. 20
- (3C) Subsection (3B) does not apply to proceedings brought by the Lord Advocate, the Advocate General, the Attorney General, the Attorney General for Northern Ireland or the Advocate General for Northern Ireland. 25
- (3D) In subsections (3A) and (3B) “act” does not include the making of any legislation but it does include any other act or failure to act (including a failure to make legislation).
- (3E) In subsection (3B) “rule” has the same meaning as it has in section 7(5) of the Human Rights Act 1998.” 30
- (7) In subsection (4) of that section at the beginning insert “Subject to subsection (3D),”.
- (8) Subsections (6) and (7) above apply to any proceedings brought after this section comes into force (including proceedings in respect of an act taking place before this section comes into force). 35
- 19 Power to vary retrospective decisions about non-legislative acts**
- In section 102 of the 1998 Act (powers of courts or tribunals to vary retrospective decisions), in subsection (1) at the end add “, or
- (c) any other purported exercise of a function by a member of the Scottish Government was outside devolved competence.” 40

*Executive competence***20 BBC Trust member for Scotland**

In the 1998 Act, after section 90 insert –

“The BBC

90A BBC Trust member for Scotland 5

(1) A Minister of the Crown must not exercise without the agreement of the Scottish Ministers functions relating to selection for a particular appointment by which –

(a) a person is to become a member of the BBC Trust and hold a Scottish post, or

(b) an existing member of the Trust is to hold a Scottish post.

(2) “Scottish post” means a position, held as a member of the Trust, with specific reference to Scotland.” 10

21 Exercise of functions relating to Seirbheis nam Meadhanan Gàidhlig

(1) The Broadcasting Act 1990 is amended as follows. 15

(2) In section 183 (financing of programmes in Gaelic out of Gaelic Television Fund) for subsection (1) substitute –

“(1) The Scottish Ministers must, for each financial year, pay to OFCOM such amount as they may determine to be appropriate for the purposes of this section.” 20

(3) Omit subsection (8) of that section.

(4) Section 183A (membership of the Gaelic Media Service) is amended as follows.

(5) In subsection (4) after “the Secretary of State” insert “and the Scottish Ministers”.

(6) In subsection (6)(b) after “the Secretary of State” insert “with the agreement of the Scottish Ministers”. 25

(7) In Schedule 19 (Gaelic Media Service: supplementary provisions), paragraph 12 (annual reports) is amended as follows.

(8) In sub-paragraph (3) for the words from “the Secretary of State” to the end substitute – 30

“(a) the Secretary of State, who must lay copies of it before each House of Parliament, and

(b) the Scottish Ministers, who must lay a copy of it before the Scottish Parliament.”

(9) Sub-paragraph (4) is omitted. 35

(10) In the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999 (S.I. 1999/1750) –

(a) in Schedule 1 (functions transferred to the Scottish Ministers), omit the entry relating to section 183 of the Broadcasting Act 1990;

- (b) in Schedule 2 (functions made exercisable concurrently), omit the reference to paragraph 12(3) of Schedule 19 to that Act;
- (c) in Schedule 5 (modification of enactments), omit paragraph 10(4).

22 Scottish Crown Estate Commissioner

- (1) In Schedule 1 to the Crown Estate Act 1961 (constitution etc of Crown Estate Commissioners), paragraph 1 is amended as follows. 5
- (2) After sub-paragraph (3) insert –
 - “(3A) One of the Commissioners shall be appointed as the Scottish Crown Estate Commissioner, who must be a person who knows about conditions in Scotland as they relate to the functions of the Commissioners.” 10
- (3) After sub-paragraph (4) insert –
 - “(4A) The Scottish Crown Estate Commissioner shall be appointed on the recommendation of the Chancellor of the Exchequer, who shall consult the Scottish Ministers before making that recommendation.” 15

23 Misuse of drugs

- (1) The Misuse of Drugs Act 1971 is amended as follows.
- (2) In section 10 (power to make regulations for preventing misuse of controlled drugs) –
 - (a) in subsection (2)(i) for “Secretary of State” substitute “appropriate authority”; 20
 - (b) after subsection (2) insert –
 - “(3) Regulations made in pursuance of subsection (2)(i) must secure that under any licence a doctor may – 25
 - (a) administer, supply or prescribe a controlled drug, or
 - (b) authorise the administration or supply of a controlled drug,only while at an address specified in the licence.
 - (4) The appropriate authority for the purposes of subsection (2)(i) is – 30
 - (a) where the specified address for the purposes of subsection (3) is in Scotland, the Scottish Ministers;
 - (b) otherwise, the Secretary of State.”
- (3) In section 13 (directions where regulations or licence contravened) after subsection (1) insert – 35
 - “(1A) In relation to regulations made in pursuance of section 10(2)(i) or to a licence under those regulations, the reference in subsection (1) to the Secretary of State is to be read as a reference to the appropriate authority.
 - (1B) The appropriate authority for the purposes of subsection (1A) is – 40
 - (a) in relation to a contravention taking place in Scotland, the Scottish Ministers;

- (b) otherwise, the Secretary of State.”
- (4) In section 14 (investigation where grounds for direction under section 13 are considered to exist) after subsection (1) insert –
- “(1A) In relation to section 13(1), references in this section to the Secretary of State are to be read in accordance with section 13(1A).” 5
- (5) In section 16 (provisions supplementary to sections 14 and 15) after subsection (1) insert –
- “(1A) Where in accordance with section 14(1A) a case is referred to a tribunal or advisory body by the Scottish Ministers –
- (a) references in this section and Schedule 3 to the Secretary of State are to be read as references to the Scottish Ministers, and 10
- (b) references in that Schedule to the approval of the Treasury do not apply.”
- (6) In section 30 (licences and authorities) –
- (a) at the beginning insert “(1)”; 15
- (b) at the end insert –
- “(2) Subsection (1) applies to a licence issued by the Scottish Ministers under regulations made in pursuance of section 10(2)(i) as if references in that subsection to the Secretary of State were references to the Scottish Ministers.” 20
- (7) In paragraph 4 of Schedule 3 (tribunal rules) at the end add –
- “(4) Where the Scottish Ministers have power to make rules under this paragraph (by virtue of section 16(1A) or otherwise) –
- (a) sub-paragraph (3) does not apply, and
- (b) the rules are subject to the negative procedure.” 25

24 Power to prescribe drink-driving limits

- (1) The Road Traffic Act 1988 is amended as follows.
- (2) Section 8 (choice of specimens of breath) is amended as follows.
- (3) In subsection (3), for “The Secretary of State may by regulations” substitute “Regulations may”. 30
- (4) After subsection (3) insert –
- “(4) Regulations under subsection (3) may be made –
- (a) by the Secretary of State, in relation to cases where the suspected offence is an offence committed in England and Wales; 35
- (b) by the Scottish Ministers, in relation to cases where the suspected offence is an offence committed in Scotland.”
- (5) Section 11 (interpretation of sections 3A to 10) is amended as follows.
- (6) In the definition of “the prescribed limit” in subsection (2), omit “made by the Secretary of State”. 40

-
- (7) After subsection (2) insert –
- “(2ZA) Regulations under subsection (2) may be made –
- (a) by the Secretary of State, in relation to driving or attempting to drive, or being in charge of a vehicle, in England and Wales;
 - (b) by the Scottish Ministers, in relation to driving or attempting to drive, or being in charge of a vehicle, in Scotland.” 5
- (8) Section 195 (provisions as to regulations) is amended as follows.
- (9) After subsection (2) insert –
- “(2A) Before making any regulations under this Act the Scottish Ministers must consult with such representative organisations as they think fit.” 10
- (10) After subsection (4) insert –
- “(4A) Regulations made by the Scottish Ministers under section 8(3) or 11(2) are subject to the affirmative procedure.”
- 25 Speed limits**
- (1) The Road Traffic Regulation Act 1984 is amended as follows. 15
- (2) Section 17 (traffic regulation on special roads) is amended as follows.
- (3) In subsection (2) for “The Secretary of State may make regulations” substitute “Regulations may make provision”.
- (4) After subsection (3) insert –
- “(3ZA) The power to make provision of the following kinds by regulations under subsection (2) is exercisable by the Scottish Ministers – 20
- (a) provision with respect to a particular special road in Scotland;
 - (b) provision for regulating the speed of vehicles on special roads in Scotland.
- (3ZB) The power to make provision of any other kind by regulations under subsection (2) is exercisable by the Secretary of State. 25
- (3ZC) In relation to special roads in Scotland that power of the Secretary of State is exercisable only after consultation with the Scottish Ministers.
- (3ZD) Regulations made by the Scottish Ministers under subsection (2) are subject to the negative procedure.” 30
- (5) In subsection (3A) –
- (a) the words from “the National Park Authority” to the end become paragraph (a), and
 - (b) after that paragraph insert “, and
(b) such representative organisations as they think fit.” 35
- (6) Section 64 (general provision as to traffic signs) is amended as follows.
- (7) After subsection (2) insert –
- “(2A) The functions under this section that are exercisable by the Scottish Ministers instead of the Secretary of State include the function of

- making regulations under subsection (1)(a) specifying signs for a Scottish national speed limit.
- (2B) The function of making such regulations is exercisable only with the agreement of the Secretary of State.
- (2C) “Scottish national speed limit” means any of these – 5
- (a) a speed limit that, by virtue of regulations under section 17(2) made by the Scottish Ministers, is to be observed –
- (i) on all special roads,
- (ii) on all special roads provided for the use of particular classes of traffic, 10
- (iii) on all special roads other than special roads of such description as may be specified in the regulations, or
- (iv) as mentioned in sub-paragraph (i), (ii) or (iii) except for such lengths of special road as may be specified in the regulations; 15
- (b) a speed limit that, by virtue of an order under section 88 made by the Scottish Ministers, is to be observed on all roads, on all roads of any class specified in the order or on all roads other than roads of any class so specified.”
- (8) After subsection (6) insert – 20
- “(7) Regulations made by the Scottish Ministers under subsection (1)(a) are subject to the negative procedure.
- (8) Before making any regulations under subsection (1)(a) the Scottish Ministers must consult with such representative organisations as they think fit.” 25
- (9) Section 88 (temporary speed limits with power to continue indefinitely) is amended as follows.
- (10) For “the Secretary of State” in each place substitute “the national authority”.
- (11) In subsection (1) – 30
- (a) for “he” substitute “the authority”;
- (b) for “his” substitute “the”.
- (12) In subsection (4) omit the words from “made by statutory instrument” to the end.
- (13) After subsection (7) insert –
- “(7A) The national authority in this section – 35
- (a) in relation to roads in England and Wales, is the Secretary of State;
- (b) in relation to roads in Scotland, is the Scottish Ministers.”
- (14) In subsection (8) after “subsection (1)(b)” insert “by the Secretary of State”.
- (15) After subsection (8) insert – 40
- “(9) The power of the Scottish Ministers to make an order under subsection (1) is not to be exercisable by Scottish statutory instrument.

- (10) The first order to be made under subsection (1)(b) by the Scottish Ministers shall not be made until a draft of the order has been laid before the Scottish Parliament and approved by it.
- (11) The power of the Secretary of State to make an order under subsection (4) is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament. 5
- (12) An order made by the Scottish Ministers under subsection (4) is subject to the negative procedure.”

26 Speed limits: supplementary

- (1) The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999 (S.I. 1999/1750) is amended as follows. 10
- (2) In Schedule 3 (functions exercisable after consultation), in the entry for the Road Traffic Regulation Act 1984 –
 - (a) omit paragraph (a) (section 17(2));
 - (b) in paragraph (f), omit “and 88(1) and (4)”. 15
- (3) In the Schedule to the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2000 (S.I. 2000/1563) omit the entry for the Road Traffic Regulation Act 1984 (section 88(1)(a) and (4)).
- (4) The transfer by virtue of section 25 of a function exercisable by the Secretary of State to the Scottish Ministers (a “transferred function”) does not affect the validity of anything done (or which has effect as if done) by or in relation to the Secretary of State before the commencement of that section. 20
- (5) Anything (including legal proceedings) which, at that commencement, is in the process of being done by or in relation to the Secretary of State may, so far as it relates to a transferred function, be continued by or in relation to the Scottish Ministers. 25
- (6) Anything done (or which has effect as if done) by or in relation to the Secretary of State for the purposes of or in connection with a transferred function has effect, if it is in force at that commencement, as if done by or in relation to the Scottish Ministers, so far as that is required for continuing its effect. 30
- (7) But an instrument containing regulations or an order made by the Secretary of State is not to be treated as if made by the Scottish Ministers for the purposes of section 64(2C)(a) or (b) of the Road Traffic Regulation Act 1984.

27 Implementation of international obligations

- (1) The 1998 Act is amended as follows. 35
- (2) After section 57 insert –

“57A International obligations

Despite the transfer to the Scottish Ministers by virtue of section 53 of functions in relation to observing and implementing international obligations, a function in relation to those matters which is exercisable by the Scottish Ministers is also exercisable by a Minister of the Crown as regards Scotland if it was exercisable by that Minister as regards Scotland immediately before that transfer.” 40

- (3) In section 118 (subordinate instruments) after subsection (4) insert –
- “(4A) But, for the purposes of the exercise of a function in relation to observing or implementing international obligations, a provision to which subsection (4) applies is to be treated as complied with if it is complied with either –
- (a) as it has effect with the modifications made by that subsection, or
- (b) as it would have effect without those modifications.”

PART 3

FINANCE 10

Introductory

28 Taxation: introductory

- (1) The 1998 Act is amended as follows.
- (2) Before Part 5 insert –

“PART 4A 15

TAXATION

CHAPTER 1

INTRODUCTORY

80A Overview of Part 4A

- (1) In this Part – 20
- (a) Chapter 2 confers on the Scottish Parliament power to set a rate of income tax to be paid by Scottish taxpayers, and
- (b) Chapters 3 and 4 specify the taxes about which the Scottish Parliament may make provision in the exercise of the power conferred by section 28(1). 25
- (2) The power to make provision about a devolved tax is subject to the restrictions imposed by –
- (a) subsection (3), and
- (b) the other provisions of this Part.
- (3) A devolved tax may not be imposed where to do so would be incompatible with any international obligations. 30
- (4) In this Act “devolved tax” means a tax specified in this Part as a devolved tax.

80B Power to add new devolved taxes

- (1) Her Majesty may by Order in Council amend this Part so as to – 35
- (a) specify, as an additional devolved tax, a tax of any description, or

- (b) make any other modifications of the provisions relating to devolved taxes which She considers necessary or expedient.
- (2) An Order in Council under this section may also make such modifications of –
- (a) any enactment or prerogative instrument (including any enactment comprised in or made under this Act), or
- (b) any other instrument or document,
as Her Majesty considers necessary or expedient in connection with other provision made by the Order.” 5
- (3) In section 93 (agency arrangements) – 10
- (a) after subsection (2) insert –
- “(2A) The collection and management of a devolved tax is a specified function of the Scottish Ministers.”;
- (b) in subsection (3), in the definition of “specified”, after “specified” insert “(subject to subsection (2A))”. 15
- (4) In section 127 (index of defined expressions), at the appropriate place insert –
- “Devolved tax | Section 80A(4)”.
- (5) In Part 2 of Schedule 5 to that Act, in Section A1 (specific reservations: fiscal, economic and monetary policy), for “*Exception*” substitute “*Exceptions*” and after that heading insert – 20
- “ Devolved taxes, including their collection and management.”
- (6) In Schedule 7 (procedure for subordinate legislation), in paragraph 1, at the appropriate place insert –
- “Section 80B | Type A”.
- 29 Amendments relating to the Commissioners for Revenue and Customs 25**
- (1) The Commissioners for Revenue and Customs Act 2005 is amended as follows.
- (2) Section 18 (confidentiality) is amended as follows.
- (3) In subsection (2) –
- (a) omit “or” at the end of paragraph (g), and
- (b) after paragraph (h) insert “, or 30
- “(i) which is made to the Scottish Ministers in connection with the collection and management of a devolved tax within the meaning of the Scotland Act 1998.”
- (4) After subsection (2) insert –
- “(2A) Information disclosed in reliance on subsection (2)(i) may not be further disclosed without the consent of the Commissioners (which may be general or specific).” 35

- (5) In section 19 (wrongful disclosure) in subsections (1) and (8) after “18(1)” insert “or (2A)”.
- (6) In section 51 (interpretation) after subsection (2) insert –
- “(2A) But a reference to the functions of the Commissioners or of officers of Revenue and Customs does not include a function which –
- (a) is conferred on them by or by virtue of an Act of the Scottish Parliament or an instrument made under such an Act, and
- (b) relates to a devolved tax within the meaning of the Scotland Act 1998.”
- (7) In section 1(1) of the Customs and Excise Management Act 1979 (interpretation), at the end of the definition of “assigned matter” insert “, except that it does not include any matter relating to a devolved tax within the meaning of the Scotland Act 1998;”.

Scottish rate of income tax

30 Scottish rate of income tax 15

- (1) The 1998 Act is amended as follows.
- (2) Part 4 (power to vary income tax rate) is omitted.
- (3) In Part 4A (as inserted by section 28), after Chapter 1 insert –

“CHAPTER 2

INCOME TAX 20

80C Power to set Scottish rate for Scottish taxpayers

- (1) The Scottish Parliament may by resolution (a “Scottish rate resolution”) set the Scottish rate for the purpose of calculating the rates of income tax to be paid by Scottish taxpayers.
- (2) Section 6(2B) of the Income Tax Act 2007 provides for the calculation of those rates. 25
- (3) A Scottish rate resolution applies –
- (a) for only one tax year, and
- (b) for the whole of that year.
- (4) A Scottish rate resolution may specify only one rate. 30
- (5) The Scottish rate must be a whole number or half a whole number.
- (6) A Scottish rate resolution –
- (a) must specify the tax year for which it applies,
- (b) must be made before the start of that tax year, and
- (c) must not be made more than 12 months before the start of that year. 35
- (7) If a Scottish rate resolution is cancelled before the start of the tax year for which it is to apply –

- (a) the Income Tax Acts have effect for that year as if the resolution had never been passed, and
 - (b) the resolution may be replaced by another Scottish rate resolution.
- (8) Standing orders must provide that only a member of the Scottish Government may move a motion for a Scottish rate resolution. 5

80D Scottish taxpayers

- (1) In any tax year, a Scottish taxpayer is an individual (T) –
- (a) who is resident in the UK for income tax purposes, and
 - (b) who, for that year, meets condition A, B or C. 10
- (2) T meets condition A if T has a close connection with Scotland (see section 80E).
- (3) T meets condition B if –
- (a) T does not have a close connection with any part of the UK other than Scotland (see section 80E), and 15
 - (b) T spends more days of that year in Scotland than in any other part of the UK (see section 80F).
- (4) T meets condition C if, for the whole or any part of the year, T is –
- (a) a member of Parliament for a constituency in Scotland,
 - (b) a member of the European Parliament for Scotland, or 20
 - (c) a member of the Scottish Parliament.
- (5) In this Chapter “the UK” means the United Kingdom.

80E Close connection with Scotland or another part of the UK

- (1) To find whether, for any year, T has a close connection with any part of the UK see – 25
- (a) subsection (2) (where T has only one place of residence in the UK), or
 - (b) subsection (3) (where T has 2 or more places of residence in the UK).
- (2) T has a close connection with a part of the UK if in that year – 30
- (a) T has only one place of residence in the UK,
 - (b) that place of residence is in that part of the UK, and
 - (c) for at least part of the year, T lives at that place.
- (3) T has a close connection with a part of the UK if in that year – 35
- (a) T has 2 or more places of residence in the UK,
 - (b) for at least part of the year, T’s main place of residence in the UK is in that part of the UK,
 - (c) the times in the year when T’s main place of residence is in that part of the UK comprise (in aggregate) at least as much of the year as the times when T’s main place of residence is in any one other part of the UK, and 40
 - (d) for at least part of the year, T lives at a place of residence in that part of the UK.

- (4) In this section “place” includes a place on board a vessel or other means of transport.

80F Days spent in Scotland or another part of the UK

- (1) T spends more days of a year in Scotland than in any other part of the UK if (and only if)– 5
- (a) the number of days in the year on which T is in Scotland at the end of the day equals or exceeds
- (b) the number of days in the year on which T is in any other part of the UK at the end of the day. 10
- (2) But T is not to be treated as being in the UK at the end of a day if–
- (a) on that day T arrives in the UK as a passenger,
- (b) T departs from the UK on the next day, and
- (c) during the time between arrival and departure T does not engage in activities which are to a substantial extent unrelated to T’s passage through the UK. 15

80G Supplemental powers to modify enactments

- (1) The Treasury may by order provide that subsections (2A) to (2C) of section 6 of the Income Tax Act 2007 are to be disapplied, or that their effect is to be modified, in relation to any enactment. 20
- (2) The Treasury may by order make such modifications of any enactment as they consider necessary or expedient in consequence of or in connection with–
- (a) the power of the Parliament to set a rate under section 80C;
- (b) the making of a Scottish rate resolution; 25
- (c) an order under subsection (1).
- (3) An order under subsection (2) may, in particular, provide that a Scottish rate resolution does not require any change in the amounts repayable or deductible under PAYE regulations between–
- (a) the beginning of the tax year for which the resolution has effect, and 30
- (b) such date (falling after the date of the resolution) as may be specified in the order.
- (4) An order under this section may, to the extent that the Treasury consider it to be appropriate, take effect retrospectively from the beginning of the tax year in which the order is made. 35

80H Reimbursement of expenses

The Scottish Ministers may reimburse any Minister of the Crown or government department for administrative expenses incurred by virtue of this Chapter at any time after the passing of the Scotland Act 2011 by the Minister or department.” 40

- (4) The repeal by subsection (2) of Part 4 of the 1998 Act has effect so that a tax-varying resolution may not be passed so as to relate to any tax year following such tax year as is appointed by the Treasury by order under this subsection (as the last year for which that Part is to have effect). 45

- (5) A Scottish rate resolution made under the provisions inserted by subsection (3) may not apply for a tax year preceding such tax year as is appointed by the Treasury by order under this subsection (as the first year for which those provisions are to have effect).
- (6) The tax year appointed under subsection (4) must precede the tax year appointed under subsection (5). 5
- (7) Schedule 3 (which contains other amendments relating to the power to set a Scottish rate of income tax) has effect.

31 Income tax for Scottish taxpayers

- (1) The Income Tax Act 2007 is amended as follows. 10
- (2) In section 6 (the rates of income tax) after subsection (2) insert –
 - “(2A) Subsection (2) does not apply to the non-savings income of a Scottish taxpayer.
 - (2B) The basic rate, higher rate and additional rate for a tax year on the non-savings income of a Scottish taxpayer is to be found as follows. 15
 - Step 1*
Take the basic rate, higher rate or additional rate determined as such under subsection (2).
 - Step 2*
Deduct 10 percentage points. 20
 - Step 3*
Add the Scottish rate (if any) set by the Scottish Parliament for that year.
 - (2C) Chapter 2 of Part 4A of the Scotland Act 1998 makes provision about the meaning of “Scottish taxpayer” and the setting of the Scottish rate.” 25
- (3) In section 10 (income charged at particular rates: individuals) after subsection (3A) insert –
 - “(3B) If the individual is a Scottish taxpayer, the basic rate, higher rate and additional rate are –
 - (a) on so much of the individual’s income as is savings income, the rates determined as such under section 6(2); 30
 - (b) on so much of the individual’s income as is not savings income, the rates determined as such under section 6(2B).
 - (3C) Section 16 has effect for determining which part of a Scottish taxpayer’s income consists of savings income.” 35
- (4) In section 16 (savings and dividend income to be treated as highest part), in subsection (1) before paragraph (a) insert –
 - “(za) which part of a Scottish taxpayer’s income consists of savings income,”.
- (5) In section 809H (charge on nominated income of long-term UK resident), after 40

subsection (3) insert –

“(3A) For the purpose of calculating income tax charged under subsection (2), ignore section 6(2A) to (2C) (special rates of income tax for Scottish taxpayers).”

- (6) In section 989 (definitions), in the definitions of “additional rate”, “basic rate” and “higher rate”, after “section 6(2)” insert “or (2B)”. 5
- (7) In section 1 of the Provisional Collection of Taxes Act 1968 (temporary statutory effect of resolution of House of Commons), after subsection (3) insert –
- “(3A) If a resolution specifies the basic rate, higher rate or additional rate of income tax, the resolution has effect in relation to Scottish taxpayers (within the meaning of Chapter 2 of Part 4A of the Scotland Act 1998) as if it specified the rate calculated in accordance with section 6(2A) to (2C) of the Income Tax Act 2007.” 10
- (8) The amendments made by this section have effect in relation to the tax year appointed by the Treasury under section 30(5) and subsequent tax years. 15

32 Definition of Scottish taxpayer for Scottish variable rate

- (1) In Part 4 of the 1998 Act (power to vary income tax rate), for subsections (1) to (6) of section 75 (Scottish taxpayers) substitute –
- “ Sections 80D to 80F (definition of Scottish taxpayer) apply for the purposes of this Part.” 20
- (2) This section ceases to have effect at the end of the last year for which Part 4 has effect (see section 30(2) and (4)).

Scottish tax on land transactions

33 Scottish tax on transactions involving interests in land 25

- (1) In Part 4A of the 1998 Act (as inserted by section 28), after Chapter 2 (inserted by section 30) insert –

“CHAPTER 3

TAX ON TRANSACTIONS INVOLVING INTERESTS IN LAND

80I Tax on transactions involving interests in land 30

- (1) A tax charged on any of the following transactions is a devolved tax –
- (a) the acquisition of an estate, interest, right or power in or over land in Scotland;
- (b) the acquisition of the benefit of an obligation, restriction or condition affecting the value of any such estate, interest, right or power. 35
- (2) The tax may be chargeable –
- (a) whether or not there is any instrument effecting the transaction,
- (b) if there is such an instrument, regardless of where it is executed, and 40

(c) regardless of where any party to the transaction is or is resident.

80J Certain transactions not taxable

(1) Tax may not be imposed under section 80I on so much of a transaction as relates to land below mean low water mark.

(2) The following persons are not to be liable to pay a tax imposed under section 80I— 5

Government

A Minister of the Crown

The Scottish Ministers

A Northern Ireland department 10

The Welsh Ministers, the First Minister for Wales and the Counsel General to the Welsh Assembly Government

Parliament etc

The Corporate Officer of the House of Lords 15

The Corporate Officer of the House of Commons

The Scottish Parliamentary Corporate Body

The Northern Ireland Assembly Commission

The National Assembly for Wales Commission

The National Assembly for Wales.” 20

(2) Tax may not be charged in accordance with the provisions inserted by this section on a land transaction within the meaning of Part 4 of the Finance Act 2003 unless section 34 (disapplication of UK stamp duty land tax) has effect in relation to that transaction.

34 Disapplication of UK stamp duty land tax 25

(1) Part 4 of the Finance Act 2003 (stamp duty land tax) is amended as follows.

(2) In section 48 (chargeable interests), in subsection (1)(a) for “the United Kingdom” substitute “England and Wales or Northern Ireland”.

(3) In Schedule 4—

(a) Part 1 contains further amendments relating to the disapplication of stamp duty land tax to Scotland, and 30

(b) Part 2 makes provision, in consequence of the disapplication of paragraph 1(1)(b) of Schedule 10 to the Finance Act 2003 (prescribed information in land transaction returns) to transactions relating to land in Scotland, about the supply of information to Her Majesty’s Revenue and Customs. 35

(4) This section has effect in relation to land transactions with an effective date on or after such date as is appointed by the Treasury by order under this subsection.

(5) But this section does not have effect in relation to any transaction— 40

(a) effected in pursuance of a contract entered into and substantially performed on or before the date on which this Act receives Royal Assent, or

(b) effected in pursuance of a contract entered into on or before that date and not excluded by subsection (6). 45

- (6) A transaction effected in pursuance of a contract entered into on or before the date on which this Act receives Royal Assent is excluded if –
- (a) there is any variation of the contract, or assignation of rights under the contract, after that date,
 - (b) the transaction is effected in consequence of the exercise after that date of any option, right of pre-emption or similar right, or
 - (c) after that date there is an assignation, subsale or other transaction relating to the whole or part of the subject-matter of the contract as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance.

Scottish tax on disposals to landfill

35 Scottish tax on disposals to landfill

- (1) In Part 4A of the 1998 Act (as inserted by section 28), after Chapter 3 (inserted by section 33) insert –

“CHAPTER 4

TAX ON DISPOSALS TO LANDFILL

80K Tax on disposals to landfill

- (1) A tax charged on disposals to landfill made in Scotland is a devolved tax.
- (2) A disposal is a disposal to landfill if –
- (a) it is a disposal of material as waste, and
 - (b) it is made by way of landfill.”
- (2) Tax may not be charged in accordance with the provision inserted by this section on a disposal if the disposal is made before the date appointed under section 36(4).

36 Disapplication of UK landfill tax

- (1) Part 3 of the Finance Act 1996 (landfill tax) is amended as follows.
- (2) In section 40(1) (charge on taxable disposal), after “taxable disposal” insert “made in England and Wales or Northern Ireland”.
- (3) Schedule 5 contains further amendments relating to the disapplication of landfill tax to Scotland.
- (4) This section has effect in relation to disposals made on or after such date as is appointed by the Treasury by order under this subsection.

Borrowing

37 Borrowing by the Scottish Ministers

- (1) The 1998 Act is amended as follows.
- (2) Section 66 (borrowing by the Scottish Ministers etc) is amended as follows.

- (3) For subsection (1) substitute –
- “(1) The Scottish Ministers may borrow from the Secretary of State –
 - (a) any sums required by them for the purpose of meeting a temporary excess of sums paid out of the Scottish Consolidated Fund over sums paid into that Fund, 5
 - (b) any sums required by them for the purpose of providing a working balance in the Scottish Consolidated Fund, and
 - (c) any sums which in accordance with rules determined by the Treasury are required by them to meet current expenditure because of a shortfall in receipts from devolved taxes, or from income tax charged by virtue of a Scottish rate resolution, against forecast receipts. 10
 - (1A) The Scottish Ministers may, with the approval of the Treasury, borrow by way of loan any sums required by them for the purpose of meeting capital expenditure. 15
 - (1B) A sum is required for the purpose of meeting capital expenditure if the expenditure would be capital expenditure for the purposes of accounts under section 70.”
 - (4) In subsection (3) after “section” insert “from the Secretary of State”.
 - (5) After subsection (4) insert – 20
 - “(5) The Secretary of State may by order made with the consent of the Treasury amend subsection (1A) so as to vary the means by which the Scottish Ministers may borrow money.”
 - (6) Section 67 (lending by the Secretary of State) is amended as follows.
 - (7) In subsection (2) for “that section” substitute “section 66(1)”. 25
 - (8) In subsection (3) omit “increased”.
 - (9) After subsection (3) insert –
 - “(3A) An amount substituted under subsection (3) may be more or less than the amount for which it is substituted but may not be less than £500 million.” 30
 - (10) After section 67 insert –
 - “67A Lending for capital expenditure**
 - (1) The aggregate at any time outstanding in respect of the principal of sums borrowed under section 66(1A) shall not exceed £2.2 billion.
 - (2) The Secretary of State may by order made with the consent of the Treasury substitute for the amount (or substituted amount) specified in subsection (1) such amount as may be specified in the order. 35
 - (3) An amount substituted under subsection (2) may be more or less than the amount for which it is substituted but may not be less than £2.2 billion. 40
 - (4) A person lending money to a member of the Scottish Government is not bound to enquire whether the member of the Scottish Government has

- power to borrow the money and is not to be prejudiced by the absence of any such power.
- (5) The Scottish Ministers may not mortgage or charge any of their property as security for money which they have borrowed under section 66(1A). 5
This is subject to section 66(2).
- (6) Security given in breach of subsection (5) is unenforceable.”
- (11) In section 114(1) (powers which may be exercised by modifying the 1998 Act), after “sections” insert “66(5),”.
- (12) In Schedule 7 (procedure for subordinate legislation), in paragraph 1, at the appropriate places insert – 10
- | | |
|-----------------|--------------|
| “Section 66(5) | Type E”; and |
| “Section 67A(2) | Type E”. |

PART 4

MISCELLANEOUS AND GENERAL 15

Miscellaneous

38 Maximum penalties which may be specified in subordinate legislation

- (1) The 1998 Act is amended as follows.
- (2) In section 113 (subordinate legislation: scope of powers), for subsection (10) substitute – 20
- “(9A) A power may not be exercised so as to create any criminal offence punishable with any of the penalties specified for the offence in subsection (9B) or (10).
- (9B) In relation to Scotland, the specified penalties are – 25
- | | | |
|--|---|----|
| (a) where the offence is triable on summary complaint only, | imprisonment for a period exceeding 12 months and a fine exceeding level 5 on the standard scale, | 25 |
| (b) where an offence triable either on indictment or on summary complaint is tried on summary complaint, | imprisonment for a period exceeding 12 months and a fine exceeding the statutory maximum, | 30 |
| (c) where the offence is tried on indictment, | imprisonment for a period exceeding two years. | |
- (10) In relation to England and Wales and Northern Ireland, the specified penalties are – 35
- | | | |
|---|---|--|
| (a) where the offence is tried summarily, | imprisonment for a period exceeding three months and a fine exceeding – | |
| (i) in the case of a summary offence, | level 5 on the standard scale, | |

enactment contained in, or in an instrument made under, an Act of the Scottish Parliament.

- (6) A statutory instrument containing an order under subsection (1) or (2) which includes provision amending or repealing any provision of an Act or an Act of the Scottish Parliament may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament. 5
- (7) Any other statutory instrument containing an order under subsection (1) or (2) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) A statutory instrument containing an order under subsection (3) which includes provision amending or repealing any provision of an Act may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons. 10
- (9) Any other statutory instrument containing an order under subsection (3) is subject to annulment in pursuance of a resolution of the House of Commons. 15

42 Financial provisions

- (1) There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums payable under any other Act out of money so provided.
- (2) There shall be paid into the Consolidated Fund any sums received by a Minister of the Crown by virtue of this Act which are not payable into the National Loans Fund. 20

43 Commencement

- (1) The following come into force on the day on which this Act is passed –
 - (a) sections 39 to 42; 25
 - (b) this section;
 - (c) section 44.
- (2) The following provisions come into force at the end of the period of two months beginning with the day on which this Act is passed –
 - (a) section 14; 30
 - (b) Part 3, except section 30(7) (and Schedule 3) and section 37.
- (3) Subsection (2)(b) is subject to the provision made in the following sections as to how those sections have effect –
 - (a) sections 30(1) to (6) and 31;
 - (b) sections 33 and 34; 35
 - (c) sections 35 and 36.
- (4) The following provisions come into force on such day as the Treasury may by order appoint –
 - (a) section 30(7) and Schedule 3;
 - (b) section 37. 40
- (5) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint.

- (6) The Secretary of State or the Treasury may appoint different days for different purposes.

44 Short title

This Act may be cited as the Scotland Act 2011.

- (2) For “The Electoral Commission or the Boundary Committee (as the case may be)” in each place substitute “The Boundary Commission for Scotland”.
- (3) In paragraph (8) of rule 2, omit “(or one made by the Boundary Committee for the purposes of it)”.

7 Omit paragraph 14(4). 5

Provision for constituencies and regions

8 In paragraph 1(2) (constituencies) for paragraph (c) substitute –
“(c) the constituencies provided for by an Order in Council under paragraph 6.”

9 For paragraph 2(2) (regions) substitute – 10
“(2) The regions are the regions provided for by an Order in Council under paragraph 6.”

Reference to “local authority areas”

- 10 (1) In paragraph 12 (the constituency rules), rule 1 is amended as follows.
- (2) In paragraph (1), for “local authority areas” substitute “the local government areas having effect from time to time under section 1 of the Local Government etc. (Scotland) Act 1994”. 15
- (3) Omit paragraph (2).

SCHEDULE 2

Section 12

INSOLVENCY

20

PART 1

CONSEQUENTIAL AMENDMENTS

Bankruptcy (Scotland) Act 1985

- 1 In section 1A(1) of the Bankruptcy (Scotland) Act 1985 (supervisory functions of Accountant in Bankruptcy) – 25
- (a) in paragraph (b)(iii) (particulars to be included in register of insolvencies) for “winding up and receivership of business associations” substitute “receivership of incorporated companies”;
- (b) in paragraph (c)(i) (annual report) for “winding up and receivership of business associations” substitute “receivership of incorporated companies”; 30
- (c) after paragraph (c) insert “and”;
- (d) omit paragraph (e) and the “and” before it.

Insolvency Act 1986

- 2 (1) The provisions of the Insolvency Act 1986 listed in sub-paragraph (2) have effect without the modifications made by paragraph 23(2) to (5) of Schedule 35

8 to the 1998 Act (under which things that would otherwise be done under those provisions to or by the registrar of companies or the Financial Services Authority may or must be done also or instead to or by the Accountant in Bankruptcy).	5
(2) The provisions are –	5
(a) the following provisions modified by paragraph 23(2) to (3) of that Schedule: sections 84(3), 94(3), 106(3) and (5), 112(3), 130(1), 147(3), 170(2) and 172(8), and	
(b) the provisions modified by paragraph 23(4) to (5) of that Schedule.	
<i>Scotland Act 1998</i>	10
3 The 1998 Act is amended as follows.	
4 In Part 2 of Schedule 5, in Section C2 (specific reservations: insolvency) omit the definitions of “social landlord” and “the relevant conditions”.	
5 (1) Paragraph 23 of Schedule 8 (amendments to the Insolvency Act 1986) is amended as follows.	15
(2) In sub-paragraph (3) omit “84(3), 94(3), 106(3) and (5), 112(3), 130(1), 147(3), 170(2) and 172(8)”.	
(3) Omit sub-paragraphs (4) to (5).	
PART 2	
HARMONISATION OF INSOLVENCY PROCEDURES	
6 The Insolvency Act 1986 is amended as follows.	
7 (1) Section 95 (effect of company’s insolvency) is amended as follows.	
(2) Omit subsection (2).	
(3) In subsection (2A) omit “In the case of the winding up of a company registered in England and Wales,”.	25
(4) In subsection (2A)(b) the repeal of “by post” by the Legislative Reform (Insolvency) Miscellaneous Provisions Order 2010 (S.I. 2010/18) extends also to Scotland.	
(5) Omit subsections (5) and (6).	
8 (1) Section 98 (meeting of creditors) is amended as follows.	30
(2) Omit subsection (1).	
(3) In subsection (1A) omit “In the case of the winding up of a company registered in England and Wales,”.	
(4) In subsection (1A)(b) the repeal of “by post” by the Legislative Reform (Insolvency) Miscellaneous Provisions Order 2010 extends also to Scotland.	35
(5) In subsection (3) for “the duties imposed by subsections (1)(c) and (2)(b) above apply” substitute “the duty imposed by subsection (2)(b) above applies”.	
(6) In subsection (4) –	

- (a) for “references in subsections (1)(c) and (3)” substitute “the reference in subsection (3)”;
 - (b) for “are replaced by references” substitute “is replaced by a reference”.
- (7) In subsection (6) omit “(1),”. 5
- 9 In section 166 (creditors’ voluntary winding up) in subsection (5)(a) omit “(1),”.
- 10 In section 246A (remote attendance at meetings) in subsection (2) omit paragraph (a) and the “or” after it.
- 11 In section 246B (use of websites) in subsection (2) omit paragraph (a) and the “or” after it. 10
- 12 In section 436B(2) (references to things in writing) omit paragraph (e).
- 13 (1) Schedule 4 (powers of liquidator in a winding up) is amended as follows.
- (2) Omit paragraph 3.
 - (3) In paragraph 6A, omit “In the case of a winding up in England and Wales,”. 15
 - (4) That paragraph extends also to Scotland.

SCHEDULE 3

Section 30

SCOTTISH RATE OF INCOME TAX: CONSEQUENTIAL AMENDMENTS

- 1 (1) The 1998 Act is amended as follows.
- (2) In section 110 (Scottish taxpayers for social security purposes) – 20
 - (a) in subsection (2), after “the basic rate” insert “, higher rate or additional rate”;
 - (b) in that subsection, for the words in the brackets substitute “instead of the rate calculated under section 6(2B) of the Income Tax Act 2007”;
 - (c) in subsection (3), for the words from “whether Scotland is” to the end substitute “whether or not they have a close connection with Scotland”; 25
 - (d) in subsection (4), for “Part IV” substitute “Chapter 2 of Part 4A”.
 - (3) In Schedule 4 (enactments protected from modification by the Parliament), in paragraph 4(3), omit “, 77, 78”. 30
 - (4) In Schedule 7 (procedure for subordinate legislation) –
 - (a) for “Section 79” substitute “Section 80G”;
 - (b) in the Note relating to the entry for section 79 –
 - (i) for “section 79” substitute “section 80G”, and
 - (ii) for “section 79(3)” substitute “section 80G(3)”. 35
- 2 In Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (consequential amendments), omit paragraph 237.
- 3 (1) The Commissioners for Revenue and Customs Act 2005 is amended as follows.

(2) In section 44 (payment into Consolidated Fund), omit subsection (3)(b).

(3) In Schedule 4 (consequential amendments), omit paragraphs 70 to 72.

SCHEDULE 4

Section 34

SCOTTISH TAX ON LAND TRANSACTIONS: CONSEQUENTIAL AMENDMENTS

PART 1

5

DISAPPLICATION OF STAMP DUTY LAND TAX TO SCOTLAND

Finance Act 1931

1 (1) Section 28 of the Finance Act 1931 (production to Commissioners of instruments transferring land) is amended as follows.

(2) In subsection (3), omit “or” after paragraph (a) and after paragraph (b) insert “; or” 10

(c) to a Scottish transaction.”

(3) After subsection (3) insert –

“(3A) In subsection (3) “Scottish transaction” means the acquisition of –

(a) an estate, interest, right or power in or over land in Scotland, 15
or

(b) the benefit of an obligation, restriction or condition affecting the value of any such estate, interest, right or power.”

Finance Act 2003

2 The Finance Act 2003 is amended as follows. 20

3 Omit section 44(9A)(b) (application of provisions relating to missives of let etc).

4 In section 48 (chargeable interests) –
(a) in subsection (2)(c) omit “in England and Wales or Northern Ireland”; 25

(b) omit subsection (4);

(c) in subsection (5) for “the United Kingdom” substitute “England and Wales or Northern Ireland”.

5 In section 55(5) (additional provisions determining amount of tax chargeable) – 30

(a) omit the reference to section 75 and the word “and” preceding it;

(b) for “provide” substitute “provides”.

6 In section 57AA (first-time buyers) –

(a) in subsection (2)(b) after “under the law of” insert “Scotland or”;

(b) in subsection (2)(c) omit “72, 72A”. 35

7 In section 60 (compulsory purchase facilitating development) –

(a) in subsection (2)(a), omit “or Scotland”;

- (b) omit subsection (5)(b).
- 8 (1) Section 61 (compliance with planning obligations) is amended as follows.
- (2) Omit subsection (2)(b) (definition of planning obligation in Scotland).
- (3) In subsection (3) (public authorities) –
- (a) under the heading “Government”, omit the entry “The Scottish Ministers”; 5
 - (b) omit the heading “Local Government: Scotland” and the entry under that heading;
 - (c) omit the heading “Health: Scotland” and the entries under that heading; 10
 - (d) under the heading “Other planning authorities” omit paragraph (b) and the word “or” preceding it.
- 9 Omit section 71A(10) (disapplication of section to Scotland).
- 10 Omit sections 72 and 72A (alternative property finance in Scotland).
- 11 In section 73 (alternative property finance: land sold and re-sold) – 15
- (a) in subsection (2)(b) omit “, 72(1) or 72A(1)”;
 - (b) omit subsection (5)(b)(ii).
- 12 (1) In section 73AB (arrangements to transfer control of financial institution) –
- (a) in subsection (1) omit “, 72 or 72A”;
 - (b) in subsection (3), in the definition of “alternative finance arrangements” omit “, 72(1) or 72A(1)”. 20
- (2) In the heading to that section, for “Sections 71A to 72A” substitute “Section 71A”.
- 13 (1) Section 73B (exempt interests) is amended as follows.
- (2) In subsection (1) omit “, 72(1)(a) or 72A(1)(a)”. 25
- (3) In subsection (2) –
- (a) in paragraph (a) omit “, 72(1)(b) or 72A(1)(b)”;
 - (b) in paragraph (b) omit “, 72(1)(c) or 72A(1)(c)”.
- (4) In subsection (4)(b) omit “, 72(4) or 72A(4)”.
- 14 In section 73CA (application of sections 71A to 73 to first-time buyers), in subsection (1) omit “, 72, 72A”. 30
- 15 Omit section 75 (crofting community right to buy).
- 16 In section 75C (anti-avoidance: supplemental), in subsection (4) for “, 74 and 75” substitute “and 74”.
- 17 In section 77 (notifiable transactions), in subsection (2)(a) omit “and 72A(7)”. 35
- 18 In section 79 (registration of land transactions etc) –
- (a) omit subsection (1)(b) (registration in Scotland);
 - (b) in subsection (2)(c) omit “or 19(3)”;
 - (c) in subsection (6) omit “(in Scotland, the Keeper of the Registers of Scotland)”. 40

-
- | | | |
|----|--|----|
| 19 | In section 108 (linked transactions) after subsection (1) insert –
“(1A) A transaction is not a linked transaction if the land to which it relates is in Scotland.” | |
| 20 | Omit section 117(3) (meaning of “major interest” in land in Scotland). | |
| 21 | In section 119(2) (provisions as to effective date of transaction), omit the reference to paragraph 19(3) of Schedule 17A. | 5 |
| 22 | In section 121 (minor definitions) omit –
(a) the definition of “assignment”;
(b) the definition of “completion”;
(c) paragraph (b) of the definition of “jointly entitled”;
(d) the definition of “standard security”;
(e) the definition of “surrender”. | 10 |
| 23 | In section 122 (index of defined expressions) omit the entries relating to –
(a) assignment (in Scotland);
(b) completion (in Scotland);
(c) standard security;
(d) surrender (in Scotland). | 15 |
| 24 | (1) Schedule 4 (chargeable consideration) is amended as follows.
(2) In paragraph 8(1C), omit “in England and Wales and Northern Ireland”.
(3) Omit paragraph 10(2A)(c) (application of provisions relating to missives of let etc).
(4) Omit paragraph 17(5) (arrangements involving public or educational bodies). | 20 |
| 25 | (1) Schedule 10 (returns, etc) is amended as follows.
(2) In paragraph 7(1A) (correction of return by certain persons) omit paragraph (b).
(3) In paragraph 45(2) (definition of “relevant tribunal”) omit paragraph (b). | 25 |
| 26 | (1) Schedule 15 (partnerships) is amended as follows.
(2) In paragraph 12(2) omit “(or, in Scotland, as joint owners)” and “(or, in Scotland, as owners in common)”.
(3) In paragraph 20(2) omit “(or, in Scotland, as joint owners)” and “(or, in Scotland, as owners in common)”. | 30 |
| 27 | (1) Schedule 17A (further provision relating to leases) is amended as follows.
(2) In paragraph 1 (meaning of “lease”) for “In the application of this Part to England and Wales or Northern Ireland” substitute “In this Part”.
(3) In paragraph 4 (leases for indefinite term), in sub-paragraph (5)(b) omit “in England and Wales or Northern Ireland”.
(4) In paragraph 7 (variable or uncertain rent), omit sub-paragraph (4A)(c) and (d). | 35 |

- (5) In paragraph 10 (tenants’ obligations etc that do not count as chargeable consideration), in sub-paragraph (1)(a) omit “(in Scotland, the leased premises)”.
- (6) In paragraph 12A(1) (agreement for lease) omit “in England and Wales or Northern Ireland”. 5
- (7) In paragraph 12B(1) (assignment of agreement for lease) omit “in England and Wales or Northern Ireland”.
- (8) In paragraph 13 (increase of rent treated as grant of new lease: variation of lease in first five years), in sub-paragraph (2)(b) for “any of paragraphs (a) to (d)” substitute “paragraph (a) or (b)”. 10
- (9) In paragraph 14 (increase of rent treated as grant of new lease: abnormal increase after fifth year), in sub-paragraph (7)(b) omit “or 19(3)”.
- (10) Omit paragraph 19 (provisions relating to leases in Scotland).

Finance Act 2004

- 28 In section 298 of the Finance Act 2004 (stamp duty land tax: notification etc), omit subsection (3). 15

Finance (No. 2) Act 2005

- 29 In section 47 of the Finance (No. 2) Act 2005 (e-conveyancing) omit –
 - (a) subsection (1);
 - (b) subsection (6)(b). 20

Finance Act 2006

- 30 In Schedule 25 to the Finance Act 2006 (amendments of Schedule 17A to Finance Act 2003), omit paragraph 5.

Finance Act 2009

- 31 (1) Schedule 61 to the Finance Act 2009 (alternative finance investment bonds) is amended as follows. 25
 - (2) Paragraph 1 (interpretation) is amended as follows.
 - (3) In sub-paragraph (1) –
 - (a) before the definition of “HMRC” insert –
 - ““effective date”, for a transaction relating to land in Scotland, is the date which would be the effective date (under section 119 of FA 2003) if Part 4 of FA 2003 applied to land in Scotland;”;
 - (b) omit the definition of “qualifying interest”. 30
 - (4) After sub-paragraph (1) insert –
 - “(1A) In this Schedule “qualifying interest” –
 - (a) in relation to land in England and Wales or Northern Ireland, means a major interest in land (within the meaning given by section 117 of FA 2003) except that it does not include a lease for a term of years of 21 years or less; 40

- (b) in relation to land in Scotland, means –
- (i) the interest of an owner of land, or
- (ii) the tenant’s right over or interest in a property subject to a lease,
- except that it does not include a lease for a period of 21 years or less.” 5
- (5) Paragraph 5 (conditions for operation of relief) is amended as follows.
- (6) In sub-paragraph (6) (Condition D) –
- (a) after “Condition D” insert “(which applies in the case of land in England and Wales or Northern Ireland)”; 10
- (b) omit paragraph (b).
- (7) In sub-paragraph (7) (charge or security for purposes of Condition D) –
- (a) omit “or security”;
- (b) in paragraph (a) omit “, or a security ranking first granted over,”.
- (8) In paragraph 6(1)(a) (relief from stamp duty land tax) for “the United Kingdom” substitute “England and Wales or Northern Ireland”. 15
- (9) In paragraph 7 (withdrawal of relief in certain circumstances) –
- (a) in sub-paragraph (1) after “This paragraph applies if” insert “paragraph 6 applies but”;
- (b) in sub-paragraph (2) after “This paragraph also applies if” insert “paragraph 6 applies but”. 20
- (10) In paragraph 9 (discharge of charge when conditions for relief met) omit “or security”.
- (11) In paragraph 11(2) (disapplication of CGT relief if charge not given) for “the United Kingdom” substitute “England and Wales or Northern Ireland”. 25
- (12) In paragraph 12(1)(b) (CGT relief on second transaction) for “the United Kingdom” substitute “England and Wales or Northern Ireland”.
- (13) In paragraph 18(5) and (6) (discharge of charge if original land replaced) –
- (a) for “the United Kingdom” substitute “England and Wales or Northern Ireland”; 30
- (b) omit “or security”.
- (14) In paragraph 19(1) (HMRC to notify Registrar of discharge) –
- (a) omit “or security”;
- (b) omit paragraph (b).
- Public Finance and Accountability (Scotland) Act 2000 (asp 1)* 35
- 32 In section 9(1) of the Public Finance and Accountability (Scotland) Act 2000 (Keeper of the Registers of Scotland: financial arrangements) omit “(other than payments of stamp duty land tax)”.

PART 2

INFORMATION REGARDING SCOTTISH LAND TRANSACTIONS 40

- 33 In this Part of this Schedule –

- “HMRC” means Her Majesty’s Revenue and Customs;
- “office-holder” means –
- (a) a member of the Scottish Government, and
 - (b) the holder of an office in the Scottish Administration which is not a ministerial office (within the meaning of section 126(8) of the 1998 Act);
- “relevant information” means information corresponding to any of the particulars which would be required under Schedule 2 to the Finance Act 1931, but for section 28(3)(c) of that Act;
- “Scottish transaction” means the acquisition of –
- (a) an estate, interest, right or power in or over land in Scotland, or
 - (b) the benefit of an obligation, restriction or condition affecting the value of any such estate, interest, right or power.
- 34 (1) An office-holder must provide to HMRC such of the information falling within sub-paragraph (2) as HMRC may require.
- (2) Information falls within this sub-paragraph if it is relevant information regarding Scottish transactions and is in the possession or under the control of the office-holder.
- (3) Information is to be provided under sub-paragraph (1) in such form as HMRC may reasonably specify.
- 35 Information acquired by HMRC under paragraph 34 is to be treated, for the purposes of the Commissioners for Revenue and Customs Act 2005, as acquired in connection with a function of theirs.

SCHEDULE 5

Section 36

25

SCOTTISH TAX ON DISPOSALS TO LANDFILL: CONSEQUENTIAL AMENDMENTS

- 1 The Finance Act 1996 is amended as follows.
- 2 Omit section 66(b) (landfill sites in Scotland).
- 3 Omit section 67(b) (operators of landfill sites in Scotland).
- 4 In section 70 (interpretation) –
- (a) in subsection (1) omit the definition of “the Scottish Environment Protection Agency”;
 - (b) in subsection (2A) (definition of local authority) omit paragraph (f).

Scotland Bill

A

B I L L

To amend the Scotland Act 1998 and make provision about the functions of the Scottish Ministers; and for connected purposes.

Brought from the Commons on 22nd June 2011

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