

SCOTLAND BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Scotland Bill as brought from the House of Commons on 10 November 2015 (HL Bill 73).

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

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Overview of the Bill

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

Policy background

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

Legal background

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

Territorial extent and application

- 9 The Bill will have UK extent and will require a Legislative Consent Motion from the Scottish Parliament on the basis that it contains provisions applying to Scotland which alter the legislative competence of the Scottish Parliament and the executive competence of the Scottish Ministers. Given the nature of the Bill, it is not anticipated that any issues will arise in relation to the Scottish Government sponsoring a Legislative Consent Motion.

Commentary on provisions of Bill

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

Part 1: Constitutional Arrangements

Chapter 1: The Scottish Parliament and the Scottish Government

Clause 1: The Scottish Parliament and the Scottish Government

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

Chapter 2: The Sewel convention

Clause 2: The Sewel convention

- 16 This clause inserts subsection (8) into section 28 of the 1998 Act so it is recognised in statute that, although the sovereignty of the UK Parliament is unchanged by the legislative competence of the Scottish Parliament, the UK Parliament will not normally legislate for devolved matters in Scotland without the consent of the Scottish Parliament.
- 17 This reflects what has come to be known as the Sewel Convention. Lord Sewel indicated in the House of Lords during the passage of the Scotland Bill (H.L. Deb vol. 592 col. 791) that "we would expect a convention to be established that Westminster would not normally legislate with regard to devolved matters without the consent of the Scottish Parliament."

Chapter 3: Elections etc

Clause 3: Elections

- 18 Clause 3 splits the B3 reservation into two parts: section B3(A) and section B3(B).
- 19 Section B3(A) covers all matters concerning elections for membership of the House of Commons and the European Parliament to include who may stand or vote in those elections, procedures under which votes are counted and candidates returned, and what the constituencies and timings of those elections should be.
- 20 New section B3(B) reserves certain matters in relation to elections for membership of the Scottish Parliament and local government elections in Scotland.
- 21 Paragraph 1 reserves the subject-matter of sections 2(2A) and 12A of the Scotland Act 1998.
- 22 Paragraph 2 reserves:

- a. the combination of polls at elections or referendums that are outside the legislative competence of the Scottish Parliament with polls at (i) Scottish Parliamentary elections or (ii) local government elections in Scotland; and
 - b. the combination of polls at ordinary Scottish Parliamentary general elections with polls at ordinary local government elections in Scotland .
- 23 Paragraph 3 reserves the timing of ordinary local government elections in Scotland where the poll at such an election would otherwise be held on the same day as a Scottish Parliamentary ordinary general election.
- 24 The reservation provides that the Individual Electoral Registration Digital Service for applications for registration or for verifying information contained in applications for registration in relation to elections for membership of the Scottish Parliament or local government elections in Scotland is reserved.
- 25 The reservation sets out the subject-matter of those provisions in the Political Parties, Elections and Referendums Act 2000 (“the 2000 Act”) which are reserved in relation to elections for the membership of the Scottish Parliament.
- 26 The reservation covers campaign expenditure by political parties, controlled expenditure and donations to third parties, but only where the regulated period in respect of such expenditure for elections to the Scottish Parliament overlaps with the regulated period for elections for membership of the House of Commons or European Parliament.
- 27 The subject matter of sections 1 to 4 of the 2000 Act, which relate to the establishment and constitution of the Electoral Commission are reserved; however many of the Electoral Commission’s general functions and enforcement functions under Parts 1 and 10 of the 2000 Act are not reserved in relation to elections for membership of the Scottish Parliament.

Clause 4: Power to make provision about elections

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

Section 12

- 29 The executive functions given to the Scottish Ministers under the new subsection 12(1) include those functions relating to Scottish Parliamentary elections in respect of which the Scottish Ministers already had executive competence by virtue of section 12 of the 1998 Act as amended by section 1 of the Scotland Act 2012 (the conduct of Scottish Parliamentary elections; and the questioning of such elections and the consequences of irregularities) as well as those previously exercised by the Secretary of State under section 12A(1) of the 1998 Act as amended by section 1 of the Scotland Act 2012 (the return of members of the Scottish Parliament otherwise than at an election). These powers have most recently been exercised by the Secretary of State in the Scottish Parliament (Elections etc.) Order 2010 (S.I. 2010 No.2999). Subsection (1) of new section 12 of the 1998 Act provides that the powers of the Scottish Ministers under section 12 are aligned with the legislative competence of the Scottish Parliament.
- 30 Subsection (2) of new section 12 of the 1998 Act clarifies the scope of the order-making power provided by subsection (1) and makes clear that it enables provision to be made:
- a. for the registration of electors;
 - b. for disregarding alterations in a register of electors;
 - c. about limits of the election expenses of individual candidates;

- d. for the combination of polls;
 - e. to modify the operation of section 7(1) of the 1998 Act, which provides for the return of constituency members to be determined before the process of allocating regional members can proceed, where a poll at a constituency election is abandoned (or notice of it is countermanded) so that special provision can be made enabling the regional members to be returned even though not all of the constituency members have been returned; and
 - f. to modify the effect of section 8(7) of the 1998 Act to ensure that the correct number of seats are allocated.
- 31 Subsection (3) of new section 12 makes it clear that subsection (1)(c) will enable sections 10(4) to 10(5A) of the 1998 Act, which relate to the procedure for replacing regional MSPs who stood on a regional party list, to be modified.
- 32 Subsection (4) of new section 12 excludes from the executive competence conferred on the Scottish Ministers by this clause, any power to make provision about the Individual Electoral Registration Digital Service. Clause 6 separately provides for certain functions of the Secretary of State relating to the Individual Electoral Registration Digital Service, in respect of elections to the Scottish Parliament and local government elections in Scotland, to be exercisable by the Scottish Ministers concurrently with the Secretary of State, subject to the agreement of the Secretary of State.
- 33 Subsection (5) of new section 12 supplements and elaborates on the scope of subsection (1) and gives the Scottish Ministers powers relating to the application and modification of electoral law.
- 34 Subsection (5)(a) of new section 12 enables the established statutory procedures for elections to be applied, subject to any necessary alterations.
- 35 Subsection (5)(b) of new section 12 enables consequential modification of any legislative provision relating to the registration of Scottish Parliamentary or local government electors in Scotland.
- 36 Subsection (6) of new section 12 provides that the return of a member at an election to the Scottish Parliament may be questioned only under Part III (legal proceedings) of the Representation of the People Act 1983, as applied and modified by an order under subsection (1).
- 37 Subsection (7) of new section 12 enables the Scottish Ministers to make orders as regards the designation of regional returning officers.

Section 12A

- 38 Subsections (1) to (3) of new section 12A give the Secretary of State the power to make regulations in order to combine the polls at certain Scottish Parliamentary elections with the polls at certain UK Parliamentary and European Parliamentary elections.
- 39 Subsection (4) of new section 12A provides that the Secretary of State must obtain the agreement of the Scottish Ministers before any making such regulations.
- 40 Subsection (5) of new section 12A supplements and elaborates on the scope of subsection (1) and gives the Secretary of State powers relating to the application and modification of electoral law.
- 41 Subsection (5)(a) of new section 12A enables the established statutory procedures for elections to be applied, subject to any necessary alterations.

- 42 Subsection (5)(b) of new section 12A provides that regulations made under subsection (1), may amend forms contained in, or in regulations or rules made under, the Representation of the People Acts to enable such forms to be used for elections to the Scottish Parliament as well as for their original purpose.
- 43 Subsection (2) of clause 4 inserts new subsection (5C) into section 15 of the Representation of the People Act 1985, requiring the Secretary of State to consult the Scottish Ministers before making combination rules under section 15(5), where one of the elections is a local government election in Scotland.

Clause 5: Timing of elections

- 44 Subsections (1) to (3), amend section 2 of the 1998 Act, by providing that section 2(2) is subject to a new subsection (2A). Subsection (2A) provides that the poll for a Scottish Parliamentary ordinary general election cannot take place on the same date as; (a) the date of a poll at a UK Parliamentary general election; or (b) the date of a poll at a European Parliamentary general election.
- 45 Subsection (3) also inserts a new subsection (2B), which provides that where subsection (2A) prevents the poll for a Scottish Parliamentary ordinary general election from being held on a day specified in section 2(2) of the 1998 Act, the Scottish Ministers may make an order specifying the alternative day on which the poll shall be held.
- 46 Subsection (4) amends section 2(3) of the 1998 Act in order that the Scottish Parliament will be dissolved automatically at the beginning of the “minimum period”, which ends with the day, if the polls is to be held on the first Thursday in May, on that date and, otherwise, on the day specified by the Scottish Ministers by order under subsection (2B).
- 47 Subsection (5) amends section 2(5) of the 1998 Act to provide that where the Presiding Officer proposes to move the date for the holding of a poll for a Scottish Parliamentary ordinary general election under that section, the poll cannot be held on the same date as a UK Parliamentary general election or a European Parliamentary general election.
- 48 Subsection (6) inserts a new subsection (5ZA), which has the effect that where Scottish Ministers make an order under section 2(2B) of the 1998 Act specifying an election date, and the Presiding Officer proposes a new date for the election under section 2(5) of that Act, the election will be held on the date proposed under section 2(5).
- 49 Subsection (7) provides that an order made by the Scottish Ministers under subsection (2B) will be subject to the affirmative procedure in the Scottish Parliament.
- 50 Subsections (8) to (10) amend section 43 of the Representation of the People Act 1983 by inserting new subsections (1ZA), (1ZB), (1ZC) and (1ZD).
- 51 New subsection (1ZA) prevents the poll at a local government election in Scotland from being held on the same day as a poll for a Scottish Parliamentary ordinary general election.
- 52 New subsection (1ZB) provides that subsection (1ZA) does not apply to a local government election in Scotland which is to fill a casual vacancy.
- 53 New subsection (1ZC) provides that where the date of a poll at an ordinary local government election in Scotland would be on the same date as the poll at an ordinary general Scottish Parliamentary election, the Scottish Ministers may by order specify an alternative date for the poll at the local government election.
- 54 New subsection (1ZD) provides that an order made by the Scottish Ministers will be subject to the affirmative procedure in the Scottish Parliament.

Clause 6: Electoral registration: the digital service

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

Clause 7: Expenditure in connection with elections

- 58 Clause 7 inserts three new sections into the Political Parties, Elections and Referendums Act 2000 to transfer to the Scottish Ministers powers currently exercised by the Secretary of State in relation to controlled expenditure and campaign expenditure at elections to the Scottish Parliament, which are not combined with elections that are reserved. In each case in exercising these powers the Scottish Ministers will be subject to the same or equivalent requirements and procedures as those to which the Secretary of State is currently subject in exercising such powers.
- 59 Subsection (2) of clause 7 inserts new section 72A into the 2000 Act. Subsection (1) of the new section provides for the Scottish Ministers to approve a code of practice prepared by the Electoral Commission in accordance with paragraph 3(1) of Schedule 8 to the 2000 Act, which provides guidance to political parties on expenses, which count as campaign expenditure at elections to the Scottish Parliament. By this provision the Scottish Ministers may also amend Part 1 of Schedule 8 to the 2000 Act, which sets out the expenses that count as campaign expenditure at elections to the Scottish Parliament.
- 60 Subsection (3) of new section 72A provides that these powers do not apply when the regulated period in respect of campaign or controlled expenditure for elections to the Scottish Parliament overlaps with the regulated period for elections for membership of the House of Commons or European Parliament
- 61 Subsection (3) of clause 7 inserts a new section 85A into the 2000 Act. Subsection (1) of the new section provides for the Scottish Ministers to approve a code of practice prepared by the Electoral Commission in accordance with paragraph 3(1) of Schedule 8A to the 2000 Act, which provides guidance to third parties on expenses which count as controlled expenditure at elections to the Scottish Parliament. By this provision the Scottish Ministers may also amend Part 1 of Schedule 8A to PPERA, which sets out the expenses which count as controlled expenditure at elections to the Scottish Parliament.
- 62 Subsection (3) of new section 85A provides that these powers do not apply when the regulated period in respect of campaign or controlled expenditure for elections to the Scottish Parliament

overlaps with the regulated period for elections for membership of the House of Commons or European Parliament

- 63 Subsection (4) of clause 7 inserts a new section 95ZA into the 2000 Act. This allows Scottish Ministers to exercise a number of powers in Schedule 11 to the 2000 Act which relate to donations to third parties which campaign at elections to the Scottish Parliament.
- 64 Subsection (3) of new section 95ZA provides that these powers do not apply when the regulated period in respect of campaign or controlled expenditure for elections to the Scottish Parliament overlaps with the regulated period for elections for membership of the House of Commons or European Parliament
- 65 Subsection (5) of clause 7 determines the period for which new section 95ZA has effect.
- 66 Subsections (6) to (10) of clause 7 amend section 155 of the 2000 Act, so that certain powers of the Secretary of State to vary sums in the 2000 Act transfer to the Scottish Ministers. In each case, in exercising these powers the Scottish Ministers will be subject to the same or equivalent requirements and procedures as the Secretary of State is currently subject in exercising such powers.
- 67 Subsection (7) of clause 7 amends the power of the Secretary of State to vary certain sums in Part 5 and Part 6 of and Schedules 9, 10 and 11 to the 2000 Act. By this subsection, the Secretary of State will no longer have such power where the sum only relates to an election the conduct of which is within the legislative competence of the Scottish Parliament.
- 68 Subsection (8) inserts a new subsection (1A) into section 155 of the 2000 Act to allow the Scottish Ministers to vary sums in Part 5 and Part 6 of and Schedules 9, 10 and 11 to the 2000 Act where the sum relates to an election the conduct of which is within the legislative competence of the Scottish Parliament.
- 69 Subsection (9) provides that these sums can only be varied by the Scottish Ministers to take into account changes in the value of money, or on the recommendation of the Electoral Commission.
- 70 Subsection (10) inserts new subsections (4A) and (4B) into section 155 of the 2000 Act, which relate to the sums specified in Schedule 11 to the 2000 Act. These new subsections have the effect of requiring the Scottish Ministers to vary sums under Schedule 11 to the 2000 Act to take account of changes in the value of money in each session of the Scottish Parliament over two years in length or, if the sums are not so varied, to lay a statement before the Scottish Parliament setting out the Scottish Ministers' reasons for not doing so.
- 71 Subsections (11) to (13) amend section 156 of the 2000 Act so that certain order-making powers of the Secretary of State transfer to the Scottish Ministers.
- 72 Subsection (12) inserts new subsections (4B) to (4D) into section 156 of the 2000 Act. Each subsection specifies the parliamentary procedure to which orders made by the Scottish Ministers are subject.
- 73 The effect of new subsection (4B) is that orders made by the Scottish Ministers under the 2000 Act will be subject to the negative procedure, except orders under section 155(2)(a) of the 2000 Act which will be subject to no parliamentary procedure pursuant to subsection 4(C), and orders made under the provisions listed in section 156(4) of the 2000 Act (in respect of those provisions which relate to matters within devolved competence) , which, pursuant to subsection (4D), are subject to the affirmative procedure.
- 74 Subsection (13) has the effect that an order made by the Scottish Ministers under section 155 of the 2000 Act may contain incidental, supplementary or transitional provisions or savings, and

may make different provisions for different cases.

- 75 Subsection (14) makes consequential changes to the Interpretation and Legislative Reform (Scotland) Act 2010 as a result of the procedure that applies to orders by the Scottish Ministers under section 155(2)(a) of the 2000 Act.

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

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

Clause 9: Functions exercisable within devolved competence: elections

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

section 53 of the Scotland Act 1998.

- 83 This clause makes provision to ensure that references in enactments immediately preceding the transfer of power to the Scottish Parliament are glossed, rather than only transferring functions and glossing references in legislation immediately preceding the coming into force of the Bill.

Clause 10: Minor and consequential amendments: elections etc

- 84 This clause makes minor changes to existing legislation which are consequential to the changes made by this Part of the Bill or which are otherwise obsolete.
- 85 Subsection (8) revokes the Scotland Act 1998 (Modification of Schedules 4 and 5 and Transfer of Functions to the Scottish Ministers) Order (S.I. 2015/692). The effect of this Order is replaced by the amendment to section B3 in Part 2 of Schedule 5 to the 1998 Act and by clause 4.

Chapter 4: Legislation by the Parliament

Clause 11: Super-majority requirement for certain legislation

- 86 Clause 11 requires certain types of electoral legislation to be passed by a two-thirds majority of the Scottish Parliament.
- 87 Subsection (4) inserts a new subsection (2A) into section 31 of the Scotland Act 1998 (“the 1998 Act”) to require the Presiding Officer to decide before the final stage at which a Bill can be voted on whether, in his view, any provision of the Bill relates to a protected subject matter. The Presiding Officer must make a statement to this effect.
- 88 Subsection (5) inserts new subsections (4) and (5) of section 31 of the 1998 Act, which set out when a provision of a Bill relates to a protected subject matter for the purpose of the clause. This is when a provision would modify the law relating to the following matters, or enable the law relating to the following matters to be changed by subordinate legislation. The matters are, in relation to elections to the Scottish Parliament, and unless a provision is incidental to or consequential on any other provision of the Bill: the franchise for elections, the electoral system, the number of constituencies and regions or other such areas and the numbers of members to be returned in each constituency or region or other such areas.
- 89 Subsection (6) inserts a new section 31A in to the 1998 Act which provides that a Bill which the Presiding Officer has decided includes a provision which relates to a protected subject matter can only be passed if, at its final stage, the number of members voting for it is at least two-thirds of the total number of seats for members of the Parliament.
- 90 Subsection (7) amends section 32(2)(a) of the 1998 Act so that a Bill may not be submitted for Royal Assent during the period when a reference may be made to the Supreme Court under section 32A on the question of whether a Bill, or a provision of a Bill, relates to a protected subject matter.
- 91 Subsection (8) inserts a new subsection (2A) into section 32 of the 1998 Act. By this amendment, a Bill that is passed with a simple majority in respect of which the Supreme Court subsequently decides that a simple majority is sufficient must be reconsidered before being submitted for Royal Assent.
- 92 Subsections (9) and (10) inserts new section 32A into the 1998 Act which allows the Advocate General, the Lord Advocate, or the Attorney General to refer to the Supreme Court on the question of whether a Bill or any provision of a Bill relates to a protected subject matter. Under this subsection a Bill may not be referred to the Supreme Court if the Bill passed with at least a two-thirds majority.

- 93 Subsection (2) of new section 32A, taken with subsection 36(5) of the 1998 Act as substituted by subsection (17) provides that such a reference must be made in certain circumstances within 4 weeks of the passing or rejection of a Bill at its final stage or within 4 weeks of the approval of a Bill following reconsideration after a Supreme Court decision.
- 94 Subsection (13) amends section 33(2)(b) of the 1998 Act so that a reference to the Supreme Court on a question of legislative competence may be made within 4 weeks of the passing of a Bill, or within 4 weeks of the approval of the Bill following reconsideration of the Bill, regardless of the reason for the reconsideration.
- 95 Subsection (14) amends section 35(3) of the Scotland Act 1998 so that the time during which the Secretary of State's may intervene in certain cases under section 35 is extended to take account of the possibility of approval of the Bill following reconsideration under subsections 36(4)(aa) or (4A) (reconsideration following a Supreme Court reference to resolve a question whether a provision of a Bill relates to a protected subject-matter), and is extended to take account of the possibility of a Supreme Court reference on grounds of protected subject-matter is decided or otherwise disposed of.
- 96 Subsections (15) and (16) amends section 36 of the 1998 Act to provide for the circumstances in which standing orders shall provide that a Bill may be reconsidered should the Supreme Court decide whether a provision of a Bill relates to a protected subject matter.
- 97 Subsections (17) to (19) also amend section 36 of the 1998 Act so that requirements regarding a final stage for a bill, and for approval of a bill following reconsideration to be treated as the passing of the bill, apply regardless of the ground for reconsideration.

Clause 12: Scope to amend Scotland Act 1998

- 98 Clause 12 amends Schedule 4 of the Scotland Act 1998.
- 99 Subsection (2) substitutes a new sub-paragraph 4(2) which means that the ability of an Act of the Scottish Parliament to modify, or to confer power by subordinate legislation to modify, sections of the 1998 Act is extended to sections which relate to the operation of the Scottish Parliament and Scottish Government.
- 100 New sub-paragraph 4(2)(a) of Schedule 4 will enable the Scottish Parliament to amend, or to confer the power to amend by subordinate legislation, certain provisions in Part 1 of the 1998 Act (the Scottish Parliament) in relation to matters relating to the administration of the Scottish Parliament, including certain arrangements for elections to the Scottish Parliament; the terms of office, resignation and disqualification for Members of the Scottish Parliament; members' interests; the role of the Presiding Officer and Clerk of the Parliament; Letters Patent and proclamations; and certain proceedings of the Parliament.
- 101 New sub-paragraph 4(2)(b) of Schedule 4 will enable the Scottish Parliament to amend, or to confer the power to amend by subordinate legislation, certain provisions in Part 2 of the 1998 Act (the Scottish Administration) in relation to matters relating to the administration of the Scottish Government, including certain matters concerning its membership and certain matters concerning the appointment and removal of ministers.
- 102 New sub-paragraph 4(2)(c) of Schedule 4 will enable the Scottish Parliament to amend, or to confer the power to amend by subordinate legislation, certain provisions relating to the Auditor General for Scotland and financial controls, accounts and audit. The power of the Scottish Parliament to amend Part 4 of the 1998 Act (financial provisions) is unchanged. The power of the Scottish Parliament to amend Part 4A of the 1998 Act (taxation) is also unchanged.
- 103 New sub-paragraph 4(2)(d) of Schedule 4 will enable the Scottish Parliament to amend, or to confer the power to amend by subordinate legislation, certain provisions of Part 5 of the 1998

Act (miscellaneous and general) in relation to matters including the remuneration of members of the Parliament and Government and arrangements for investigating complaints of maladministration.

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

Part 2: Tax

Chapter 5: Income tax

Clause 13: Power of Scottish Parliament to set rates of income tax

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

Clause 14: Amendments of Income Tax Act 2007

- 123 The Income Tax Act 2007 (ITA) includes the charge to income tax, income tax rates, the calculation of income tax liability and general income tax definitions.
- 124 Subsection (3) omits the cross reference to the calculation of Scottish basic, higher and additional rates from the provisions in ITA that set out the main rates at which income tax is charged.

- 125 Subsection (4) inserts a signpost to the provisions in the Scotland Act 1998 that provide for the powers for the Scottish Parliament to set rates and rate limits for income tax.
- 126 Subsection (5) omits the provisions in ITA that provide the calculation of Scottish basic, higher and additional rates.
- 127 Subsection (6) removes the reference to Scottish basic, higher and additional rates in the provisions in ITA that set out what income is charged at the three main rates of income tax.
- 128 Subsection (8) replaces the charge to income tax at the Scottish basic, higher and additional rates with a provision that income tax is charged on the non-savings income of a Scottish taxpayer at the Scottish basic rate and any other rates set by a Scottish rate resolution.
- 129 Subsection (9) omits a cross reference in respect of a Scottish taxpayer to the provisions in ITA which identify which part of a person's income the Scottish basic, higher and additional rates apply to.
- 130 Subsection (11) omits a cross reference to the Scottish basic, higher and additional rates in the provisions in ITA that provide the rates of income tax that apply to dividends in place of the basic, higher and additional rates.
- 131 Subsection (13) updates the definition provision in ITA to reflect the changes made by clause 12 and this clause by omitting the definitions of Scottish higher rate and Scottish additional rate, amending the definition of Scottish basic rate to refer to the Scottish basic rate set by a Scottish rate resolution, and inserting definitions of Scottish rate and Scottish rate resolution.
- 132 Subsection (14) omits the references to Scottish higher rate and Scottish additional rate in the index of defined expressions in ITA. This subsection also amends the defined expression for Scottish basic rate to omit the cross reference to the provisions in ITA which provide the calculation of Scottish basic, higher and additional rates.
- 133 Subsection (15) provides that the amendments made by clause 12 have effect from the tax year set by Treasury regulations as set out by clause 13 of this Bill.

Clause 15: Consequential amendments: income tax

- 134 This clause makes amendments to statute in consequence of clauses 13 and 14.
- 135 Subsection (1) amends section 110(2) of the Scotland Act 1998 (which gives the Secretary of State the power, for social security purposes, to deem an individual a Scottish taxpayer) to reflect the ability for the Scottish Parliament to set the rates of Income Tax and the limits at which these are paid, for the non-savings and non-dividend income of Scottish taxpayers.
- 136 Subsections (2) to (5) amend the Taxation of Chargeable Gains Tax 1992 (TCGA). Section 4 of TCGA sets out the rate of Capital Gains Tax (CGT) that an individual pays – this can be affected by the rate of income tax at which an individual is liable.
- 137 Currently individuals who pay Income Tax at the higher rate also pay CGT at the higher rate of 28%. As CGT remains a reserved matter so to ensure that the tax applies equally to all UK individuals, subsections (2) to (5) therefore make amendments to sections 4 and 4A of TCGA to ensure that the rate of CGT that applies to Scottish income taxpayers is calculated by reference to UK income tax limits rather than the Scottish Income Tax limits. So the CGT rate of 28% will apply to a Scottish Income Tax payer if their income exceeds the UK Income Tax higher rate threshold.
- 138 Subsection (6) makes consequential amendments to the Finance Act 2014.
- 139 Subsection (7) provides that the Treasury may by regulations set the tax years to which the

amendments made by subsections (3) to (6) have effect.

140 Subsections (8) to (14) provide the Treasury with the power, by regulations, to make consequential, transitional or saving provision in connection with clauses 13 and 14.

Chapter 6: Value added tax

Clause 16: Assignment of VAT

141 Clause 16 makes amendments to the Scotland Act 1998 (“the Scotland Act”) and to the Commissioners for Revenue and Customs Act 2005 (“the CRCA”).

142 Section 64 of the Scotland Act makes provision for the Scottish Consolidated Fund and for payments to be made into and from the fund. Clause 16(2) inserts a new subsection, (2A), which requires that the Secretary of State pay into the fund any amounts payable in accordance with the terms of section 64A of the Scotland Act.

143 Clause 16(3) inserts a new section, section 64A, into the Scotland Act.

144 Section 64A(1) provides that where there is an agreement between the Treasury and the Scottish Ministers for identifying an amount agreed to represent the standard rate of VAT attributable to Scotland for any period then an amount calculated in accordance with section 64A(3) is payable for that period.

145 Section 64A(2) provides that where there is an agreement between the Treasury and the Scottish Ministers for identifying an amount agreed to represent the reduced rate of VAT attributable to Scotland for any period then an amount calculated in accordance with section 64A(4) is payable for that period.

146 Section 64A(3) outlines the calculation of the first 10 percentage points of the attributable standard rate VAT.

147 Section 64A(4) outlines the calculation of the first 2.5 percentage points of the attributable reduced rate VAT.

148 Section 64A(5) provides that payment under section 64(2A) of the Scotland Act of an amount calculated pursuant to section 64A(3) or (4) is to be made in accordance with any agreement between the Treasury and the Scottish Ministers as to the time of payment or otherwise.

149 Section 18 of the CRCA prohibits the disclosure, by Her Majesty’s Revenue and Customs (“HMRC”) officials, of information held by HMRC in connection with its functions. Section 18(2) provides for exceptions to this prohibition and clause 16(5) inserts a new subsection, (2)(k), which permits disclosure in connection with, or with anything done with a view to, the making or implementation of an agreement referred to in section 64A(1) or (2) of the Scotland Act.

150 Clause 16(6) inserts a new subsection, (2A), into section 18 of the CRCA. The new subsection prohibits further disclosure of information lawfully disclosed pursuant to section 18(1)(k) of that Act without the consent of the Commissioners of HMRC.

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

Chapter 7: Devolved taxes

These Explanatory Notes relate to the Scotland Bill as brought from the House of Commons on 10 November 2015 (HL Bill 73)

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

Clause 17: Tax on carriage of passengers by air

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

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

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

Clause 18: Tax on commercial exploitation of aggregate

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

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

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

159 In new section 80M:

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

161 Subsections (2) and (3) provide that the devolved tax cannot be charged when aggregate is subjected to commercial exploitation for fuel, that is, used as a fuel (for example, when coal is burned) or processed in order to extract or produce fuel (for example, when shale is hydraulically fractured to extract gas). The exclusion also applies when aggregate is supplied under a contract for any of these purposes.

162 Subsection (2) of this clause provides that the devolved tax cannot be charged on the commercial exploitation of aggregate in Scotland before a date to be specified in secondary legislation. Subsection (4) provides for the date of the changes made by subsection (3) and Schedule 1 to be appointed by regulations made by the Treasury.

Clause 19: Devolved taxes: further provision

163 This clause makes a minor consequential amendment to the Scotland Act 1998 (“SA 1998”) and provides for regulations to make further provision relating to the disapplication of air passenger duty and aggregates levy to Scotland. It also provides for the Parliamentary procedure that these regulations must follow.

Part 3: Welfare Benefits and Employment Support

Chapter 8: Welfare Benefits

Clause 20: Disability, industrial injuries and carer's benefits

164 This clause amends Section F1 (social security schemes) in Part 2 of Schedule 5 to the Scotland Act 1998 to give the Scottish Parliament legislative competence in relation to disability, industrial injuries and carer's benefits, which are currently reserved to Westminster. The Scottish Parliament will have the power, if they so wish, to change these new benefits or other payments and to determine the structure and value of such provision.

165 Subsection (2) amends the current social security scheme reservation by introducing two new exceptions (Exception 1 and Exception 2) for disability benefits, severe disablement benefit payable to a relevant person, certain industrial injuries benefits, and carer's benefits, other than benefits which are, or form an element of, an excluded benefit. The effect of Exceptions 1 and 2 is to bring the benefits which they describe within the legislative competence of the Scottish Parliament.

166 Subsection (4) defines various terms:

- a. "Disability benefit" means a benefit which is normally payable in respect of a significant adverse effect which impairment to a person's physical or mental condition has on their ability to carry out day-to-day activities (examples of such activities include looking after yourself, moving around, or communicating) or a significant need arising from impairment to a person's physical or mental condition (examples of such needs include a need for attention or supervision to avoid substantial danger to anyone). The adverse effect or need must not be short-term, because disability benefits are not intended to cover, for example, temporary effects arising from illness. The phrase "normally payable" is designed to provide sufficient flexibility to enable provision for exceptional cases - for example it would enable provision to be made to prevent the payment of benefit in situations where a person is temporarily accommodated at public or local expense in a care home or is receiving free in-patient treatment from the NHS or to enable the payment of benefit in situations where a person is terminally ill. This definition covers the following benefits currently paid by the UK Government: Attendance Allowance, Disability Living Allowance and Personal Independence Payment. The definition is based on the common feature of these benefits that, with the exception of those people who are terminally ill, eligibility is usually based on the effects on the individual, or the needs of the individual, rather than the nature of their condition itself;
- b. "Severe disablement benefit" means a benefit which is normally payable in respect of a person's being incapable of work for a period of at least 28 weeks beginning no later than their 20th birthday or incapable of work and disabled for a period of at least 28 weeks. This definition covers Severe Disablement Allowance which is currently paid by the UK Government. Severe Disablement Allowance was payable to people who could not meet the National Insurance conditions for Incapacity Benefit. It was closed to new claims in 2001. Severe Disablement Allowance (and Incapacity Benefit) claimants below state pension age are currently being assessed for eligibility for Employment and Support Allowance which was introduced in 2008 and which will remain reserved to the UK Government. For this reason the clause only applies to Severe Disablement Benefit insofar as it is payable in respect of a relevant person. Subsection (4) defines a "relevant person" as someone who is entitled to severe disablement allowance at the point the clause is commenced as respects severe

disablement benefit;

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

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

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

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

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

Clause 21: Maternity, funeral and heating expenses etc

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

172 The Scottish Parliament will have legislative competence to make provision for the type of payments which are currently the subject matter of the regulated Social Fund. The UK Government currently makes such provision through the Sure Start Maternity Grant, Funeral Payment, Cold Weather Payment and Winter Fuel Payment. The Scottish Parliament will have legislative competence to make provision for payments or other assistance and to determine conditions of entitlement or to replace these types of benefits entirely.

173 The current social security schemes reservation explicitly provides, through an exclusion from the exceptions, that the subject matter of both section 138 of the Social Security Contributions and Benefits Act 1992 (payments out of the social fund) and section 69 of the Child Support, Pensions and Social Security Act 2000 (discretionary housing payments) is reserved. Subsection (3) amends the current social security schemes reservation to remove this provision. Clause 22 makes specific provision for the transfer of competence in relation to discretionary housing payments).

174 Subsection (3) also inserts new exclusions from the exceptions to the social security schemes reservation. Exclusions (a) and (b) provide that the National Insurance Fund and the Social Fund remain reserved. That is, the Scottish Parliament does not have competence over the funds themselves. Exclusion (c) ensures that the provision of Budgeting Loans out of the Social Fund remains reserved.

175 Subsection (4) removes interpretation provisions that are no longer needed.

Clause 22: Discretionary payments: top-up of reserved benefits

176 Clause 22 inserts Exception 5 in Section F1 (social security schemes) in Part 2 of Schedule 5 to the Scotland Act 1998.

177 Exception 5 provides the Scottish Parliament with legislative competence to introduce discretionary top-up payments to people in Scotland who are entitled to a reserved benefit. These top-up payments could be paid on an individual case by case basis or to provide on-going entitlement to specific or all benefit claimants.

178 The exception does not devolve competence over the provision of discretionary financial assistance as part of a reserved benefit (for example Universal Credit hardship payments).

179 The exception provides that where a person is in receipt of a reserved benefit that is subject to a reduction, suspension or non-payability (for example as a result of a sanction because of non-compliance with a work-related requirement) a discretionary top-up payment cannot be made to an individual simply to offset this reduction.

Clause 23: Discretionary housing payments

180 This clause amends Section F1 (social security schemes) in Part 2 of Schedule 5 to the Scotland Act 1998 to confer on the Scottish Parliament legislative competence in relation to discretionary housing payments (“DHPs”).

181 DHPs are administered by local authorities and provide a flexible, local mechanism for providing additional financial assistance for housing costs to Housing Benefit claimants, and Universal Credit claimants. Claimants apply to the local authority for help and the local authority makes a decision, based on their local policy. The current powers in relation to DHPs are found in sections 69 and 70 of the Child Support, Pensions and Social Security Act 2000. Pursuant to these powers the Secretary of State for Work and Pensions made the Discretionary Financial Assistance Regulations 2001 (S.I. 2001/1167) and the Discretionary Housing Payments (Grants) Order 2001 (S.I. 2001/2340).

182 The clause transfers legislative competence to the Scottish Parliament such that it can set up its own legislative scheme in relation to DHPs. However, any such scheme must only provide assistance with housing costs to applicants who are in receipt of either housing benefit or another reserved benefit which includes payment for rental housing costs. The prohibitions against granting DHP where the need for financial assistance with housing costs arises from a benefit suspension or sanction must be retained by any devolved legislative scheme.

183 Similar to Exception 5 for top-up payments (in Clause 22), the exception does not devolve

competence over the provision of discretionary financial assistance as part of a reserved benefit (for example Universal Credit hardship payments).

Clause 24: Discretionary payments and assistance

- 184 Clause 24 replaces the exception in section F1 (social security schemes) in Part 2 of Schedule 5 to the Scotland Act 1998 relating to “Providing occasional financial or other assistance” with new Exception 7 and new Exception 8.
- 185 Exception 7 provides the Scottish Parliament with legislative competence to introduce discretionary payments to help alleviate a short-term need for people whose well-being is at risk. This is similar to, but expands upon, the power that the Scottish Parliament currently has to make exceptional payments under certain circumstances and under which the Scottish Welfare Fund is delivered. Under the new power, there is no longer the requirement for the person’s need to be immediate or to have arisen out of an exceptional event or circumstances.
- 186 The second limb of Exception 7 provides that where a person is in receipt of a reserved benefit that is subject to a reduction, suspension, or non-payability (for example as a result of a sanction because of non-compliance with a work-related requirement or the recovery of an overpayment or repayment of a compensation payment) a discretionary payment cannot be made to simply offset this reduction. However, a discretionary payment may be made if the need arises due to some other exceptional circumstance or event not related purely to the reduction in the benefit.
- 187 As is the case now, under Exception 8, the Scottish Parliament will be able to continue to make provision for occasional payments to help vulnerable people needing to establish or maintain a settled home.

Clause 25: Welfare Foods

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

transfer to Scottish Ministers along with the section 13 power.

Clause 26: Power to create other new benefits

- 193 Under the Scotland Act 1998 if the area is one of devolved responsibility then the Scottish Parliament has full legislative competence to enact legislation in that area, including the provision of new benefits should it wish. However as Social Security remains reserved, the Scottish Government would be required to engage with the UK Government if they wished to create new benefits that strayed into the reservation under Section F1 of Part 2, Schedule 5 of the 1998 Act.
- 194 This clause inserts Exception 10 into Section F1 of the 1998 Act, giving the Scottish Parliament powers to create new benefits in areas of devolved responsibility.
- 195 Any new benefits introduced by the Scottish Government must be funded from the Scottish Consolidated Fund. These new benefits will be administered by the Scottish Government and will not be part of the UK-wide welfare system.
- 196 The power to create new benefits will not extend to pensions as the Smith Commission Report specifically states that all aspects of pensions should remain reserved. Similar to discretionary payments, new benefits created under this power cannot be used to simply to offset a reduction, suspension or non-payability in a reserved benefit due to an individual's conduct (for example as a result of a sanction because of non-compliance with a work-related requirement).
- 197 This exception will only apply to the social security schemes reservation and not to any other reservation in the 1998 Act.
- 198 The clause will give the Scottish Parliament parallel legislative competence to that of the UK Parliament but not the power to amend UK legislation. The UK Parliament will still be able to legislate in all areas of welfare across Great Britain without the requirement of a legislative consent motion, except for those areas already devolved and those being devolved by other clauses of this Bill (for example, carers and disability benefits covered by clause 20).

Clause 27: Universal credit: cost of claimants who rent accommodation

- 199 This clause enables Scottish Ministers to exercise certain regulation-making powers for Scotland in respect of the housing costs within Universal Credit for claimants who rent their home.
- 200 The Scottish Ministers be able to make regulations to amend the way in which the housing costs for Universal Credit are calculated for claimants who rent accommodation. They will also be able to make regulations which enable the housing costs to be paid to someone on behalf of a claimant such as the claimant's landlord. This power can be exercised concurrently with the Secretary of State, which means that both the UK Government and Scottish Government have the same power to make regulations for Scotland on the matters covered by this clause which they can exercise independently.
- 201 The Scottish Ministers, before making regulations with regard to the matters covered by this clause, must consult with the Secretary of State about the practicality of implementing them. If, following this consultation, the Scottish Ministers proceed to make regulations and the Secretary of State considers that it is not practicable to implement the changes in the proposed timescale, he or she may make regulations to postpone the time Scottish Minister's regulations will start to have effect.
- 202 Regulations made by Scottish Ministers under this clause will be subject to the negative procedure in the Scottish Parliament.

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

Clause 28: Universal credit: persons to whom, and time when, paid

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

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

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

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

208 Regulations made by Scottish Ministers under the powers mentioned in this clause will be subject to the negative resolution procedure in the Scottish Parliament.

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

Chapter 9: Employment support

Clause 29: Employment support

210 This clause amends the reservation on job search and employment support set out in section H3 of Schedule 5 to the Scotland Act 1998.

211 Exception 1 gives the Scottish Parliament legislative competence in relation to creating employment schemes to assist those at risk of becoming long-term unemployed, and to help disabled people into work, including schemes which seek to help employers find suitable employees. For example, under current arrangements in Great Britain much of this support is provided through the Work Programme in respect of the long-term unemployed, and through Work Choice in respect of disabled people.

212 The Scottish Parliament will be able to make provision for arrangements to provide facilities, support or services to help people into work, or where they arrange for others to provide facilities, support or services to help people into work. For example, currently the UK Government arranges for support to the long term unemployed to be provided by third party providers, contracted through the Work Programme contracts.

213 The arrangements may include making payments to a person. Examples of where payments are made in respect of current or previous equivalent UK Government schemes include payments to contracted Work Programme Providers for the results they achieve, payments to employers as Wage Incentives, and payments to claimants to cover travel expenses incurred whilst engaging with provision.

214 These arrangements could support claimants through work search support, provision of skills and training, and community placements, or through other new techniques. Any support for

those at risk of long-term unemployment must assist the claimant for at least one year.

215 Subsection (5) provides for section 56(1)(g) of the Scotland Act 1998 to have effect as if it referred to section 17B of the Jobseekers Act 1995 (schemes for assisting persons to obtain employment: “work for your benefit” schemes etc). This enables the functions under section 17B to continue to be exercisable separately within devolved competence by a Minister of the Crown as well as by the Scottish Ministers, thus providing an exception to the general rule that functions which transfer to the Scottish Ministers under this Bill are no longer exercisable by Ministers of the Crown in or as regards Scotland.

Chapter 10: General

Clause 30: Functions exercisable within devolved competence

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

217 Where this Bill transfers legislative competence to the Scottish Parliament, the functions of a Minister of the Crown need to be transferred to the Scottish Ministers and other appropriate amendments made to legislation. In some instances e.g. speed limits, this done by way of textual amendment of those functions. However in the case of devolution to the Scottish Parliament of clauses 20, 21, 22, 23, 24 and 29 this is done by updating the operation of section 53.

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

Clause 31: Universal credit: supplementary

219 This section provides that section 117 of the Scotland Act 1998 applies where the Scottish Ministers make regulations under clause 27 and clause 28. This means that all relevant enactments will be read so that references to a Minister of the Crown are read as being, or including, references to the Scottish Minister.

Clause 32: Information-sharing

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

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

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

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

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

Clause 33: Extension of unauthorised disclosure offence

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

226 Section 123 of the Social Security Administration Act 1992 contains an offence of the unauthorised disclosure of information. It applies to (amongst others) those individuals who are or have been employed in social security administration.

227 So far as civil servants in the Scottish Administration are concerned, they are only covered by the offence to the extent that their functions are, or are connected with, functions of the First-tier Tribunal or Upper Tribunal which relate to social security or to occupational or personal pension schemes or to war pensions or functions of the Chief, or any other Social Security Commissioner.

228 Once responsibility for additional social security functions is devolved to the Scottish Ministers, the limited application of this offence to employees of the Scottish Administration will not be appropriate.

229 Therefore this clause amends the scope of the offence so that it also applies to those civil servants in the Scottish Administration whose functions relate to social security administration generally. It does this by amending the definition of Scottish Administration contained in Part 2 of Schedule 4 to the Social Security Administration Act 1992.

Part 4: Other Legislative Competence

Clause 34: Crown Estate

230 This clause concerns Crown property managed by the Crown Estate Commissioners (the “Commissioners”), an independent commercial public body with responsibility for managing and turning to account the property forming part of the Crown Estate.

231 Currently, the management of the Crown Estate is a reserved matter. Clause 34 provides for the devolution to Scotland of the functions of managing the Crown Estate’s then current wholly-owned assets in Scotland (“the Scottish assets”), the revenue arising from those assets and competence to legislate about those functions going forwards.

232 The Commissioners currently have a duty under the Crown Estate Act 1961 (c.55) to manage the Crown Estate on a commercial basis. Depending on any future legislation passed by the Scottish Parliament, the Scottish Ministers may be able to take a different approach to managing the Scottish assets (for example, to adopt a less commercial approach to some aspects of management, including widening the role of social enterprise). To ensure both that the Scottish Ministers can manage the Scottish assets as they see fit, whilst at the same time ensuring that the Commissioners continue to meet their existing commercial management obligations under the Crown Estate Act 1961, clause 34 effects devolution by means of a transfer of functions.

233 In overview, this clause addresses the following matters-

- a. The transfer of the functions of managing the Scottish assets from the Commissioners to the Scottish Ministers or a person nominated by them (“the transferee”), together with the rights and liabilities attaching to those functions.
- b. The payment of hereditary revenues from the Scottish assets into the Scottish Consolidated Fund.
- c. The amendment of the existing reservation in the Scotland Act 1998 (c.46) which concerns the management of the Crown Estate.
- d. Provision facilitating the introduction by the Scottish Ministers of a different form of management (different to that otherwise applicable under the Crown Estate Act 1961) before the transfer takes place, but to take effect immediately upon transfer.
- e. Protection of the Scottish assets as an estate in land in perpetuity.
- f. Consequential amendments to the Crown Estate Act 1961 and the Scotland Act 2012 (c.11).

234 These matters are explained in more detail below.

New section 90B and the transfer scheme

235 Clause 34(1) inserts new section 90B (the Crown Estate) into the Scotland Act 1998.

236 New section 90B(1) enables the Treasury to make a scheme transferring all the existing Scottish functions of the Commissioners to the transferee.

237 New section 90B(2) defines these functions as the Commissioners’ functions in relation to property, rights and interests in land in Scotland and rights in relation to the Scottish zone¹. Property, rights and interests held by a limited partnership registered under the Limited

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

Partnerships Act 1907 (c.24) are expressly excluded as are any interests in such a partnership (new section 90B(3)).

238 The Commissioners have a function of maintaining the Crown Estate as an estate in land with such proportion of cash or investments as they consider necessary under section 1(3) of the Crown Estate Act 1961. By means of this function the Crown Estate is (in effect) held in trust for the Sovereign. New section 90B(5) requires post-transfer management to be on behalf of the Crown. Subsections (6) and (7) of new section 90B allow the disposal and acquisition of property post-transfer and all acquired property (excluding hereditary revenues) must also be managed on behalf of the Crown. Post-transfer new section 90B(8) requires the property, rights and interests to be maintained as an estate in land (or as estates in land separately managed).

239 The scheme will provide for the transfer of associated rights and liabilities of the Commissioners and it must include provision ensuring that no person in Crown employment is adversely affected by the transfer (new section 90B(10) and (11)). In order that there is a clear statement of the starting position for devolution purposes, the scheme will also set out a full (but non-exhaustive) list of the property, rights and interests which are relevant to the transfer (new section 90B(9)).

240 The scheme will include such provision as the Treasury consider necessary or expedient in relation to defence or national security, telecommunications, oil and gas, and the interests of consumers in relation to electricity networks (new section 90B(12)). The transfer will take effect subject to this provision (new section 90B(13)).

241 The scheme will be made as a statutory instrument and it must be agreed with the Scottish Ministers (new section 90B(17) and (18)). The scheme may make additional provision in accordance with new section 90B(14), which could include (for example) conferring a power of direction on the Secretary of State in respect of matters of defence or national security.

242 On the transfer date specified in the scheme the existing Scottish functions, and the associated rights and liabilities, will vest in the transferee in accordance with the scheme (new section 90B(15)). The transfer scheme will have the effect of transferring the Commissioners' functions under the Crown Estate Act 1961 to the transferee. Clause 34(7) makes provision modifying the Crown Estate Act 1961 in its application to the transferee for these purposes².

243 The scheme will be subject to the usual draft affirmative procedure before both Houses of Parliament (also known as the type C procedure) (clause 34(5)). Any amendment of the scheme will be made in the same way as the scheme itself. However, amendments of the scheme will be subject to the usual negative procedure before both Houses of Parliament (also known as the type I procedure) provided there is no amendment of primary legislation, no retrospective provision (under new section 90B(19)) and no amendment made under new section 90B(12) (clause 34(6)).

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

Other aspects of clause 34

245 As mentioned above, clause 34(7) modifies the Crown Estate Act 1961 as it will apply to the transferee after the transfer. However, the Scottish Ministers may wish to adopt a different form of management for the Scottish assets. To facilitate arrangements for the management of the functions by the transferee before the transfer takes place (allowing the new arrangements

² See note of the effect of clause 34(9) in this respect.

to take effect immediately on transfer), clause 34(9) enables Her Majesty to make provision by Order in Council in connection with the transfer. This power is exercisable by Scottish statutory instrument and subject to the affirmative procedure before the Scottish Parliament (clause 34(11)). Clause 34(10) makes it clear that the Order in Council may be used to establish a body to which the functions of managing the Scottish assets may be transferred.

- 246 Once the transfer scheme takes effect, the Scottish Parliament will have competence to legislate about the management of the Scottish assets. Clause 34(3) amends the reservation in paragraph 2(3) of Schedule 5 to the Scotland Act 1998 which concerns the management of the Crown Estate. In order to clarify the operation of that reservation after the transfer, a definition of the Crown Estate is inserted into that paragraph. The effect of the amendment is that the reservation will no longer apply to the management of the Scottish assets (that is, the existing Scottish functions as defined in new section 90B(2)), but will continue to apply to existing limited partnership interests and would apply to further investment, if any, that the Commissioners might make in Scotland after the transfer date.
- 247 Clause 34(4) inserts a new reservation into Schedule 5, which reserves the subject matter of subsections (5) to (8) of new section 90B, in particular, the requirement to manage the Scottish assets on behalf of the Crown and the requirement of maintaining the Scottish assets as an estate in land.
- 248 Clause 34(13) amends section 1(2) of the Civil List Act 1952 (c.37) so that the revenue from the Scottish assets will be paid into the Scottish Consolidated Fund.
- 249 Subsections (14) and (15) of clause 34 make consequential amendments to the Crown Estate Act 1961 and the Scotland Act 2012 so as to repeal the current provisions concerning the Crown Estate Commissioner with special responsibility for Scotland.
- 250 Subsections (1), (5), (6) and (9) to (12) of clause 34 will come into force on Royal Assent. All other subsections will come into force at the same time as the transfer scheme.

Clause 35: Equal opportunities

- 251 This clause amends the reservation of equal opportunities in Section L2 in Part 2 of Schedule 5 of the Scotland Act 1998 to give the Scottish Parliament more competence to legislate for equalities.
- 252 Section L2 currently reserves equal opportunities including the subject-matter of the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976 and the Disability Discrimination Act 1995. The references to the repealed legislation are removed. This amendment does not change the scope of the reservation.
- 253 Subsection (3) sets out the new exceptions to the reservation. The exceptions specify that:
- a. the Scottish Parliament may legislate about equal opportunities in relation to non-executive appointments to the boards of Scottish public authorities that have devolved functions;
 - b. in relation to Scottish functions of Scottish or cross-border public authorities (other than board appointments), the Scottish Parliament may introduce protections and requirements that supplement but do not modify the existing provisions of the Equality Acts; and
 - c. the Scottish Parliament may also replicate or apply to new legislation provided for above, any part or provision of the Equality Acts, provided that this does not affect how these provisions currently operate.

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

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

256 Subsection (6) amends Section 152(3) of the Equality Act 2010 so that the Scottish Ministers will no longer have to obtain the consent of a Minister of the Crown before making an order to amend Part 3 Schedule 19 of the 2010 Act. Schedule 19 lists those public authorities which are subject to the public sector equality duty.

257 Subsection (7) means that the Scottish Ministers would no longer have to consult a Minister of the Crown before adding a cross border authority to that Schedule.

Clause 36: Public sector duty regarding socio-economic inequalities

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

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

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

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

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

Clause 37: Tribunals

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

264 It is anticipated that the transfer of functions from the reserved tribunals to the specified tribunals in Scotland would take place through a two-stage process. First, an Order in Council would be made to specify the functions which could be transferred, along with any conditions or restrictions on the competence of the Scottish Parliament in legislating in relation to the transfer of those functions to the tribunals and the carrying out of those functions by the specified Scottish tribunal. This would give the Scottish Parliament competence to legislate to transfer the specified functions to the specified tribunal. The Scottish Parliament would then have to effect the transfer of the relevant functions to that Scottish tribunal. It is possible that there will be UK tribunals whose functions are neither subject to qualified transfer nor excluded from transfer. It is expected that these situations will arise infrequently. Provision could be made by UK Parliament for the transfer of the functions of these tribunals by the

Scottish Parliament by providing for a definition of “Scottish cases” under paragraph 2A(2) that would apply to them.

- 265 As set out in the Command Paper “Scotland in the United Kingdom: An enduring settlement”, this two-stage process will need to be operated in collaboration with the Scottish Government and the judiciary in both Scotland and England & Wales. It is anticipated given the range of subject areas and tribunals that will need to be discussed and the timetable for the implementation of the Tribunals (Scotland) Act 2014, that the transfer of reserved functions to tribunals in Scotland will be dealt with in tranches. Paragraph 2A allows sufficient flexibility for this to happen.
- 266 Subsection (1) of clause 37 inserts the new paragraph 2A into Part 3 of Schedule 5 to the 1998 Act.
- 267 Paragraph 2A(1) makes clear that Schedule 5 to the 1998 Act does not prevent the Scottish Parliament legislating to transfer to Scottish tribunals functions relating to reserved matters where those functions relate to “Scottish cases”.
- 268 Sub-paragraph (2) provides that Her Majesty will, by Order in Council, set out what constitutes “Scottish cases” for these purposes. It is anticipated that given the variety of work undertaken by the reserved tribunals that different definitions of “Scottish cases” will be required for each potential transfer. For example, the definition of “Scottish cases” in relation to welfare benefit appeals is likely to differ to that used for employment appeals. This power, taken with section 113(2) of the 1998 Act provides the necessary flexibility.
- 269 Sub-paragraph (3) makes clear that the power in sub-paragraph (1) does not apply to any functions that are expressly excluded from transfer. These excluded functions are listed in sub-paragraph (10) and, where necessary, further definitions are found in sub-paragraph (11).
- 270 Sub-paragraph (4) introduces the concept of “qualified transfer”. Where tribunal functions are subject to qualified transfer, the transfer of those functions in legislation made by the Scottish Parliament must be in accordance with the provisions made by Her Majesty by Order in Council under this sub-paragraph. The tribunal functions that are subject to qualified transfer are listed in sub-paragraph (6).
- 271 Sub-paragraph (5) makes further provision for the purposes of sub-paragraph (4). Sub-paragraph (5)(a) and (b) provides that an Order in Council made under sub-paragraph (4) must specify the tribunal functions to which it relates and the Scottish tribunal to which those functions may be transferred. Sub-paragraph (5)(c) enables provision to be included in such an Order in Council where it is considered by Her Majesty to be necessary or expedient for the purposes of or in consequence of the transfer of the functions and their exercised by the relevant Scottish tribunal. Sub-paragraph (8) provides a non-exhaustive list of the provision which may be included in an Order in Council by virtue of sub-paragraph (5)(c).
- 272 Sub-paragraph (6) provides that the functions of the following tribunals are subject to qualified transfer:
- a. the First-tier Tribunal and the Upper Tribunal, both of which were established under the Tribunals, Courts and Enforcement Act 2007,
 - b. an employment tribunal or the Employment Appeal Tribunal,
 - c. any tribunals listed in Schedule 1 to the Tribunals and Inquiries Act 1992, and
 - d. any tribunals listed in Schedule 6 to the 2007 Act (ones which have not been transferred into the unified tribunal structure established by the 2007 Act).

- 273 Sub-paragraph (7) clarifies that sub-paragraph (6) applies to any tribunal added to Schedule 1 to the 1992 Act or Schedule 6 to the 2007 Act after paragraph 2A comes into force.
- 274 Sub-paragraph (8) sets out some of the matters which may be included in an Order in Council under sub-paragraph (5)(c). These could include provision modifying the functions that are to be transferred or imposing conditions or restrictions on the rules of procedure of the Scottish tribunal, as well as conditions necessary to ensure that the operation of the functions in respect of that tribunal relevant to the delivery of the reserved policy remain consistent. This would also enable, where necessary, provisions to be made in the interest of national security.
- 275 The reserved tribunals that are expected to be subject to paragraph 2A, range from those dealing with individuals challenging decisions of the state on personal welfare benefit claims to claims against private sector employers for breach of contract. As such, the matters considered by and the potential limits, constraints and requirements on the exercise of relevant functions are likely to differ depending upon the matters being heard.
- 276 Sub-paragraph (9) clarifies that sub-paragraph (8) does not exhaustively describe, or otherwise limit, the provision which can be made by an Order in Council under sub-paragraph (5)(c).
- 277 Sub-paragraph (10) sets out the functions which excluded from transfer. These include the functions of any "national security tribunal" (further defined in sub-paragraph (11)), the functions of regulators, such as the Civil Aviation Authority and the Office of Road and Rail, and the functions of the Comptroller-General of Patents, Designs and Trade Marks.
- 278 Sub-paragraph (11) defines key terms used in paragraph 2A.
- 279 The Order in Council making powers conferred under paragraph 2A are in addition to, and do not limit, the powers conferred by sections 30 and 113 of the Scotland Act 1998 (sub-paragraph (12)).
- 280 Subsection (2) of clause 37 amends Schedule 7 to 1998 Act to set out the approval mechanism required for an Order in Council made under new paragraph 2A. No recommendation can be made to Her Majesty in Council to make such an Order until a draft of it has been laid before and approved by both the UK and Scottish Parliaments.
- 281 Subsections (3) to (7) of clause 37 insert two additional reserved tribunals into the list of tribunals in Schedule 1 to the Tribunals and Inquiries Act 1992. These are persons appointed under section 27A(1)(a) of the Registered Designs Act 1949 and section 77(1) of the Trade Marks Act 1994, who hear certain appeals from the Comptroller-General of Patents, Designs and Trade Marks, and the Company Names Adjudicators.

Clause 38: Roads

- 282 Paragraph (c) of Section E1 (specific reservations: road transport) of Part 2 of Schedule 5 to the 1998 Act provides that the subject matter of the following provisions of the Road Traffic Regulation Act 1984 ("the RTRA 1984") are reserved matters:-
- a. section 17 (traffic regulation on special roads);
 - b. section 25 (pedestrian crossings);
 - c. Part V (traffic signs); and
 - d. Part VI (speed limits).
- 283 This clause amends Section E1 as follows.
- 284 It substitutes a new paragraph (c) which provides that only the subject matter of the following provisions of the RTRA 1984 will remain reserved:-

- a. section 17 (traffic regulation on special roads) except so far as it relates to the speed of vehicles; and
- b. section 87 (exemption of emergency vehicles from speed limits) so far as it relates to vehicles used in connection with any other reserved matter, or to the training of the drivers of emergency vehicles.

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

286 It inserts an interpretative provision to the effect that the reference to section 87 of the RTRA 1984 is to be construed as a reference to that section as at the date on which clause 38 comes into force (and correspondingly dis-applying paragraph 5(1) of Part 3 of Schedule 5 to the 1998 Act).

Clause 39: Roads: traffic signs etc

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

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

289 Section 25(1) (Secretary of State to make pedestrian crossing regulations), to enable the national authority to exercise the power to make regulations in respect of pedestrian crossings.

290 Section 64 (general provisions as to traffic signs), to enable the national authority to exercise the power to make regulations in respect of traffic signs.

291 Section 65 (powers of highway authorities as to placing of traffic signs), to:

- a. enable the national authority to exercise the power to give general directions in relation to the placing of traffic signs;
- b. provide that the power of the Scottish Ministers to give general directions is to be exercisable by Scottish statutory instrument; and
- c. require the Scottish Ministers and the Secretary of State to consult each other before exercising their powers to give general directions.

292 Section 69(3) (Secretary of State's directions for removal of traffic signs), to enable the national authority to exercise the power to direct the removal of traffic signs.

293 Section 70(1) (default powers of Secretary of State as to traffic signs), to enable the national authority to exercise the default powers to carry out works in respect of traffic signs in consequence of any failure by a local traffic authority to comply with directions given under sections 65 or 69 and to recover the costs of doing so from the relevant traffic authority.

294 Section 71(1) (power to enter land in connection with traffic signs), to enable the national authority to exercise the power to enter any land for the purposes of placing, replacing, converting or removing traffic signs.

295 Section 77 (modification of provisions relating to directions where the Secretary of State is the traffic authority), to substitute references to roads for which the Secretary of State is the traffic authority to roads for which the national authority is the traffic authority.

296 Section 79 (advances by Secretary of State towards expenses of traffic signs), to enable the national authority to exercise the power to make advances to traffic authorities towards expenses relating to the erection, maintenance, alteration or removal of traffic signs.

297 Section 142(1) (general interpretation), to insert a definition of the new term “national authority”, which means:

- a. in relation to roads in England and Wales, the Secretary of State; and
- b. in relation to roads in Scotland, the Scottish Ministers.

298 The clause also amends section 36 of the RTA Act 1988 (offence of failing to comply with traffic sign) to:-

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

299 Finally, a consequential amendment is made to section 195 (regulations) of the RTA 1988 in respect of the Parliamentary procedure applicable to regulations made by the Scottish Ministers under section 36(5) of that Act.

Clause 40: Roads: speed limits

300 In consequence of the devolution to the Scottish Parliament of almost all powers to legislate for speed limits in Scotland, this clause transfers the relevant functions of the Secretary of State to the Scottish Ministers in relation to roads in Scotland.

301 This clause amends the following provisions of the RTRA 1984:-

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

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

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

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

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

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

- a. impose upon the national authority the duty, in the case of a road for which it is the traffic authority, to erect and maintain traffic signs;

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

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

- a. enable the “relevant authority” to exercise the power to make regulations which prescribe the purposes and circumstances in which speed limits do not apply to vehicles other than those used by the emergency services; and
- b. define the new term “relevant authority”, which means:
 - c. the Scottish Ministers in relation to vehicles used on roads in Scotland, except vehicles used in connection with reserved matters; and
 - d. otherwise, the Secretary of State.

Clause 41: Roads: consequential provision etc

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

309 It also provides that the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) has effect in relation to the RTRA 1984 and the RTA 1988 as if the amendments of those Acts by clauses 39 and 40 and Schedule 2 were in force immediately prior to the commencement of the Order.

310 The clause also includes a provision that would mean that if the Secretary of State replaces the current regulations and general directions on traffic signs, the new provisions can, if the Scottish Ministers consent, apply in relation to Scotland, in addition to England and Wales. Replacement Traffic Signs Regulations and General Directions (TSRGD) are currently being prepared for spring 2016.

311 This power can only be used once, and will only be used if the traffic sign provisions are commenced before the TSRGD 2016 is made.

Clause 42: Policing of railways and railway property

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

Clause 43: British Transport Police: cross-border public authorities

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

Constable of the British Transport Police and the assistant Chief Constables of the British Transport Police (“the BTP Bodies”). The Scotland Act 1998 applies to BTP Bodies in the same way as it applies to any cross-border public authority specified in an Order in Council made under section 88(5) of the Scotland Act 1998 (see clause 43(3)), although one modification is needed to ensure that this is the case.

314 The designation of the BTP Bodies as cross-border public authorities will result in functions in relation to those bodies being modified immediately so that future appointments to the British Transport Police Authority or to the offices of Chief Constable, Deputy Chief Constable and Assistant Chief Constables will only be able to be made in consultation with the Scottish Ministers. Other functions in relation to the BTP Bodies will similarly only be able to be exercised in consultation with the Scottish Ministers unless their effect on Scotland would be wholly in relation to reserved matters.

315 The designation of the BTP Bodies as cross-border public authorities is envisaged as a first step in the process of devolving greater powers to the Scottish Government. An order could, if required, be made under section 89 of the Scotland Act 1998 to confer further or wider functions on the Scottish Ministers in relation to the BTP Bodies or to make other modifications to constitutional arrangements. In the event that the Scottish Parliament exercises the new legislative competence conferred by clause 42 to remove the Scottish aspects of functions of, or relating to, the BTP Bodies, section 90 of the Scotland Act 1998 could then be used to transfer the property and liabilities of the cross-border public authority which will enable the transfer to take place in an orderly manner.

316 To ensure that the Scotland Act 1998 applies to the BTP Bodies as it does to other cross-border public authorities clause 39(2) provides for the reference in section 88(3) of the Scotland Act 1998 to “pre-commencement enactments” to be read as a reference to the Railways and Transport Safety Act 2003.

Clause 44: Onshore petroleum

317 This clause amends Section D2 (oil and gas) in Part 2 of Schedule 5 to the Scotland Act 1998 to give the Scottish Parliament competence to legislate for the granting and regulation of licences to search and bore for and get petroleum within the Scottish onshore area. The power to set the consideration payable for such licences is not included in these exceptions and remains reserved. The Scottish Parliament is also given competence to legislate for access to such land for the purposes of searching, boring for and getting petroleum under such licences within the Scottish onshore area.

318 The Scottish onshore area is defined in line with the baseline established by any Order in Council under section 1(1)(b) of the Territorial Sea Act 1987 (extension of territorial sea). “Petroleum” for the purposes of matters to be devolved or reserved under the Scotland Act 1998 is defined in line with the definition of “Petroleum” as provided for in section 1 of the Petroleum Act 1998. For a given licence, the definition of onshore Scotland is that which applied at the time of granting of that licence.

319 Clause 44 and all of the provisions therein are subject to a commencement power and will come into force on such day as the Secretary of State appoints by regulations made by statutory instrument.

Clause 45: Onshore petroleum: consequential amendments

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

- 321 Subsections (1), (2) and (3) amend section 3(1) of the Petroleum Act 1998 to transfer, from the Secretary of State to the Scottish Ministers the powers to grant licences to bore and get petroleum.
- 322 Subsections (1), (2) and (4) amend section 3(3) to transfer the powers to determine the terms and conditions, other than consideration payable, under which such licences shall be granted. The determination of consideration payable for the granting of a licence remains a reserved power for the Secretary of State, who shall make such determination with the consent of Treasury.
- 323 Subsections (1), (2) and (5) insert subsection (5) into the Petroleum Act 1998 to define “the appropriate Minister” as being the Scottish Ministers in relation to the Scottish onshore area and the Secretary of State otherwise.
- 324 Subsections (1), (6) and (7) provide for amendment section 4(1) of the Petroleum Act 1998 to transfer, from the Secretary of State to the Scottish Ministers, the powers to make regulations in relation to the licensing process for the Scottish onshore area. These regulations can prescribe, amongst other matters, model clauses which would be incorporated into a new onshore petroleum licence, unless the Scottish Ministers decide it necessary to amend or exclude model clauses for a particular licence.
- 325 Subsections (1), (6) and (8) insert sections 4(1A) and 4(1B) into the Petroleum Act 1998 to reserve, for the Secretary of State, regulatory powers to make model clauses in relation to the consideration payable for a licence as well as: (a) the measurement and facilitation of measurement of petroleum obtained from the licensed areas and (b) the keeping of accounts. The powers of the Scottish Ministers do not, therefore, extend to the drafting of model clauses on the above matters or to the modification or exclusion of such clauses.
- 326 Subsections (1), (6) and (9) amend section 4(3) of the Petroleum Act 1998 to limit the powers of the Houses of Parliament to annul section 4 regulations, made by statutory instrument, to those regulations prescribed by the Secretary of State.
- 327 Subsections (1), (6) and (10) insert section 4(3A) into the Petroleum Act 1998 to make any section 4 regulations made by the Scottish Ministers subject to annulment by negative procedure in the Scottish Parliament.
- 328 Subsections (1), (6) and (11) insert section 4(4A) which requires the Scottish Ministers to publish notices of licenses granted by them for the Scottish onshore area in the Edinburgh Gazette.
- 329 Subsections (1) and (12) amend section 5(9) of the Petroleum Act 1998 to transfer, from the Secretary of State to the Scottish Ministers, powers to alter or delete, by instrument subscribed with the licensee, clauses incorporated into a licences granted under section 2 of the Petroleum (Production) Act 1934 in the Scottish onshore area.
- 330 Subsections (1) and (13) amend section 5(5A) of the Petroleum Act 1998 to transfer, from the Secretary of State to the Scottish Ministers, powers to revert licence rights in onshore Scotland back to the transferor, where rights have been transferred without the Scottish Ministers’ consent. These subsections also transfer the procedures by which the Scottish Ministers must abide by when reverting rights in the Scottish onshore area.
- 331 Subsections (1) and (14) amend section 5(5B)(1) of the Petroleum Act 1998 to extend the right of the Commissioners of HMRC to disclose information, to the Scottish Ministers, in relation to the transfer of a right granted by a license in the Scottish onshore area. This disclosure is for the purpose of determining whether a transfer in the Scottish onshore area that should have had the Scottish Ministers’ consent did have that consent.

- 332 Subsections (1) and (15) amend section 7(2) of the Petroleum Act 1998, which determines the effects of the Mines (Working Facilities and Support) Act 1966 when applied to licensing under the Petroleum Act 1998, by specifying that, within sections 4 and 9 of that Act, “the Secretary of State” or “the Minister” shall in those sections refer to the Scottish Ministers for licences granted in the Scottish onshore area.
- 333 Subsections (1) and (16) amend section 8 of the Petroleum Act 1998 to provide officers appointed by the Scottish Ministers with the same powers to inspect plans of mines as those already enjoyed by officers appointed by the Secretary of State under the Health and Safety at Work etc. Act 1974.
- 334 Subsections (1) and (17) insert section 8(8A) into the Petroleum Act 1998 to provide that, for Part I of the Petroleum Act 1998, “the appropriate Minister” shall be the Scottish Ministers for the Scottish onshore area. These subsections also align the definition of the Scottish onshore area with the provisions set out by any Order in Council under section 1(1)(b) of the Territorial Sea Act 1987 (extension of territorial sea).
- 335 Subsections (1) and (18) amend section 118 (12) of the Energy Act 2004 to add petroleum licensing to the list of energy functions exercisable by the Scottish Ministers for which they may impose charges.
- 336 Subsections (19) and (20) amend section 12(1A)(a)(ii) of the Oil Taxation Act 1975 to include the revocation of a licence by the Scottish Ministers to the list of cessation events by which a person ceases to be a licensee in relation to oil fields.
- 337 Subsections (19) and (21) amend sub-paragraph 1(2)(a) of Schedule 1 to the Oil Taxation Act 1975 to limit the powers of the Secretary of State for determining oil fields to those areas that are such that the granting of a licence within them, under Part 1 of the Petroleum Act 1998, would fall exclusively to the Secretary of State.
- 338 Subsections (19) and (21) amend paragraph 1(2) of Schedule 1 to the Oil Taxation Act 1975 to include the Scottish Ministers as the appropriate authority for the determination of an oil field, where the relevant area is such that the granting of licences within it would fall exclusively to the Scottish Ministers. The subsections also determine the Secretary of State and Scottish Ministers as the joint appropriate authorities for the determination of an oil field, where the relevant area is such that the granting of licences within it would fall in part to the Secretary of State and in part to the Scottish Ministers.
- 339 Subsections (22) and (23) amend regulation 2 of The Petroleum (Production)(Landward Areas) Regulations 1995 to introduce a definition of the “Scottish onshore area” that is in line with that of section 8A of the Petroleum Act 1998.
- 340 Subsections (23), (24) and (25) amend regulation 3 of the Petroleum (Production)(Landward Areas) Regulations 1995 to exclude the Scottish onshore area from the applicability of the Regulations in terms of licence applications.
- 341 Clause 45 and all of the provisions therein are subject to a commencement power and will come into force on such day as the Secretary of State appoints by regulations made by statutory instrument.

Clause 46: Onshore petroleum: existing licences

- 342 This clause grants the power to the Secretary of State to make amendments to the provisions and model clauses of licences that were in existence before the commencement of devolved oil and gas licensing powers. This additional power is limited to those licences already in existence in onshore Scotland and to certain clauses within these, which require amendment in order for the licences to continue to function appropriately in relation to the reserved taxation

powers.

- 343 Subsection (1) grants the Secretary of State the power to make any amendments, that the Secretary of State deems necessary or expedient, under clauses 44 and 45, to the provisions of an existing licence and to the model clauses that are incorporated or have the effect as if incorporated into such an existing licence.
- 344 The provision also confers on the Secretary of State the power to split cross-border licences, where part of the licence acreage falls within onshore Scotland and the remainder of the acreage falls outwith of onshore Scotland.
- 345 Subsection (3) specifies that the power to make amendments, awarded to the Secretary of State by means of subsection (1), is to be exercised by regulations made by statutory instrument.
- 346 Subsection (4) specifies that any such statutory instruments, containing regulations to make amendments to existing licences, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- 347 Subsection (5) defines “existing licences” as those licences granted under section 2 of the Petroleum Act 1998 or under section 2 of the Petroleum (Production) Act 1934 before the commencement of the devolution of licensing powers to the Scottish Ministers for the Scottish onshore area.

Clause 47: Consumer advocacy and advice

- 348 This clause amends several reservations in Part 2 of Schedule 5 to the Scotland Act 1998 so that responsibility for consumer advocacy and advice is devolved to the Scottish Parliament.
- 349 Subsections (2) to (4) insert exceptions for consumer advocacy and advice from the reservations in Sections C7 (consumer protection), C8 (product standards, safety and liability) and C9 (weights and measures) This will have the effect of devolving the provision of consumer advocacy or advice by, or by agreement with, a public body or holder of a public office, in relation to the reserved matter.
- 350 Subsections (5) to (7) insert exceptions from consumer advocacy and advice from the reservations in Sections C11 (posts), D1 (electricity) and D2 (oil and gas). This will have the effect of devolving the provision of consumer advocacy and advice by, or by agreement with, a public body or holder of a public office, in relation to the reserved matter, whilst reserving the right to levy energy and postal sector companies in order to fund consumer advocacy. However, this exception does not include conferring or removing functions from the Office of Communications (Ofcom) or the Gas and Electricity Markets Authority (Ofgem). This is clarified by subsection (8), which adds Ofcom and Ofgem to the list of reserved bodies in paragraph 3 of Part 3 of Schedule 5.
- 351 Subsections (9) to (15) make consequential amendments to support the change in funding arrangements that the devolution of consumer advocacy and advice requires.

Clause 48: Functions exercisable within devolved competence: consumer advocacy and advice

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

353 Where this Bill transfers legislative competence to the Scottish Parliament, provision needs to be made for the functions of a Minister of the Crown that fall within the scope of the newly devolved competence and other appropriate amendments made to legislation. In some instances e.g. speed limits, this is done by transferring functions to the Scottish Ministers by textual amendment of the relevant legislation. However in the case of devolution to the Scottish Parliament by virtue of clause 47 this is done by updating the operation of section 53.

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

Clause 49: Gaming machines on licensed betting premises

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

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

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

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

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

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

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

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

Clause 50: Abortion

363 This clause repeals section J1 in Part 2 of Schedule 5 to the Scotland Act 1998 (abortion). The effect of the clause is that the Scottish Parliament will have legislative competence to make provision for abortion in Scotland, including modifying the majority of the Abortion Act 1967 (“the 1967 Act”) as it applies to Scotland.

364 Section 3 of the 1967 Act makes provision about abortion for members of the visiting forces. As this relates to the reserved matter of defence, it would be outside the legislative competence of

the Scottish Parliament. The UK Parliament retains the power to modify the 1967 Act as it applies to England and Wales, and will be able to modify section 3 of the 1967 Act as it applies in Scotland.

Part 5: Other Executive Competence

Clause 51: Gaelic Media Service

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

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

Clause 52: Commissioners of Northern Lighthouses

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

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

Clause 53: Maritime and Coastguard Agency

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

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

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

Clause 54: Rail: franchising of passenger services

372 The Railways Act 1993 ("the 1993 Act") provides that the bodies and persons listed in

subsections 25(1)(a) to 25(1)(f) (public sector operators) shall not be a franchisee. Accordingly, those bodies and persons listed in section 25(1) of the 1993 Act may not bid for, or operate, passenger rail services under a franchise agreement in Great Britain.

373 Subsection (3) of the clause will have the effect of lifting this prohibition in relation to Scottish franchise agreements. It will allow a public sector operator to be a franchisee in relation to a franchise agreement for the provision of services that begin and end in Scotland (Scotland-only services) and such other cross-border services that are designated by the Scottish Ministers to be provided under that same franchise agreement.

374 Subsection (4) of the clause provides that the disapplication of section 25(1) of the 1993 Act in relation to Scottish franchise agreements will apply only in relation to an invitation to tender issued by the Scottish Ministers under powers set out in section 26(2) of the 1993 Act on or after subsection (3) comes into force.

Clause 55: Fuel poverty: support schemes

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

376 This clause amends the 2010 Act by inserting a new section 14A to enable the Scottish Ministers to exercise a range of powers for the purpose of support schemes in relation to Scotland. It also makes consequential changes to section 9 (schemes for reducing fuel poverty) and section 31 (Orders and regulations) of the 2010 Act.

377 All of the powers under section 9 of the 2010 Act in relation to obligations on suppliers are transferred to the Scottish Ministers with the exception of: powers to determine the licensed gas or electricity suppliers to whom the scheme applies; powers to determine the aggregate amount of benefits to be provided in any specified period and the total amount of benefits to be provided by any one scheme supplier; and powers relating to the reconciliation of supplier costs. These relate to the scale and apportionment of the obligations, and the obligated parties.

378 Before exercising the powers that are transferred to them by virtue of this clause, the Scottish Ministers must have consulted with, and obtained the agreement of, the Secretary of State.

379 The Secretary of State may exercise the powers that are transferred to the Scottish Ministers by virtue of this clause, if the Scottish Ministers agree. The Secretary of State can intervene and exercise the powers without the agreement of the Scottish Ministers in the circumstances set out in subsections (7), (9) or (11) of the new s.14A.

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

- a. If, after consulting the Scottish Ministers, the Secretary of State considers it necessary to ensure a scheme is made in Scotland with the same start and end times as a scheme made or to be made in relation to England and Wales,
- b. Where a scheme made in relation to Scotland, alone or in conjunction with a scheme made or to be made by the Secretary of State in relation to England and Wales, is likely to cause detriment to the United Kingdom (including consideration of the costs imposed on suppliers by virtue of schemes) or adversely affect the ability of the United Kingdom to comply with any international agreement or arrangement in relation to climate change or energy efficiency. The Secretary of State may only exercise this power after the Scottish Ministers have failed to comply with a written request to make specified modifications to prevent these effects within a specified time, or

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

Clause 56: Energy company obligations

381 Under the Gas Act 1986 (“the 1986 Act”) and the Electricity Act 1989 (“the 1989 Act”) the Secretary of State has powers to impose obligations on gas and electricity suppliers in Great Britain, for the purposes of promoting reductions in carbon emissions and home-heating costs. This Bill amends those Acts to enable the Scottish Ministers to exercise many of those powers in relation to the promotion by gas and electricity suppliers of reductions in carbon emissions and home-heating costs in Scotland.

382 This clause amends the 1986 Act by inserting new sections 33BCA and 33BDA and the 1989 Act by inserting new sections 41AA and 41BA to enable the Scottish Ministers to exercise a range of powers in relation to obligations imposed on licenced gas and electricity suppliers to promote reductions in carbon emissions or home heating costs in relation to Scotland.

383 Section 33BC of the 1986 Act contains the powers to impose obligations on gas suppliers to promote reductions in carbon emissions. Section 33BD of the 1986 Act and sections 41A and 41B of the 1989 Act contain similar powers to impose obligations on gas and electricity suppliers to promote reductions in home-heating costs and to impose obligations on electricity suppliers to promote reductions in carbon emissions.

384 Powers are conferred on the Scottish Ministers to specify how suppliers may meet their obligations through measures carried out in Scotland. Most of the powers under sections 33BC and 33BD of the 1986 Act and under sections 41A and 41B of the 1989 Act are transferred to the Scottish Ministers for the purpose of obligations imposed by the Secretary of State in relation to Scotland. Specific powers that are not transferred to the Scottish Ministers are: powers to determine whether there should be an obligation and to specify the obligation period; powers to specify the suppliers on whom the obligation is imposed; powers to determine how other persons that become suppliers after the start of the obligation period are treated; powers to set the criteria for distributing the obligation between individual suppliers; powers to alter a supplier’s share of the obligation during an obligation period; and powers to impose obligations on gas transporters or electricity distributors. These relate to the scale and apportionment of the obligations, and the obligated parties.

385 Before exercising the powers that are transferred to them by virtue of this clause, the Scottish Ministers must have consulted with, and obtained the agreement of, the Secretary of State. The Scottish Ministers will also be under a duty to consult the Gas and Electricity Markets Authority, Citizens Advice Scotland, suppliers and other persons they consider appropriate. Where part of an overall target has been apportioned to Scotland, the Scottish Ministers will be under a duty to exercise their powers in the way they think most likely to secure that the costs of the obligation relating to Scotland, when expressed as a proportion of the total costs of the obligation across Great Britain, do not exceed the share of the overall target apportioned to Scotland. The Secretary of State’s power to set and apportion overall carbon emissions reduction and home-heating cost reduction targets is conferred by sections 103 and 103A of the Utilities Act 2000 as amended by clause 57.

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

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

Clause 57: Apportionment of targets

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

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

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

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

Clause 58: Renewable electricity incentive schemes: consultation

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

Clause 59: Offshore renewable energy installations

393 This clause amends the Energy Act 2004 ("the 2004 Act") to enable the Scottish Ministers to exercise functions in relation to declaring safety zones around, and the decommissioning of, offshore renewable energy developments wholly in Scottish waters or in a Scottish part of a Renewable Energy Zone ("REZ").

394 Subsections (2) to (5) amend section 95 of the 2004 Act (safety zones around renewable energy installations) to provide the Scottish Ministers with a discretionary power to issue a notice to

declare safety zones around a renewable energy installation wholly in Scottish waters or in a Scottish part of a REZ and to determine which activities are permitted within a safety zone, and which vessels may enter or remain within a safety zone. Where such an installation is proposed to be, or is, extended outside Scottish waters or a Scottish part of a REZ the Secretary of State will exercise the functions in relation to declaring safety zones in respect of that part of the installation, unless the Scottish Ministers and the Secretary of State agree that the Scottish Ministers should do so.

395 Subsection (5) inserts a new subsection (4A) in section 95 of the 2004 Act to provide that, before issuing a notice which relates to an area outside Scottish waters or the Scottish part of a REZ, the Scottish Ministers must consult the Secretary of State.

396 Subsections (6) to (8) amend section 96 of the 2004 Act (prohibited activities in a safety zone) to provide the Scottish Ministers with the power to make regulations setting out general permissions allowing vessels to enter safety zones and carry out activities.

397 Subsections (17) to (19) amend Schedule 16 to the 2004 Act (applications and proposals for notices under section 95) to make provision for applications and proposals for notices declaring safety zones to be made to the Scottish Ministers.

398 The 1982 United Nations Convention on the Law of the Sea (UNCLOS) places an obligation on contracting parties to ensure that renewable energy installations in a REZ are decommissioned. Chapter 3 of the 2004 Act created a common legal regime for offshore renewable energy developments in territorial and internal waters or a REZ.

399 Subsections (9) to (12) amend Chapter 3 of the 2004 Act (decommissioning of offshore installations) to provide that the Scottish Ministers will exercise functions in relation to decommissioning of renewable energy installations wholly in Scottish waters or in a Scottish part of a REZ and those parts of a related electric line in such waters. These functions include the discretionary power to impose an obligation on a responsible person to submit a costed decommissioning programme. The Scottish Ministers may approve such a programme or, where they consider it to be inadequate, prepare a suitable decommissioning programme and recover the costs from the responsible person. Where such an installation is proposed to be, or is, extended outside Scottish waters or a Scottish part of a REZ the Secretary of State will exercise the functions in relation to decommissioning in respect of that part of the installation, unless the Scottish Ministers and the Secretary of State agree that the Scottish Ministers should do so.

400 Subsection (13) amends section 111 of the 2004 Act (regulations about decommissioning) to provide the Scottish Ministers with the power to make regulations relating to decommissioning of such renewable energy installations and related electric lines.

Clause 60: References to Competition and Markets Authority

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

whether or not to launch a market study (to determine whether a reference is appropriate) within a reasonable period of time (subsections (2) and (3)). The “appropriate Minister” may make market investigation references only as a reserve power.

402 Clause 60 amends the definition of “appropriate Minister” in section 132(5) of the 2002 Act so that it includes the Scottish Ministers, acting jointly with the Secretary of State, or jointly with the Secretary of State and one or more other Ministers of the Crown.

Part 6: Miscellaneous

Clause 61: Gas and Electricity Markets Authority

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

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

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

Clause 62: Office of Communications

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

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

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

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

410 Subsections (7) to (8) of this clause amend the Schedule to the 2002 Act to require the Comptroller and Auditor General to send a copy of Ofcom’s statement of accounts and his report to the Scottish Ministers and for the Scottish Ministers to lay those documents before the Scottish Parliament. Similarly, subsection (9) amends the Schedule to the 2002 Act to require Ofcom to send its annual report to the Scottish Ministers and for the Scottish Ministers to lay the report before the Scottish Parliament.

Clause 63: Bodies that may be required to attend before the Parliament

These Explanatory Notes relate to the Scotland Bill as brought from the House of Commons on 10 November 2015 (HL Bill 73)

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

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

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

Clause 64: Destination of fines, forfeitures and fixed penalties

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

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

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

Part 7: General

Clause 65: Subordinate legislation under functions exercisable within devolved competence

417 This clause ensures that where functions transferred to the Scottish Ministers by section 53 of the Scotland Act 1998, as glossed by clauses 9, 30 and 48 of the Bill, include powers to make delegated legislation, the procedure applicable follows that set out by the Scottish Parliament in the Interpretation and Legislative Reform (Scotland) Act 2010 (ILRA).

418 Section 53 of the Scotland Act 1998, as glossed by clauses 9, 30 and 48 of the Bill, transfers functions exercisable within devolved competence by virtue of clauses 3, 20, 21, 22, 23, 24, 29, 47 of the Bill from a Minister of the Crown to the Scottish Ministers. Some of the functions transferred will include the power to make delegated legislation, but that delegated legislation will be subject to procedure in the UK Parliament. Accordingly, adjustment is needed to apply Scottish Parliament procedure to those transferred functions.

419 In 2010, the Scottish Parliament passed ILRA which makes provision for scrutiny of devolved subordinate legislation. This clause ensures that where a transferred function is exercisable by statutory instrument, it will be exercisable by Scottish statutory instrument. If no provision is made for the transferred function to be exercisable by statutory instrument, then the function is not exercisable by Scottish statutory instrument. Further, this clause glosses references to the parliamentary scrutiny applicable to a transferred delegated power. For example, references to subordinate legislation being “subject to annulment in pursuance of a resolution” will be read as subject to the negative procedure in the Scottish Parliament.”

Clause 66: Transfers of property etc to the Scottish Ministers

420 Clause 66 amends section 60(3) of the Scotland Act 1998. Section 60 confers a power to provide for (a) the transfer to the Scottish Ministers of any property belonging to a Minister of the Crown or government department, (b) the Scottish Ministers to have rights or interests in relation to such property and (c) the transfer to the Scottish Ministers of any liabilities to which a Ministers of the Crown or government department is subject. The scope of the power is limited by subsection (3) of that section to any transfer or sharing of functions of a Minister of the Crown by virtues of section 53, 63 or 89 of the Scotland Act 1998 or any other circumstances which the person making the legislation considers it appropriate to do so for the purposes of the Scotland Act 1998.

421 The amendment to subsection (3) will allow transfer of property, rights or interests in relation to such property and liabilities, to the Scottish Ministers in connection with the transfer or sharing of functions of a Minister of the Crown to the Scottish Ministers by virtue of the Bill. The Bill provides for the transfer or sharing of functions:

- a. by way of general transfer of functions (see the gloss of section 53 by clauses 9, 30 and 48;
- b. by textual amendment where legislative competence is also transferring;
- c. by textual amendment where there is no transfer of legislative competence; and
- d. where the consequential power in clause 62 is used to transfer a function to the Scottish Ministers.

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

Clause 67: Transitional provision

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

Clause 68: Power to make consequential, transitional and saving provisions

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

Clause 69: Commencement

425 This clause details the commencement arrangements for the Bill (see paragraph 436).

Clause 70: Short title

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

Schedules

Schedule 1: Disapplication of UK aggregates levy: further amendments

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

Schedule 2: Roads: consequential and related amendments

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

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

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

m. schedule 9 (special provisions as to certain orders), by inserting references to the “Scottish Ministers” in addition to the references to the Secretary of State or substituting references to the “national authority” for references to the “Secretary of State”, as appropriate, and making other related minor consequential amendments, in the following provisions:

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

430 Paragraphs 19 to 21 amend the Road Traffic (Temporary Restrictions) Procedure Regulations 1992 (S.I. 1992/1215) by substituting references to the “national authority” for references to the “Secretary of State”.

431 Paragraphs 22 to 24 amend the Zebra, Pelican and Puffin Pedestrian Crossings Regulations and General Directions 1997 (S.I. 1997/2400) by substituting references to the “national authority”

for references to the “Secretary of State”.

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

433 Paragraphs 26 to 28 amend the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999 (S.I. 1999/1750) by omitting the entries relating to the RTRA 1984 and secondary legislation made under that Act, together with section 36(5) of the RTA 1988. These entries will become otiose in consequence of the amendments made by sections 33 to 35 and Schedule 2.

434 Paragraphs 29 to 31 amend the Traffic Signs Regulations and General Directions 2002 (S.I. 2002/3113) by substituting references to the “national authority” for references to either the “Secretary of State” or the “Secretary of State or the Scottish Ministers”.

435 Paragraph 32 amends the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2005 (S.I. 2005/849) by omitting references to certain functions so far as they are exercisable by virtue of section 22C of the RTRA 1984. These references will become otiose in consequence of the amendments made by sections 33 to 35 and Schedule 2.

Commencement

436 Commencement of the provisions of the Bill is specified in clause 69. Clauses 1, 34(1), (5), (6) and (9) to (12) and Part 7 of the Bill come into force on the day on which the Act is passed. The other provisions of clause 34 come into force on the date specified under section 90B(20) of the 1998 Act. The remainder of the provisions come into force either 2 months from the day on which the Act is passed, or on such a day as the Secretary of State (or in the case of clause 64, the Treasury) may appoint by regulations.

Financial implications of the Bill

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

Compatibility with the European Convention on Human Rights

438 Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). Lord Dunlop, Parliamentary Under Secretary of State for Scotland, has made the following statement: "In my view the provisions of the Scotland Bill are compatible with the Convention rights."

Related documents

439 The following documents are relevant to the Bill and can be read at the stated locations:

- Scotland Act 1998: <http://www.legislation.gov.uk/ukpga/1998/46>
- Scotland Act 2012: <http://www.legislation.gov.uk/ukpga/2012/11>
- The Smith Commission, 2014:
<https://www.smith-commission.scot/smith-commission-report/>
- Scotland in the United Kingdom: An enduring settlement, 2015:
<https://www.gov.uk/government/publications/scotland-in-the-united-kingdom-a-n-enduring-settlement>

Annex A - Territorial extent and application

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

SCOTLAND BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Scotland Bill as brought from the House of Commons on 10 November 2015 (HL Bill 73).

Ordered by the House of Lords to be printed, 10 November 2015

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LONDON - THE STATIONERY OFFICE LIMITED

Printed In the United Kingdom by The Stationery Office Limited

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