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Dear Bruce

I am writing in response to the Devolution (Further Powers) Committee's interim report on the Smith Commission and the UK Government's proposals.

I would firstly like to put in writing my thanks to the Committee for the considerable work put into producing this dispassionate, evidence-based and considered report. The fact that the report is unanimous and represents the views of all parties in this Parliament lends considerable weight to its conclusions. I have also noted the impressive analysis of the Scotland Bill which was published by the Committee on 4 June.

The report highlighted very clearly the Committee's conclusions that the draft clauses published by the UK Government would require significant revision in order to fully implement the Smith Commission's proposals, in particular in the areas of welfare and employment support and in other areas such as Crown Estate, equalities and constitutional matters. These shortfalls will have a real impact on the Scottish Government's ability to deliver reform in these critical areas, matched to the specific needs of Scotland.

The areas for improvement identified by the Scottish Government are very similar to those identified by the Committee in its report and in its further analysis of the Scotland Bill.

Since the publication of the UK Government's Command Paper in January, the Scottish Government has sought to work with the UK Government to improve the clauses in order that the Scotland Bill delivered the recommendations of the Smith Commission in full. There have also been clear commitments from the Prime Minister and Secretary of State that the Bill would do so. In the circumstances it is disappointing that the Bill as introduced has not taken the unanimous views of the Devolution Committee on board.

The Scottish Government has therefore prepared a comprehensive response to the Committee which sets out proposals for how the Scotland Bill can be improved to deliver the spirit and substance of the Smith Commission recommendations. This includes alternate clauses covering a large part of the scope of the Bill.

The Scottish Government will continue to work with the Committee and the UK Government as the Bill passes through the legislative process, to try and reach a position where the I can commend it to the Parliament for its support. I hope the attached response will assist both the Committee and the UK Government in achieving this aim.

**JOHN SWINNEY**

## **SCOTTISH GOVERNMENT RESPONSE TO THE INTERIM REPORT FROM THE DEVOLUTION (FURTHER POWERS) COMMITTEE ON THE SMITH COMMISSION AND THE UK GOVERNMENT'S PROPOSALS**

This paper sets out the Scottish Government's response to the Committee's report which was published on 14 May and debated in the Scottish Parliament on 21 May.

The Scottish Government supports the conclusions of the Smith Commission in as far as they go, although we have also made clear that, in our opinion, they do not go nearly far enough. This response focuses on ensuring the Scotland Bill delivers the spirit and substance of the Smith Commission recommendations, although it should be noted that the Scottish Government is also preparing proposals for additional powers that go beyond those recommended by the Smith Commission, as agreed in the meeting between the First Minister and the Prime Minister on 15 May.

The Scottish Government shares the Committee's concerns that, in some crucial areas, the UK Government's draft legislative clauses, published in January 2015, fall short of fully implementing the recommendations of the Smith Commission. The shortfalls identified by the Scottish Government are very similar to those set out by the Committee in its report and in its analysis of the Scotland Bill published on 4 June.

The Committee's report concentrated on a number of key areas and this response follows that approach, although we have taken the opportunity to highlight our position and proposed way forward across all areas covered by the Smith Commission recommendations.

For areas where significant shortfalls have been identified, alternative clauses have been provided to deliver Smith in full. For a few issues, a narrative description of the change required to the Bill is provided.

Where the provisions in the Scotland Bill appear to the Scottish Government to meet the terms of the relevant Smith recommendations in full we have not referred to them in this note although discussions in these areas will continue between the governments to ensure effective implementation. Subjects which fall into this category are tax, policing of railways and railway property, British Transport Police: cross-border public authorities, Gaelic Media Service, franchising of rail passenger services, offshore renewable energy installations, Gas and Electricity Markets Authority, Office of Communications and bodies that may be required to attend before Parliament.

## CONSTITUTION AND GOVERNANCE

### Permanency of the Scottish Parliament and Scottish Government

The Smith Commission report stated, in simple terms, at paragraph 21, that “UK legislation will state that the Scottish Parliament and Scottish Government are permanent institutions.”

The Devolution (Further Powers) Committee raised two main issues with the draft clause and the Scottish Government has addressed these as follows:

- The Scottish Government believes the form of words proposed in the Scotland Bill is a weaker formulation than stating simply that the Scottish Parliament and the Scottish Government are permanent. The Scottish Government therefore agrees with the Committee’s views at paragraph 47 of its report. The Scottish Government’s alternative clause follows the wording of the Smith Commission report more plainly and directly.
- In legal terms there is nothing to stop the Westminster Parliament from repealing clause 1 according to the doctrine of Parliamentary sovereignty and the associated norm that one Parliament cannot bind its successors. The Scottish Government’s alternate clause includes a double lock requiring that the clause cannot be repealed without the prior consent of the Scottish Parliament and the people of Scotland voting to abolish the Scottish Parliament in a referendum conducted for that purpose. This strengthens the declaratory and political effect of the clause. It also acknowledges both the position of the Scottish Parliament and the long-standing sovereign right of the people of Scotland to determine the form of government best suited to their needs, as recognised in paragraph 20 of the Smith Commission report.

The Scottish Government also notes that both the House of Commons Political and Constitutional Reform Committee<sup>1</sup> and the House of Lords Select Committee on the Constitution<sup>2</sup> raised concerns with these aspects of the UK Government’s clause.

The Scottish Government’s alternative clause also addresses some more minor issues with the UK Government’s clause: using the definite article “the” instead of the indefinite “a” as this is the language used in the Scotland Act 1998; and using “constitution” rather than “constitutional arrangements” as that term is already straightforwardly used in the Scotland Act 1998. “Constitutional arrangements” is a term most commonly used to refer to the governing arrangements of bodies and offices and is therefore inappropriate for describing the governance of Scotland.

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<sup>1</sup> *Constitutional Implications of the Government’s draft Scotland clauses* (HC 1022) March 2015

<sup>2</sup> *Proposals for the devolution of further powers to Scotland* (HL Paper 145) March 2015

## **The Sewel Convention / Legislative Consent Memoranda**

Paragraph 22 of the Smith Commission report stated that:

“The Sewel Convention will be put on a statutory footing.”

The Scotland Bill adds a new subsection (8) to section 28 of the Scotland Act. The positioning of this new provision is significant because the provision before, section 28(7), makes an unambiguous assertion of Westminster’s parliamentary sovereignty and the legislative supremacy of the UK Parliament. Section 28(7) declares:

“This section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland.”

This is therefore a clear statement that Westminster continues to have the legal power to legislate for Scotland across devolved, as well as reserved, areas of public policy.

Clause 2 of the draft Scotland Bill inserts section 28(8):

“But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament.”

In its report (paragraph 61) the Committee considered that the current draft clause placed “the purpose of the Sewel Convention in statute [but] does not incorporate in legislation the process for consultation and consent where Westminster plans to legislate in a devolved area.” In addition the Committee recommended that the words ‘but it is recognised’ and ‘normally’ in the draft clause should be removed because they weaken the intention of the Smith recommendation.

The Scottish Government agrees with the Committee’s analysis. The current clause fails to implement the Smith recommendation in three respects:

- The Sewel Convention, as set out in Devolution Guidance Note 10 (DGN 10), also requires the consent of the Scottish Parliament to Westminster legislation which alters the legislative competence of the Scottish Parliament or the executive competence of the Scottish Ministers. The draft clause does not refer to either of these categories. This is a significant omission.
- The draft clause puts the Sewel Convention into legislation as a convention, rather than putting the convention on a statutory footing. This is very different from precedents where the UK has placed other conventions on a statutory footing, such as the Ponsonby Convention relating to treaty ratification.
- As has been widely noted, and set out in DGN 10, the effective operation of the Sewel Convention depends on consultation between the Scottish and UK Governments; the draft clause fails to include any consultation requirements.

The Scottish Government's alternative clause addresses these deficiencies and properly places the Sewel Convention on a statutory footing. The opening subsection of the alternative draft adds to section 28 of the Scotland Act by providing a clear statement of the Sewel Convention – that the UK Parliament must not pass Acts applying to Scotland about a devolved matter without the consent of the Scottish Parliament. It then defines “about a devolved matter” to encompass all three devolved aspects covered by DGN 10: legislation in a devolved area; changing the legislative competence of the Scottish Parliament; and adjusting the executive competence of the Scottish Government.

The alternative clause then provides for a new section 28A to be inserted into the Scotland Act. This is a straightforward consultation provision requiring the UK Government to consult with the Scottish Government before introducing to Westminster, Bills that apply to Scotland. Where the Westminster Bill would require the consent of the Scottish Parliament under section 28, as amended, the UK Government should share a copy of the provisions of the Bill that apply to Scotland, with the Scottish Government, 21 days before introduction at Westminster. However the Scottish Government understands that, on occasion, it is necessary to expedite the legislative process and therefore the alternative clause is pragmatic and flexible in allowing the consultation requirement to be curtailed in certain circumstances.

## **Elections**

The Smith Commission report recommended at paragraph 23 that the Scottish Parliament should have ‘all powers in relation to elections to the Scottish Parliament and local government elections in Scotland (but not in relation to Westminster or European elections). This will include powers in relation to campaign spending limits and periods and party political broadcasts.’ Paragraph 24 provides additional detail.

The Scotland Bill seeks to address this recommendation in clauses 3 to 9. The Scottish Government believes there are some provisions in the draft clauses which limit the Scottish Parliament's powers beyond that envisaged by Smith. In particular, clause 3 falls short of implementing the Smith Commission recommendation, and the Scottish Government has proposed an alternative to this clause.

The proposed alternative clause substitutes, rather than amends, the Section B3 Elections reservation in schedule 5 to the Scotland Act 1998, which makes the effects clearer. Part (A) reserves elections for membership of the House of Commons and the European Parliament. Part (B) refers to Scottish Parliament elections and local government elections in Scotland.

Specifically, it reserves the holding of the poll at an ordinary Scottish Parliament election on the same day as a UK parliamentary general election, a European parliamentary election or an ordinary local government election in Scotland. This gives effect to the Smith Commission recommendation at paragraph 24(4). This is clearer than the approach in the Scotland Bill.

We have removed paragraph (b) of the combination of polls provision in Part (B), which would have had the effect of reserving the combination of devolved polls. Should the timing rules be varied to allow ordinary Scottish Parliament and ordinary

Scottish local government polls to coincide, then the Secretary of State would have had competence over the devolved conduct rules, which would otherwise both be the responsibility of the Scottish Parliament. This is clearly undesirable and goes beyond the Smith recommendation.

Alternative drafting in relation to the digital service is suggested, which we think is clearer as to what the effect of the reservation is.

Clauses 4 to 9 of the Scotland Bill are lengthy and complex. There are a number of points that we would wish to see amended within these clauses as follows:

- In Clause 4, the part which enables Scottish Ministers to make provision by order for the combination of polls could be simplified. The reservation of the power to make combination rules could be removed from B3, and the list of coinciding polls at s.12(2)(d) could be replaced with provision that gives Scottish Ministers power to provide for the combination of polls and referendums that are within the legislative competence of the Scottish Parliament.
- The references to use of the digital service could be seen to conflict with clause 6, which currently gives Scottish Ministers some powers to make provision, with the agreement of the Secretary of State. This could be read as restricting the use of the digital service beyond what is actually needed or intended.
- In Clause 5, subsection (3), goes beyond the recommendation by the Smith Commission, which clearly seeks only to prevent the polls from being held on the same day. We propose that the words 'or within two months before' be omitted.
- In Clause 6 the definition of 'use of the digital service' seems over complicated. Inserted section 10ZC(4) of Section 6(3) seems to be out of step with existing provision in this area, as it appears to suggest that a person cannot use the digital service unless they are eligible to register, when there is nothing to suggest any current restriction on those who may use the service; the purpose of the digital service is to determine whether an applicant is eligible to register, and therefore this provision could be omitted.
- Clause 6 currently contains a veto which provides that although Scottish Ministers will be able to make regulations about the use of the digital service they will only be able to do so with the agreement of the Secretary of State. In common with our approach to the vetoes throughout the Bill we would remove the provision at (11) "Regulations made by the Scottish Ministers by virtue of subsection (9) may not be made without the agreement of the Secretary of State."
- In clause 7, we note that this power does not apply where any other poll is combined with a Scottish Parliament election, and accept this in principle as a practical approach, but we suggest that this should be limited to the combination of a Scottish Parliament election with any other poll that is outwith the Parliament's competence, as the provision as drafted would have the effect that, should the timing provisions be varied to permit Scottish Parliament elections to be combined with local government elections in Scotland, the combination rules would be reserved, which would be undesirable.

- In clause 9 subsection (6) can be omitted as the Scottish Parliament (Elections etc.) Order 2010 is devolved under the Scotland Act 2012.

In recommending that the Scottish Parliament should have all powers in relation to Scottish Parliament elections and elections to local government in Scotland, the Smith Commission also stated specifically that this would include party political broadcasts. There does not appear to be any provision to this effect in the draft clauses. The Scottish Government has therefore prepared a new clause that creates an exception under section K1 of Schedule 5 to the Scotland Act 1998 to devolve competence in relation to party political broadcasts in relation to polls that are within the competence of the Scottish Parliament and referendums held under Acts of the Scottish Parliament.

### **Electoral Commission**

The Smith Commission recommended that “the Electoral Commission will continue to operate on a UK-wide basis. The Scottish Parliament will have competence over the functions of the Electoral Commission in relation to Scottish Parliament elections and local government elections in Scotland. The Electoral Commission will report to the UK Parliament in relation to UK and European elections and to the Scottish Parliament in relation to Scottish Parliament and local government elections in Scotland.” Clause 3 in the Scotland Bill appears to include some provision to address this in part, but it does not fully deliver the second part of the recommendation. We think an alternative approach should be considered to make clear that the Scottish Parliament will have competence over the Commission’s functions in relation to Scottish Parliament elections and local government elections in Scotland.

### **Super-majority requirement for certain legislation**

While the Committee was not able to consider the issue of supermajority in its interim report, the Scottish Government has a number of suggestions for improving clause 10 of the Scotland Bill.

The Smith Commission report stated at paragraph 27 that “to provide an adequate check on Scottish Parliament legislation changing the franchise, the electoral system or the number of constituency and regional members for the Scottish Parliament, UK legislation will require such legislation to be passed by a two-thirds majority of the Scottish Parliament.”

The Scottish Government believes the relevant clause needs some development to make it work properly and effectively. In particular the Scottish Government’s alternative clause amends the UK Government’s clause in relation to:

- the point in the Parliamentary process when the Presiding Officer is to make a decision on whether super-majority requirements are triggered;
- not requiring an unnecessary statement in the event that the super-majority requirements are not triggered;



- providing for a Bill passed by consensus to be regarded as meeting the super-majority requirements;
- clarifying of the circumstances in which a Law Officer can make a reference to the Supreme Court on whether a provision of a Bill is subject to the super-majority requirements; and
- the circumstances in which the Parliament can reconsider a Bill.

### **Scope to modify the Scotland Act 1998**

Paragraph 26 of the Smith report recommended that:

“UK legislation will give the Scottish Parliament powers to make decisions about all matters relating to the arrangements and operations of the Scottish Parliament and Scottish Government...”

Schedule 4 to the Scotland Act provides that most of the Scotland Act itself cannot be modified by legislation in the Scottish Parliament. This, in practical terms, means that the structures and arrangements for the devolved institutions can only currently be adjusted by Westminster. The Smith Commission recognised that powers relating to the arrangements and operations of the Scottish Parliament and Scottish Government – which have developed into mature, respected institutions – should rest in Scotland.

Clause 11 of the Scotland Bill partially implements the Smith recommendation. It does this by removing various sections of the Scotland Act from the restrictions in schedule 4, therefore opening them up to being legislated for in the Scottish Parliament.

However there are several other areas of provision in the Scotland Act that are missing from clause 11 which ought to be included to fully implement the devolution of “all matters relating to the arrangements and operations of the Scottish Parliament and Scottish Government”. These provisions are included in the alternative clause and cover the following areas:

- powers to call witnesses and documents
- significant aspects of the Scottish Parliament’s legislative process
- full devolution of the appointment process for, and functions of, the First Minister, Cabinet Secretaries and Ministers in the Scottish Government, and the Lord Advocate and Solicitor General as the Scottish Law Officers
- full devolution of the Auditor General for Scotland and of responsibility for judicial appointments.

This would give the Scottish Parliament full legislative competence over the structures, workings, processes, procedures, and institutional architecture of the Scottish Parliament and Scottish Government, as set out in the Scotland Act.

## **TAX**

The Scottish Government is broadly content with the clauses in the Scotland Bill relating to taxation. As the Committee recognised, there will need to be extensive discussions between the Scottish and UK Governments over the plans for implementing these provisions.

### **Fiscal framework and borrowing**

The Smith Commission recognised that Scotland's new fiscal framework needs to be underpinned by appropriate borrowing powers – both to help manage the additional economic risks accruing to the Scottish Budget and to enable the Scottish Government to support capital investment. The current Scotland Bill does not include any new borrowing provisions. It is our expectation that amendments will be introduced to the Bill as it proceeds through Westminster to reflect agreements reached by Scottish and UK Ministers in the course of fiscal framework negotiations.

The Scotland Act 2012 enhanced the borrowing powers of Scottish Ministers, but we consider that further changes are required to ensure that we can take responsible decisions within a sustainable borrowing framework. Some changes could be introduced without any changes to legislation. For example, the UK Government currently sets administrative limits on the amount which Scottish Ministers can borrow in any one year and these could be relaxed or removed at any time.

It is the Scottish Government's view that the Smith Commission proposal that the Scottish and UK Governments should consider the merits of introducing a prudential capital borrowing regime should be given a statutory underpinning. Such a regime would give Scottish Ministers greater discretion over borrowing so that we can prioritise infrastructure investment in line with Scotland's economic interests.

The devolution of increased powers of taxation and welfare will inevitably expose the Scottish Budget to a greater degree of risk and revenue borrowing will be one of the tools available to us to manage forecasting, cyclical and demand risks while protecting our spending on Scotland's public services. The Scotland Acts enable the Scottish Ministers to undertake revenue borrowing for specified purposes, and we consider that these purposes need to be reviewed and expanded to enable us to manage these risks.

More broadly, the Scottish Government shares the Committee's view that negotiations on the fiscal framework must proceed in parallel with the passage of the Scotland Bill, to enable the Scottish Parliament to be satisfied that a robust and coherent framework is in place before it gives legislative consent to the Scotland Bill.

## **WELFARE BENEFITS AND EMPLOYMENT SUPPORT**

In its report the Committee said at paragraph 318 that it had “..concerns with a number of the welfare provisions and considers that the relevant clauses do not yet meet the spirit and substance of the Smith Commission’s recommendations and potentially pose challenges in any attempt to implement them”.

The Scottish Government shares the concerns of the Committee and notes from the Committee’s initial assessment of the Scotland Bill (published on 4 June) that the Committee considers the changes made are fairly limited whilst many of the recommendations contained in the Committee’s Interim Report remain to be addressed.

### **Disability, industrial injuries and carers benefits**

The Scottish Government believe that Clause 19 of the Scotland Bill does not fully implement the recommendation of the Smith Commission report at paragraph 51: “The Scottish Parliament will have complete autonomy in determining the structure and value of the benefits at paragraph 49 or any new benefits or services which might replace them. For these benefits, it would be for the Scottish Parliament whether to agree a delivery partnership with DWP or to set up separate Scottish arrangements.”

The Smith recommendations have been narrowed in the draft clause, in particular the definition of who can be considered a carer. The Scottish Government believes that this limits the opportunity for ‘*complete autonomy*’ as recommended by Smith.

The Committee was also concerned that the definition of a carer contained in this clause was overly restrictive and wanted to ensure that future Scottish administrations are able to define what constitutes a carer.

The Scottish Government’s alternative clause has been drafted to ensure that the scope of the powers that the Scottish Parliament can exercise is in line with the recommendations of the Smith Commission, removing restrictions around who may be entitled to claim Carer’s Allowance.

### **Benefits for maternity, funeral and heating expenses**

Under the terms of clause 20 of the Scotland Bill, the support which might be provided in respect of maternity, funeral and heating expenses is limited to financial assistance. The Scottish Government believes this places limitations on the Scottish Parliament’s proposed ‘complete autonomy,’ which are significant and unwelcome

The Scottish Government’s alternative clause therefore allows for provision of assistance in a form other than cash.

### **Discretionary housing payments**

The proposed powers over discretionary housing payments in clause 22 of the Scotland Bill fail to deliver the Smith Commission recommendation for autonomy as they are subject to restrictions. The exclusion of the ability to make payments where

the need arises from the impact of UK Government policies on conditionality and sanctions constrains the effectiveness of these powers in providing necessary support to key groups. The Committee's report of 4 June said it was likely that some stakeholder concerns about this clause would remain.

The Scottish Government's alternative clause delivers Smith's recommendations in relation to when discretionary housing payments can be made by removing some restrictions, including those relating to sanctions.

### **Discretionary payments and assistance**

The powers over discretionary payments and assistance included in clause 23 of the Scotland Bill fail to deliver the Smith Commission recommendation for autonomy as they are also subject to restrictions.

The Scottish Government's alternative clause broadens when discretionary payments can be made by removing some restrictions including those relating to sanctions.

### **Powers to create new benefits**

There is no currently no provision in the Scotland Bill to deliver on the recommendation at paragraph 54 of the Smith Report that the Scottish Parliament will have new powers to create new benefits in areas of devolved responsibility. Without such a provision in the Bill the Scottish Parliament would only be able to create new benefits in the much narrower areas of welfare to be devolved under the Bill. The Committee recommended that the UK Government reconsider its approach to ensure the relevant sections of the bill meet the spirit and substance of the Smith Commission, giving the Scottish Government genuine policy discretion in this area.

The Scottish Government's proposed new clause would give effect to the Smith recommendation of an explicit power to create new benefits in devolved areas.

### **Universal Credit**

Clauses 24 and 25 do not fully deliver the Smith Commission recommendations at paragraphs 44 and 45 of report in that exercise of the powers is constrained by the inclusion of a *de facto* veto for the UK Government, with the requirement that the agreement of the Secretary of State be secured in respect of changes.

The Committee's report highlighted this issue and suggested the wording should be resolved between the two Governments before introduction of the Bill. Although the Scottish Government has made proposals to the UK Government for alternative approaches to ensuring effective inter-governmental working, this aspect of the Scotland Bill has remained unchanged.

The issue has not been resolved and so, in common with our approach to vetoes throughout the Bill, the Scottish Government's proposed alternative clauses remove the requirement to obtain consent from a UK Secretary of State.

## **Employment support**

Clause 26 of the Scotland Bill is inconsistent with the letter and spirit of paragraph 57 of the Smith Commission Heads Of Agreement which stated:

“The Scottish Parliament will have all powers over support for unemployed people through the employment programmes currently contracted by DWP (which are presently delivered mainly, but not exclusively, through the Work Programme and Work Choice) on expiry of the current commercial arrangements. The Scottish Parliament will have the power to decide how it operates these core employment support services. Funding for these services will be transferred from the UK.”

The current draft of clause 26 contains limitations which are inconsistent with both the letter and spirit of the Smith Report. These limitations are that support can only be provided to (a) those at risk of long-term unemployment (b) those claiming reserved benefits or (c) assistance lasting for at least one year.

The Committee’s examination of this issue resulted in the conclusion that the Smith Commission intended that all employment programmes currently contracted by DWP should be devolved. It recommended removal of the restrictions on the type of person receiving support or in regard to the length of unemployment any person has experienced. The Scottish Government’s proposals address these conclusions. Our alternative clause specifies “...persons...who are unemployed or at risk of unemployment...”.

The Scottish Government recognises that employment programmes currently contracted by DWP are limited to those claiming reserved benefits, but it is not in keeping with Smith to restrict devolved powers over employability support services to those claiming reserved benefits. The restriction in the UKG clause 26 to “...persons claiming reserved benefits...” is removed in our alternative clause and replaced by the provision “...persons (including persons claiming reserved benefits)...”.

The Scottish Government’s proposed alternative clause amends the introductory words to the exception in clause 26 (and makes a consequential amendment to the definition of “arrangements”) to make provision for power to legislate on arrangements themselves rather than the process by which a person makes such arrangements; the UKG reference to “The making by a person of arrangements for, or arrangements for the purposes of or in connection with a scheme for, any of the following purposes...” is replaced in our alternative clause with reference to “Arrangements or schemes for any of the following purposes...”. We consider these more direct words to be more in keeping with Smith and the style of many of the other clauses in the Scotland Bill.

## **OTHER PROVISIONS**

### **Crown Estate**

The Smith Commission included four recommendations on the Crown Estate in Scotland. Only two of those recommendations require legislation at Westminster through the Scotland Bill:

“Responsibility for the management of the Crown Estate’s economic assets in Scotland, and the revenue generated from these assets, will be transferred to the Scottish Parliament. This will include the Crown Estate’s seabed, urban assets, rural estates, mineral and fishing rights, and the Scottish foreshore for which it is responsible.

“Following this transfer, responsibility for the management of those assets will be further devolved to local authority areas such as Orkney, Shetland, Na h-Eilean Siar or other areas who seek such responsibilities. It is recommended that the definition of economic assets in coastal waters recognises the foreshore and economic activity such as aquaculture.”

The provisions in the Scotland Bill fall short of the Smith recommendations in a number of areas.

The Scotland Bill clauses for the Crown Estate are very complex and are based on the Treasury making a scheme which will detail the transfer process. There is still no compulsion for the Treasury to make the scheme. The Devolution (Further Powers) Committee said that the particular legislative approach adopted to devolve the management and revenues of the Crown Estate could be construed as overly complicated unless there is full transparency and full consultation with the Scottish Parliament and Government during the process and recommended that the UK Government should consider revising its drafting approach. The Committee’s analysis of the Bill published on 4 June said that the provision looks very similar in form to the draft clauses.

The scheme includes provision for the Treasury to include what the Treasury considers necessary and expedient in relation to defence and national security, telecommunications, oil and gas and the interests of consumers in relation to electricity networks. This is wide ranging and open ended in relation to those issues and does not implement the Smith Commission in the manner expected as the Smith Commission had recommended that these issues should be covered by a MOU between the Scottish Government and the UK Government.

There are also a number of additional concerns:

- The Scotland Bill provides for restrictions on the Scottish Parliament’s ability to legislate, and retention of Crown Estate Act 1961 powers. The powers of direction and the carve outs were not envisaged by Smith.
- The Scotland Bill clauses exclude assets not wholly owned by the Crown Estate and, therefore, the Crown Estate’s economic assets in the property at Fort Kinnaird will not transfer.

- In relation to the situation post-devolution, the Devolution (Further Powers) Committee noted concerns regarding the potential for “two Crown Estates”.
- The area of the continental shelf beyond the 200 nautical mile limit where the Crown Estate has spill-over responsibilities is not covered by the revised clauses.

The Scottish Government’s proposed alternative clause would both reduce the complexity of the provision in this area and address the concerns above in a number of ways:

- A different approach is taken, based on amending Schedule 5 to of the Scotland Act 1998. This removes the reservation of relating to the management of the Crown Estate and provides the Scottish Parliament with full legislative competence in relation to the its management of the Crown Estate, both in or as regards Scotland.
- The alternative draft clauses transfer any functions the Crown Estate Commissioners’ functions have in relation to rights to the continental shelf beyond the 200 nautical mile limit adjacent to Scotland.

Further consideration is being given to existing Crown Estate liabilities, transitional arrangements and future investment by the Crown Estate Commissioners, including Fort Kinnaird Retail Park. The Scottish Government may therefore wish to supplement the proposed clause with additional proposals as the Bill progresses and we will make these available to the Committee.

Our intention would be for the Scottish Government and UK Government to agree an MoU in relation to the operation of the reserved functions specified by the Smith Commission on parts of the Crown Estate in Scotland.

## Equal opportunities

The report of the Smith Commission made the following recommendation in relation to equal opportunities—

“The Equality Act 2010 will remain reserved. The powers of the Scottish Parliament will include, but not be limited to, the introduction of gender quotas in respect of public bodies in Scotland. The Scottish Parliament can legislate in relation to socio-economic rights in devolved areas.”

The Scotland Bill explanatory notes explain that the provisions at clause 32 amend 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 equal opportunities.

Clause 32(2) would amend reservation L2 so that, instead of the subject-matter of the 4 statutes currently listed being referred to, there would be a reference to the subject-matter of the Equality Act 2006 and the Equality Act 2010. We consider that there is no need to amend the first paragraph of reservation L2 and to do so would be inappropriate in a Bill intended to deal only with additional devolution. The alternative clause proposed by the Scottish Government therefore removes clause 32(2) and the first part of clause 32(3).

The remainder of clause 32(3) sets out a new exception to the reservation in relation to the Scottish functions of any Scottish public authority or cross-border public authority. However, we do not consider that this devolves competence sufficiently clearly in relation to gender quotas and that a more explicit reference is necessary. Our revised clause creates an exception to the reservation which will cover gender quotas in respect of public bodies in Scotland.

The Smith Commission agreed that the powers of the Scottish Parliament will include, but not be limited to, the introduction of gender quotas. The Scottish Government would also like to see provisions which would more clearly allow a range of measures to be taken to advance equality of opportunity and strengthen accountability. For example: the full devolution of provisions concerning the public sector equality duty and provision which would allow the accountability of the Equality and Human Rights Commission to the Scottish Parliament to be increased. The Scottish Government intends to take these issues forward in discussion with the UK Government and will update the Committee on those discussions.

The remainder of clause 32 covers technical amendments to the Equality Act 2010. Some of these relate to Part 1 of the Act (socio-economic inequalities). A legislative consent motion was passed by the Scottish Parliament in relation to this Part in January 2010. The explanatory notes for the Bill state that the intention is to enable the Scottish Ministers to commence Part 1 of the Act by order, on a date of their choosing. We have suggested technical amendments which would clearly allow Scottish Ministers to commence Part 1 in all respects so far as it relates to authorities capable of being added to section 1 of the Act by regulations made by those Ministers.



## **Tribunals**

The Smith Commission report set out that “All powers over the management and operation of all reserved tribunals.. will be devolved to the Scottish Parliament other than the Special Immigration Appeals Commission and the Proscribed Organisations Appeals Commission” (paragraph 63); the underlying substantive law will remain reserved (paragraph 64).

Clause 33 puts in place a framework which envisages transfer being effected by a separate Order in Council for each tribunal. Each Order will define the specified functions that will transfer to a specified Scottish Tribunal. However, the clause confers wide powers to modify the functions transferred and to impose conditions, restrictions and requirements on their exercise. The Order may also contain any other provision which Her Majesty considers necessary or expedient. As such, it is not apparent from the clause what will transfer, each Order requiring separate negotiation.

The Scottish Government’s alternative clause takes an approach which we consider better reflects the terms of the Smith Commission’s conclusions. Our proposal is that *all* functions exercisable in relation to Scottish cases (or a specified category of Scottish case) should transfer. The broad powers contained in clause 33 to qualify what functions transfer and how they are to be exercised are omitted. Moreover, the alternative clause makes clear that competence over a tribunal’s practice (e.g. appointment and management of the judiciary); rules of procedure and fees in relation to transferred cases becomes devolved, as per the Smith Commission recommendation.

## **Roads**

The speed limit clauses in the Scotland Bill broadly implement the relevant Smith recommendations, but the Scottish Government consider them to be deficient in two respects.

We consider that the reservation of the subject matter of section 87 of the Road Traffic Regulation Act 1984 (exemption of emergency vehicles from speed limits) “so far as relating to vehicles used in connection with any other reserved matter” restricts the full devolution of all remaining powers over speed limits and should be removed from the draft clauses.

In practice the Scottish Ministers already have, and do currently use, other powers within the RTRA to make such exemptions in a number of ways and that will continue. To resolve this inconsistency and to give full effect to the Smith recommendation that “all remaining powers to change speed limits” be devolved, we believe that this aspect of section 87 is about speed limits and should be within the power of the Scottish Ministers for vehicles being driven in Scotland.

We also consider that the Scotland Bill should amend section 130(3) of the RTRA (varying existing speed limits in relation to vehicles used by the armed forces). This provision is one of the only remaining powers over speed limits which the Scottish Ministers do not currently have. Whilst it has not been specifically reserved the

Scottish Ministers have not been added in to the provision as the relevant “national authority” as has been done in the other provisions dealing with speed. We also consider it will be partially reserved by the reservation of the subject matter of section 87. Again this creates an inconsistency and a limit on the full devolution of speed limit powers.

The proposed alternative Scottish Government clauses address these matters.

## **Energy**

### **Onshore oil and gas licencing**

Paragraphs 69 and 70 of the Smith Report said “The licensing of onshore oil and gas extraction underlying Scotland will be devolved to the Scottish Parliament. The licensing of offshore oil and gas will remain reserved. Responsibility for mineral access rights for underground onshore extraction of oil and gas in Scotland will be devolved to the Scottish Parliament.” In clause 41, the Secretary of State has retained powers to set the “considerations payable” for licences. This includes powers to charge royalties. The ability to charge royalties would be viewed as a form of taxation, and has thus been excluded in line with the wider principles around taxation agreed by Smith Commission.

However, in restricting access to these powers we are concerned that it could limit Scottish Ministers’ ability to set other charges that form integral aspects of the licensing regime, for instance, DECC charge a “land rental” to promote an efficient and focused application and licensing regime.

The Scottish Government’s alternative clause would broaden the scope of the powers to allow Scottish Ministers to introduce a similar “land rental” scheme in Scotland.

It would allow Scottish Ministers to set licence conditions that would require a licensee to make annual payments calculated by reference to the area of land to which the licence relates.

The current Scottish Government has put in place a moratorium on granting consents for unconventional oil and gas developments in Scotland whilst further research and a public consultation is carried out.

### **Fuel poverty and energy company obligations**

Clauses 50 to 52 of the Scotland Bill provide the opportunity to re-shape delivery of Fuel Poverty programmes in Scotland. However, the Secretary of State retains significant powers that restrict the ability of Scottish Ministers to exercise these new powers.

The Smith Commission recommended that the powers to determine how supplier obligations in relation to energy efficiency and fuel poverty are designed and implemented in Scotland should be devolved. Clauses 50 and 51 as currently drafted provide that Scottish Ministers may not make regulations in these areas

unless they have the agreement of the Secretary of State. In line with the intention of the Smith Commission to devolve responsibilities to Scottish Ministers, and in common with our approach to vetoes throughout the Bill, our alternative clauses remove the requirement for the agreement of the Secretary of State as a prerequisite to the exercise of certain powers by the Scottish Ministers, and include a requirement for the agreement of the Scottish Ministers before Secretary of State may vary or revoke instruments made by the Scottish Ministers.

Our intention is to develop an intergovernmental concordat to ensure that there is a common understanding of the roles and responsibilities of each Government when developing future fuel poverty and energy efficiency schemes.

### **Renewable incentives schemes**

Paragraph 41 of the Smith Commission Report said that there will be a “formal consultative role for the Scottish Government and the Scottish Parliament in designing renewables incentives”. We remain disappointed that the Scotland Bill as introduced falls short of the Scottish Government’s desire to take forward the Smith recommendations and achieve a truly collaborative approach to setting the strategic direction of energy policy in the UK.

Clause 53 in the Scotland Bill relates to the consultation of Scottish Ministers over changes to renewables incentives schemes. At introduction, these clauses placed restrictions on the consultation process which the Scottish Government does not believe are appropriate or within the spirit of the Smith Commission recommendation. The Scottish Government’s proposed revisions to clause 53 remove these restrictions.

Our intention is to develop an intergovernmental concordat to ensure that there is a common understanding of the roles and responsibilities of each Government when developing future renewables incentive schemes.

### **Consumer advocacy and advice and consumer protection**

Clauses 43 and 44 (on consumer advocacy and advice) as currently drafted do not cover every relevant reservation in Schedule 5 to the Scotland Act 1998 (e.g. telecommunications and wireless telegraphy and transport are missing). In order to give full effect to the intention of the Smith recommendations at paragraph 72 “Consumer advocacy and advice will be devolved to the Scottish Parliament”, the remaining two pillars of consumer protection (enforcement and redress) must also be devolved. In addition, the references in clause 43 to a public body and to the holder of a public office are unnecessary and do not reflect anything in the Smith Report.

The Scottish Government’s proposed alternative clause:

- provides an exception to reservation C10 of Schedule 5 to the Scotland Act 1998, which covers telecommunications and wireless telegraphy.
- devolves responsibility for consumer enforcement and redress – in respect of relevant reservation in Schedule 5 to the Scotland Act 1998 (including telecommunications and wireless telegraphy) – to the Scottish Parliament.

- Removes unnecessary references to a public body and to the holder of a public office.

Clause 55 (on references to the Competition and Markets Authority) as currently drafted would only allow Scottish Ministers to make a reference to the Authority in the most exceptional circumstances and only with the involvement of the Secretary of State. This does not reflect the intention of paragraph 71 of the Smith Commission Report which states “Scottish Ministers will have the power to require the Authority to carry out a full second phase investigation, in the same way as UK Ministers”. The Scottish Government’s proposed alternative clause would allow Scottish Ministers to make references to the Authority without the involvement of the Secretary of State.

### **Gaming machines on licensed betting premises**

Clause 45 of the Scotland Bill does not fully deliver Smith Commission Recommendation 74: “The Scottish Parliament will have the power to prevent the proliferation of Fixed-Odds Betting Terminals”. It fails to do so for two key reasons:

- The powers it provides to Scottish Ministers are limited to betting premises licences only; and
- The powers would only apply to future applications for a betting premises licence.

The Smith Commission recommendation refers to the proliferation of Fixed-Odds Betting Terminals without qualification as to where these are found. To limit the power to those found in betting premises would mean that the number of those machines found in other premises (such as casinos), currently or in the future would not be subject to the limit set by Scottish Ministers.

The Smith Commission did not recommend the exclusion of existing premises. Limiting this power to new licences would mean that Scottish Ministers would not be able to address the proliferation in Fixed-Odds Betting terminals that has already occurred. This would not amount to a meaningful devolution in practical terms and would therefore be at odds with the intention of the Smith Commission.

The Scottish Government’s proposed alternative clause replaces the references to betting premises with a more general reference to gambling premises, thus giving effect to the Smith Recommendation 74. The alternative clause does not limit the exercise of the power to new license applications.

### **Maritime Clauses (Northern Lighthouse Board and Maritime and Coastguard Agency)**

Clauses 47 and 48 of the Scotland Bill broadly deliver the Smith Commission recommendations on maritime issues, but there are three important areas where the provisions should be revised. These relate to the strategic direction of the Northern Lighthouse Board (NLB), powers of direction over the NLB by the Secretary of State and to the powers in relation to the Maritime and Coastguard Agency (MCA) outwith the 12 mile territorial limit.

We would propose the following revisions. Firstly, in relation to the NLB the legislation should give Scottish Ministers a statutory role in setting the Strategic Priorities of the NLB. There are also powers where the UK Government can direct or give approvals to the NLB, for example in relation to borrowing above a set threshold. The legislation should be amended to have the effect of making this a shared responsibility with Scottish Ministers as far as these directions and approvals relate to the undertaking of particular functions in Scotland.

Clause 48 delivers the recommendation of the Smith Commission in relation to MCA but only as far as the functions undertaken within the 12 mile limit (the Scottish Inshore Region). This should be amended to cover functions in the Exclusive Economic Zone (the Scottish inshore region and the Scottish offshore region formally known as the 200 Nautical Mile limit - both within the meaning of section 322(1) of the Marine and Coastal Access Act 2009). This is important as Scottish Government has responsibility for marine planning within the whole EEZ and there are many strategic activities, particularly around oil, off shore wind farms and fishing which take place in this area and therefore Scottish Ministers should be able to influence any MCA activity within those limits, either now or in the future.

## **ADDITIONAL ISSUES RAISED BY THE SMITH COMMISSION**

The Committee noted the other issues contained within the Smith Commission report in the section at paragraph 96 entitled “Additional issues for consideration”. The subjects covered are asylum seekers; fines; forfeitures; fixed penalties imposed by courts and tribunals and sums recovered from crimes; and the functions and operations of the Health and Safety Executive. The Committee reaffirmed the view of the Smith Commission that these issues need to be the subject of discussion between the two governments.

The Committee also noted the recommendations of the Smith Commission in relation to health and social affairs. The Committee noted that these issues require serious further consideration and discussion between the Scottish and UK Governments.

### **Food labelling**

Under the EU Food Information to Consumers Regulation (FIC), the Commission has been tasked with carrying out several reports to look at the feasibility of extending requirements for origin information to a wider range of foods. Food Standards Scotland (FSS) is working closely with the Department for Environment, Food and Rural Affairs (DEFRA) and the Scottish Government (SG) as the Commission reports are published and discussed at EU level. With regards to the Smith Commission’s proposal for a ‘Made in Scotland’ label, following discussions with SG, the UK Government made a statement at the April 2015 Agriculture Council highlighting the need to ensure that rules on country of origin labelling provide for flexibilities, including the flexibility to use terms such as ‘Made in Scotland’.

### **Post study work**

The Smith Commission report contained a recommendation that “the Scottish and UK Governments should work together to: ... explore the possibility of introducing formal schemes to allow international higher education students graduating from Scottish further and higher education institutions to remain in Scotland and contribute to economic activity for a defined period of time.”

The Scottish Government supports the reintroduction of a Post Study Work Visa scheme within Scotland in order to retain skilled individuals within the Scottish labour market and attract talented students to our education institutions. A similar scheme was previously established by the Secretary of State under rules made under the Immigration Act 1971. The preferred mechanism for achieving this is currently under consideration, however the agreed mechanism should ensure that Scottish Ministers have an appropriate role in relation to Post Study Work visa schemes that are set up under the 1971 Act rules. The Scottish Government will be writing to the Home Office to this effect.

### **Human trafficking**

The Smith Commission recommended that the Scottish and UK Governments should work together to “explore the possibility of extending the temporary right to remain in

Scotland for someone who is identified as a victim of human trafficking, including in particular to enable the individual to participate in relevant legal proceedings.”

Scottish Government and UK Home Office officials have met to discuss this recommendation. It is acknowledged that under existing immigration and visa arrangements, people identified as victims of human trafficking can be granted discretionary leave to remain in the UK, beyond the mandatory 45 day recovery and reflection period, to participate in legal proceedings or in light of their personal circumstances. Whilst decisions about any criminal proceedings and the provision of support to victims of human trafficking are devolved, immigration and visa decisions are reserved. The UK Home Office is currently taking forward consideration of recommendations from the Review of the UK-wide National Referral Mechanism (NRM), through which potential and confirmed victims of human trafficking are identified, including the potential for the establishment of local panels to inform these decisions. It was agreed that administrative arrangements for making recommendations on temporary leave to remain could be considered as part of on-going dialogue on the NRM. No immediate legislative or procedural action is required at this time.

## **Asylum**

On asylum, the Scottish Government believes that the asylum system should provide a comprehensive end-to-end system of support for those seeking asylum, including the ability to claim asylum in Scotland and make representations via MSPs. Discussions with the UK Government on how this can be achieved are ongoing and the majority of the Smith Commission proposals on asylum could be achieved through changes to Home Office operating procedures rather than requiring legislation.

## **Levies**

Agriculture, aquaculture and fisheries are devolved matters on which decisions are taken and legislation enacted by Scottish Ministers and the Scottish Parliament. The Scottish Government also has responsibility for promotion and support of the food industry.

The overarching principle that agriculture, aquaculture and fisheries are devolved to Scotland should apply equally to levies that are raised to support these sectors in Scotland. While some levies have been devolved in practice, such as for red meat, this is not the case for every sector.

The Scottish Government’s new clause on levies would give the Scottish Parliament general legislative competence in respect of agricultural, aquacultural and fisheries levies. It would enable a coherent Scottish approach to food industry support to be put in place over time, with arrangements for each sector developed appropriately, in consultation with the sector, the UK Government and other devolved administrations, including the extent to which to continue with UK or GB arrangements.

## **Fines and forfeitures income**

The Smith Commission recommended that income from fines, forfeitures and fixed penalties imposed by courts and tribunals in Scotland and sums recovered under Proceeds of Crime legislation should be retained by the Scottish Government. Fines, forfeitures and fixed penalties are currently designated receipts which, in terms of s64(5) of the Scotland Act 1998, must be transferred to HM Treasury. They are designated by Regulation 2(2)(a) and (b) of The Scotland Act 1998 (Designated Receipts) Order 2009 (SI 2009 No 537). To achieve the desired result Regulation 2(2)(a) and (b) should be repealed, which would be achieved by annulment in pursuance of a resolution of the House of Commons. Although we currently retain sums recovered under Proceeds of Crime legislation this is subject to a cap agreed with HM Treasury. The repeal of Regulation 2(2)(a) and (b) would also render this cap ineffectual.

## **Welfare foods**

The Report of the Smith Commission, which was published on 27 November 2014, contained a recommendation at paragraph 62 that the devolution of “welfare foods (i.e. matters reserved under Sections J2 to J5 of Head J – Health and Medicines, Schedule 5 to the Scotland Act 1998) should be the subject of further discussions between UK and Scottish Governments” and that those discussions should be “without prejudice to whether or not devolution takes place and in what form”.

The Scottish Government believes that the reservation should be removed from section 13 of the Social Security Act 1988 (described in Section J5 of Schedule 5 to the Scotland Act 1998) in order to devolve powers to make schemes for welfare foods. This may also include consideration of the ancillary powers in section 175 of the Social Security Contributions and Benefits Act 1992 which apply to regulations made in relation to welfare foods. The Scottish Government will be writing to the Department of Health to this effect.

## **Abortion, embryology, surrogacy and genetics**

As proposed by Smith, Scottish Ministers began discussions on health reservations with the UK Government prior to the General election. These discussions are ongoing.

## **Medicines**

The Scottish Government wants to ensure that views from stakeholders around greater involvement of Scotland in medicines pricing are taken forward. Discussion is on-going between the Scottish Government and the Department of Health on how this can be achieved.

On the regulation of medicines, the Scottish Government aims to enhance the Medicine and Healthcare Products Regulatory Agency’s delivery for Scotland. Discussions are ongoing between the Scottish Government, UK Government and MHRA on how this can be achieved.



## **INTER-GOVERNMENTAL RELATIONS**

The Committee's key recommendations on Inter-governmental relations (IGR) focussed on parliamentary scrutiny, statutory under-pinning of inter-governmental principles and dispute resolution and the importance of flexible bilateral structures in addition to the multilateral structures.

The Scottish Government recognises that the intergovernmental machinery requires overhaul. This is being taken forward by officials from the JMC Joint Secretariat (having been instructed at the JMC Plenary meeting of 15 December 2014). This new machinery will be laid out in a Memorandum of Understanding, as is currently the case. We remain open-minded about the need for statutory underpinning of inter-governmental principles and dispute resolution. While this might help to encourage administrations act in line with the sound principles set out in the MOU, it could prove cumbersome and the mechanism by which it would be enforced is not clear.

We also agree that bilateral as well as multilateral structures are required to reflect the unique characteristics of the future relationship between the Scottish Government and the UK Government. We are working with the UK Government to develop appropriate mechanisms. As identified by the Committee, these will be focussed on priority areas such as taxation, welfare and employment support and will build on a number of established structures which the Deputy First Minister outlined in his evidence to the Committee. The Prime Minister and First Minister recognised the need for greater bilateral engagement in their meeting in Edinburgh on 15 May.

The Scottish Government welcomes the observations of the Devolution (Further Powers) Committee in relation to how the use of the additional functions and powers will be scrutinised. We stand ready to co-operate with Parliament on how this is taken forward and the Deputy First Minister has already given evidence to the Public Administration Committee and Finance Committee on this subject. Our aim is to be as open as possible while respecting the need for a degree of confidence while negotiations with other administrations are ongoing. There will also need to be clear rules for sharing of data produced by the UK Government.



# Scotland Bill

## SCOTTISH GOVERNMENT ALTERNATIVE CLAUSES

### **1 The Scottish Parliament and the Scottish Government**

- (1) In section 1 of the Scotland Act 1998 (the Scottish Parliament), after subsection (1) insert—
  - “(1A) The Scottish Parliament is a permanent part of the United Kingdom’s constitution.
  - (1B) Subsection (1) and (1A), and this subsection, may be repealed only if—
    - (a) the Scottish Parliament has consented to the proposed repeal, and
    - (b) a referendum has been held in Scotland on the proposed repeal and a majority of those voting at the referendum have consented to it.”.
- (2) In section 44 of the Scotland Act 1998 (the Scottish Government), for the words in subsection (1) before paragraph (a) substitute—
  - “(1) There shall be a Scottish Government.
  - (1A) The Scottish Government is a permanent part of the United Kingdom’s constitution.
  - (1B) Subsection (1) and (1A), and this subsection, may be repealed only if—
    - (a) the Scottish Parliament has consented to the proposed repeal, and
    - (b) a referendum has been held in Scotland on the proposed repeal and a majority of those voting at the referendum have consented to it.
  - (1C) The members of the Scottish Government shall be—”.

## **2 Consent of the Scottish Parliament to certain Westminster Acts**

- (1) In section 28 of the Scotland Act 1998 (Acts of the Scottish Parliament), at the end add—
  - “(8) But the Parliament of the United Kingdom must not pass Acts applying to Scotland that make provision about a devolved matter without the consent of the Scottish Parliament.
  - (9) Provision is about a devolved matter if the provision—
    - (a) applies to Scotland and does not relate to reserved matters,
    - (b) modifies the legislative competence of the Scottish Parliament, or
    - (c) modifies the functions of any member of the Scottish Government.
  - (10) In subsection (8), “Acts” includes any Act, whether a public general Act, a local and personal Act or a private Act.

- (2) After section 28 of the Scotland Act 1998 insert—

### **“28A Duty to consult the Scottish Government on Bills applying to Scotland**

- (1) A Minister of the Crown must not introduce a Bill into the Parliament of the United Kingdom for an Act of that Parliament that would make provision applying to Scotland unless a Minister of the Crown has consulted the Scottish Ministers.
- (2) Where the Bill is for an Act making provision that would require the consent of the Scottish Parliament by virtue of section 28(8), the requirement to consult under subsection (1) includes a requirement that a Minister of the Crown give the Scottish Ministers a copy of the provisions of the Bill that apply to Scotland no later than—
  - (a) 21 days before the proposed date of introduction, or
  - (b) such later date as the Scottish Ministers may agree.
- (3) The requirement in subsection (2) does not apply if—
  - (a) the Scottish Ministers so agree, or
  - (b) there are exceptional circumstances justifying failure to comply with the requirement.
- (4) The reference in subsection (1) to an Act of Parliament is a reference to any Act whether a public general Act, a local and personal Act or a private Act.”.

### 3 Elections

In Part 2 of Schedule 5 to the Scotland Act 1998, for Section B3 (elections) substitute—

#### “B3. Elections

(A) *Elections for membership of the House of Commons and the European Parliament*

Elections for membership of the House of Commons and the European Parliament, including the subject matter of—

- (a) the European Parliamentary Elections Act 2002,
- (b) the Representation of the People Act 1983 and the Representation of the People Act 1985, and
- (c) the Parliamentary Constituencies Act 1986,

so far as those enactments apply, or may apply, in respect of such membership.

#### *Interpretation*

Paragraph 5(1) of Part 3 of this Schedule does not apply to the subject matter of the European Parliamentary Elections Act 2002; and the reference to the subject matter of that Act is to be construed as a reference to it as at 24 July 2002 (the date that Act received Royal Assent).

(B) *Elections for membership of the Parliament and local government elections*

The holding of the poll at an ordinary general election for membership of the Parliament on the same day as the poll at—

- (a) a parliamentary general election (other than an early such election),
- (b) a European parliamentary general election, or
- (c) an ordinary local government election in Scotland.

The combination of polls at—

- (a) elections for membership of the Parliament, or
- (b) local government elections,

with polls at elections or referendums that are outside the legislative competence of the Parliament.

Modifying the digital service for the purposes of applications for registration or for verifying information contained in such applications.

The subject-matter of Parts 5 and 6 of the Political Parties, Elections and Referendums Act 2000 in relation to polls at elections that are within the legislative competence of the Parliament where they are combined with polls at elections for membership of the House of Commons and the European Parliament.

#### *Interpretation*

“Digital service” has the meaning given by regulation 3(1) of the Representation of the People (Scotland) Regulations 2001 as at the day on which the Scotland Act 2015 received Royal Assent.

Paragraph 5(1) of Part 3 of this Schedule does not apply to the subject matter of Parts 5 and 6 of the Political Parties, Elections and Referendums Act 2000; and the reference to the subject-matter of those Parts of that Act is to be read as at the day on which the Scotland Act 2015 received Royal Assent.”.

## **10 Super-majority requirement for certain legislation**

- (1) The Scotland Act 1998 is amended as follows.
- (2) Section 31 (scrutiny of Bills before introduction) is amended as follows.
- (3) In the heading for “before introduction” substitute “for legislative competence and protected subject-matter”
- (4) After subsection (2) insert—
  - “(2A) The Presiding Officer shall, after the last time when a Bill may be amended but before the motion that the Bill be passed is debated—
    - (a) consider whether any provision of the Bill relates to a protected subject-matter, and
    - (b) if he decides that in his view any provision does so relate, state his decision.”
- (5) At the end insert—
  - “(4) For the purposes of this Part a provision of a Bill relates to a protected subject-matter if it would modify, or confer power to modify, any of the matters listed in subsection (5) (but not if the provision is incidental to or consequential on another provision of the Bill).
  - (5) The matters are—
    - (a) the persons entitled to vote as electors at an election for membership of the Parliament,
    - (b) the system by which members of the Parliament are returned,
    - (c) the number of constituencies, regions or any equivalent electoral area, and
    - (d) the number of members to be returned for each constituency, region or equivalent electoral area.”
- (6) After that section insert—

**“31A Two-thirds majority for Bills relating to a protected subject matter**

If the Presiding Officer makes a statement under section 31(2A) in relation to a Bill, the Bill is not passed unless—

  - (a) it is passed without a division, or
  - (b) if there is a division on the motion that it be passed, the number of members voting in favour of it is at least two-thirds of the total number of seats for members of the Parliament.”
- (7) In section 32 (submission of Bills for Royal Assent) in subsection (2)(a) after “under section” insert “32A or”.
- (8) After that section insert—

**“32A Scrutiny of Bills by the Supreme Court (protected subject-matter)**

  - (1) The Advocate General, the Lord Advocate or the Attorney General may refer the question of whether a Bill or any provision of a Bill relates to a protected subject-matter to the Supreme Court for decision.

- (2) Subject to subsections (3) to (5), he may make a reference in relation to a Bill—
  - (a) at any time during the period of four weeks beginning with the rejection of the Bill, if the Presiding Officer has made a statement under section 31(2A) in relation to the Bill, and
  - (b) at any time during the period of four weeks beginning with the passing of the Bill, if the Presiding Officer has not made a statement under section 31(2A) in relation to the Bill.
- (3) He shall not make a reference by virtue of paragraph (a) of subsection (2) if the Parliament resolves that it wishes to reconsider the Bill.
- (4) He shall not make a reference by virtue of paragraph (b) of subsection (2) if—
  - (a) the Bill was passed without a division, or
  - (b) the Bill was passed on a division and the number of members voting in favour of it was at least two thirds of the total number of seats for members of the Parliament.
- (5) He shall not make a reference in relation to a Bill if he has notified the Presiding Officer that he does not intend to make a reference in relation to the Bill, unless the Bill has since the notification been approved in accordance with standing orders made by virtue of section 36(4)(aa) or (4A).
- (6) Subsection (7) applies where—
  - (a) a reference has been made in relation to a Bill under this section, and
  - (b) the reference has not been decided or otherwise disposed of.
- (7) If the Parliament resolves that it wishes to reconsider the Bill—
  - (a) the Presiding Officer shall notify the Advocate General, the Lord Advocate and the Attorney General of that fact, and
  - (b) the person who made the reference in relation to the Bill shall request the withdrawal of the reference.”.
- (9) In the heading to section 33 after “Supreme Court” insert “(legislative competence)”.
- (10) Section 36 (stages of Bills) is amended as follows.
- (11) In subsection (4) after paragraph (a) insert—
  - “(aa) where section 32A(2)(b) applies—
    - (i) the Supreme Court decides that the Bill or any provision of the Bill relates to a protected subject-matter, or
    - (ii) a reference has been made in relation to the Bill under section 32A and the Parliament subsequently resolves that it wishes to reconsider the Bill.”.
- (12) After that subsection insert—
  - “(4A) Standing orders shall provide for an opportunity for the reconsideration of a Bill after its rejection if (and only if), where section 32A(2)(a) applies—
    - (a) the Supreme Court decides that the Bill or any provision of the Bill does not relate to a protected subject-matter, or
    - (b) the Parliament resolves that it wishes to reconsider the Bill.”



- (13) In subsections (5) and (6) after “reconsideration” insert “in accordance with standing orders made by virtue of subsection (4)(a), (b) or (c)”.
- (14) After those subsections insert—
- “(7) Standing orders shall, in particular, ensure that any Bill reconsidered in accordance with standing orders made by virtue of subsection (4)(aa) or (4A), is subject to a final stage at which it can be approved or rejected.
  - (8) References in sections 28(2), 31(2A), 31A, 32A(2)(b) and 38(1)(a) and paragraph 7 of Schedule 3 to the passing of a Bill shall, in the case of a Bill which has been reconsidered in accordance with standing orders made by virtue of subsection (4)(aa) or (4A), be read as references to the approval of the Bill.”

## **11 Scope to modify the Scotland Act 1998**

- (1) The Scotland Act 1998 is amended as follows.
- (2) In paragraph 4 of Schedule 4 (protection of Scotland Act 1998 from modification) for sub-paragraph (2) substitute—
  - “(2) This paragraph does not apply to modifying—
    - (a) the following sections in Part 1 (the Scottish Parliament)—
      - (i) section 1(2) to (5),
      - (ii) section 2(1), (2) and (2B) to (6),
      - (iii) sections 3 to 12,
      - (iv) sections 13 to 27,
      - (v) section 28(1) to (6),
      - (vi) section 29(2)(e),
      - (vii) section 31,
      - (viii) section 32(1) to (3),
      - (ix) section 36, and
      - (x) sections 38 to 42,
    - (b) the following sections in Part 2 (the Scottish Administration)—
      - (i) section 44(1C), (2) and (4),
      - (ii) sections 45 to 50,
      - (iii) section 51(1), (2) and (5) to (8),
      - (iv) section 52,
      - (v) section 59, and
      - (vi) section 61,
    - (c) in Part 3 (financial provisions), section 69,
    - (d) in Part 5 (miscellaneous and general)—
      - (i) sections 81 to 85,
      - (ii) sections 91 to 95, and
      - (iii) section 97,
    - (e) the following provisions in Part 6 (supplementary)—
      - (i) sections 112, 113 and 115, and Schedule 7 (insofar as those sections and that Schedule apply to any power in this Act of the Scottish Ministers to make subordinate legislation),
      - (ii) sections 118, 120 and 121,
      - (iii) section 124 (insofar as that section applies to any power in this Act of the Scottish Ministers to make subordinate legislation),
      - (iv) section 126(1) and (6) to (8), and
      - (v) section 127,

- (f) Schedule 1 (constituencies, regions and regional members),
  - (g) paragraphs 1, 2(1) and 3 to 7 of Schedule 2 (Scottish Parliamentary Corporate Body), and
  - (h) Schedule 3 (standing orders – further provision).”
- (3) In paragraph 1 of Schedule 7 (procedure for subordinate legislation) in the entry for section 97 for “Type A” substitute “Type D”.

## **19 Disability, industrial injuries and carer's benefits**

- (1) In Part 2 of Schedule 5 to the Scotland Act 1998, Section F1 (social security schemes) is amended as follows.
- (2) In the Exceptions, before the paragraph beginning "The subject-matter of Part II of the Social Work (Scotland) Act 1968" insert—

### **"Exception 1**

Any of the following benefits—

- (a) disability benefits, other than severe disablement benefit or industrial injuries benefits,
- (b) severe disablement benefit, so far as payable in respect of a relevant person, and
- (c) industrial injuries benefits, so far as relating to relevant employment or to participation in training for relevant employment;

but this exception does not except a benefit which is, or which is an element of, an excluded benefit.

### **Exception 2**

Carer's benefits, other than a benefit which is, or which is an element of, an excluded benefit."

- (3) In the Exceptions, at the beginning of the paragraph beginning "The subject-matter of Part II of the Social Work (Scotland) Act 1968" insert—

### **"Exception 3"**

- (4) In the Interpretation provision, after "local taxes." insert—

"Disability benefit" means a benefit which is normally payable in respect of—

- (a) a significant adverse effect that impairment to a person's physical or mental condition has on his or her ability to carry out day-to-day activities (for example, looking after yourself, moving around or communicating), or
- (b) a significant need (for example, for attention or for supervision to avoid substantial danger to anyone) arising from impairment to a person's physical or mental condition;

and for this purpose the adverse effect or need must not be short-term.

"Severe disablement benefit" means a benefit which is normally payable in respect of—

- (a) a person's being incapable of work for a period of at least 28 weeks beginning not later than the person's 20th birthday, or
- (b) a person's being incapable of work and disabled for a period of at least 28 weeks;

and "relevant person", in relation to severe disablement benefit, means a person who is entitled to severe disablement allowance under section 68 of the Social Security Contributions and Benefits Act 1992 on the date on which section 19 of the Scotland Act 2015 comes into force as respects severe disablement benefit.

“Industrial injuries benefit” means a benefit which is normally payable in respect of—

- (a) a person’s having suffered personal injury caused by accident arising out of and in the course of his or her employment, or
- (b) a person’s having developed a disease or personal injury due to the nature of his or her employment;

and for this purpose “employment” includes participation in training for employment.

“Relevant employment”, in relation to industrial injuries benefit, means employment which—

- (a) is employed earner’s employment for the purposes of section 94 of the Social Security Contributions and Benefits Act 1992 as at 28 May 2015 (the date of introduction into Parliament of the Bill for the Scotland Act 2015), or
- (b) would be such employment but for—
  - (i) the contract purporting to govern the employment being void, or
  - (ii) the person concerned not being lawfully employed,as a result of a contravention of, or non-compliance with, provision in or made by virtue of an enactment passed to protect employees.

“Carer’s benefit” means a benefit which is normally payable in respect of the regular and substantial provision of care by a carer to a disabled person; and for this purpose “disabled person” means a person to whom a disability benefit is normally payable.

“Excluded benefit” means—

- (a) a benefit, entitlement to which, or the amount of which, is normally determined to any extent by reference to a person’s income or capital (for example, universal credit under Part 1 of the Welfare Reform Act 2012),
- (b) a benefit which is payable out of the National Insurance Fund (for example, employment and support allowance under section 1(2)(a) of the Welfare Reform Act 2007), or
- (c) a benefit payable by way of lump sum in respect of a person’s having, or having had—
  - (i) pneumoconiosis,
  - (ii) byssinosis,
  - (iii) diffuse mesothelioma,
  - (iv) bilateral diffuse pleural thickening, or
  - (v) primary carcinoma of the lung where there is accompanying evidence of one or both of asbestosis and bilateral diffuse pleural thickening.

“Employment” includes any trade, business, profession, office or vocation (and “employed” is to be read accordingly).”.

**20 Benefits for maternity, funeral and heating expenses**

- (1) In Part 2 of Schedule 5 to the Scotland Act 1998, Section F1 is amended as follows.
- (2) In the Exceptions, after exception 3 (see section 19(3) above) insert—

**“Exception 4**

Providing financial or other assistance for the purposes of meeting—

- (a) maternity expenses,
- (b) funeral expenses, or
- (c) expenses for heating in cold weather.”

- (3) In the Exceptions, for the words from “But the following are not excepted” to “Act 2000 (discretionary housing payments).” substitute—

**“Exclusions from exceptions 1 to 9**

Nothing in exceptions 1 to 9 is to be read as excepting—

- (a) the National Insurance Fund,
- (b) the Social Fund, or
- (c) the provision by a Minister of the Crown of assistance by way of loan for the purpose of meeting, or helping to meet, an intermittent expense.”.

- (4) In the Interpretation provision, omit the words from “Paragraph 5(1) of Part 3 of this Schedule” to “it is to be treated as if it were.”

## 22 Discretionary housing payments

In Section F1 of Part 2 of Schedule 5 to the Scotland Act 1998, in the Exceptions, after exception 5 (see section 21 above) insert—

### “Exception 6

Providing financial assistance to an individual who—

- (a) is entitled to—
  - (i) housing benefit, or
  - (ii) any other reserved benefit payable in respect of a liability to make rent payments, and
- (b) appears to require financial assistance, in addition to any amount the individual receives by way of housing benefit or such other reserved benefit, to meet or help to meet housing costs.

For the purposes of this exception—

“rent payments”—

- (a) has the meaning given from time to time by paragraph 2 of Schedule 1 to the Universal Credit Regulations 2013 (S.I. 2013/376) or any re-enactment of that paragraph, or
- (b) if at any time universal credit ceases to be payable to anyone, has the meaning given by that paragraph or any re-enactment of that paragraph immediately before that time;

“reserved benefit” means a benefit which is to any extent a reserved matter.”.

## 23 **Discretionary payments and assistance**

In Section F1 of Part 2 of Schedule 5 to the Scotland Act 1998, in the Exceptions, for the words from “Providing occasional financial” to “unsettled way of life.” substitute—

### **“Exception 7**

Providing financial or other assistance to or in respect of individuals who appear to require it for the purposes of meeting, or helping to meet, a need that requires to be met to avoid a risk to the well-being of an individual.

### **Exception 8**

Providing financial or other assistance to or in respect of individuals who have been or might otherwise be—

- (a) in prison, hospital, a residential care establishment or other institution, or
- (b) homeless or otherwise living an unsettled way of life,

and who appear to require the assistance to establish or maintain a settled home.”



**23A New benefits**

In Section F1 of Part 2 of Schedule 5 to the Scotland Act 1998, in the Exceptions, after exception 8 (see section 23 above) insert—

**“Exception 9**

A benefit not in existence at the relevant date provided entitlement to or the purpose of the benefit is different from entitlement to or the purpose of any benefit that is—

- (a) in existence at the relevant date,
- (b) payable by or on behalf of a Minister of the Crown, and
- (c) otherwise a reserved benefit.

For the purpose of this exception—

“the relevant date” means the date of introduction into Parliament of the Bill that becomes the Scotland Act 2015;

“reserved benefit” means a benefit which is to any extent a reserved matter.”.

**24 Universal credit: costs of claimants who rent accommodation**

- (1) A function of making regulations to which this section applies, so far as it is exercisable by the Secretary of State in or as regards Scotland, is exercisable by the Scottish Ministers concurrently with the Secretary of State.
- (2) This section applies to—
  - (a) regulations under section 11(4) of the Welfare Reform Act 2012 (determination and calculation of housing cost element), so far as relating to any liability of a claimant in respect of accommodation which the claimant rents, and
  - (b) regulations under section 5(1)(p) of the Social Security Administration Act 1992 (payments to another person on behalf of the beneficiary), so far as relating to the payment of an amount of universal credit in respect of any such liability.
- (3) For the purposes of this section—
  - (a) a claimant “rents” accommodation if he or she is liable to make rent payments (with or without other payments) in respect of it, and
  - (b) “rent payments” has the meaning given from time to time by paragraph 2 of Schedule 1 to the Universal Credit Regulations 2013 (S.I. 2013/376).
- (4) The Scottish Ministers may not exercise the function of making regulations to which this section applies unless they have consulted the Secretary of State.
- (5) The Secretary of State may not exercise the function of making regulations to which this section applies in or as regards Scotland unless he or she has consulted the Scottish Ministers.
- (6) Where regulations are made by the Scottish Ministers by virtue of subsection (1)—
  - (a) section 43 of the Welfare Reform Act 2012 (in the case of regulations referred to in subsection (2)(a)) and sections 189(3) and 190 of the Social Security Administration Act 1992 (in the case of regulations referred to in subsection (2)(b)) do not apply, and
  - (b) the regulations are subject to the negative procedure (see Part 2 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).

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

- (1) A function of making regulations to which this section applies, so far as it is exercisable by the Secretary of State in or as regards Scotland, is exercisable by the Scottish Ministers concurrently with the Secretary of State.
- (2) This section applies to regulations under section 5(1)(i) of the Social Security Administration Act 1992, so far as relating to the person to whom, or the time when, universal credit is to be paid.
- (3) The Scottish Ministers may not exercise the function of making regulations to which this section applies unless they have consulted the Secretary of State.
- (4) The Secretary of State may not exercise the function of making regulations to which this section applies in or as regards Scotland unless he or she has consulted the Scottish Ministers.
- (5) Where regulations are made by the Scottish Ministers by virtue of subsection (1)—
  - (a) sections 189(3) and 190 of the Social Security Administration Act 1992 do not apply, and
  - (b) the regulations are subject to the negative procedure (see Part 2 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).

## 26 Employment support

- (1) In Part 2 of Schedule 5 to the Scotland Act 1998, Section H3 (job search and support) is amended as follows.
- (2) For the heading “Exception” substitute “Exceptions”.
- (3) After that heading insert—

### “Exception 1

Arrangements or schemes for any of the following purposes—

- (a) assisting disabled persons to select, obtain and retain employment;
- (b) assisting persons (including persons claiming reserved benefits) who are unemployed or at risk of unemployment to select, obtain and retain employment;
- (c) assisting employers to obtain suitable employees who are persons referred to in paragraph (a) or (b).

The arrangements referred to in this exception include—

- (a) securing that the assistance referred to in this exception is provided by a person other than the person making the arrangements;
- (b) providing or arranging for the provision of facilities, support or services to any person;
- (c) the making of payments to any person.

The assistance referred to in this exception includes—

- (a) work search support,
- (b) skills training, and
- (c) work placements for the benefit of the community.

In this exception—

- (a) “disabled person” has the same meaning as it has in the Equality Act 2010 as at 28 May 2015 (the date of introduction into Parliament of the Bill for the Scotland Act 2015);
- (b) “reserved benefit” means a benefit which is to any extent a reserved matter.”

- (4) At the beginning of the existing exception which begins “The subject-matter of—” insert—

### “Exception 2”.

- (5) The Scotland Act 1998 has effect as if section 56(1)(g) of that Act included a reference to section 17B of the Jobseekers Act 1995.

### 31 Crown property

- (1) Part 1 of Schedule 5 to the Scotland Act 1998 (general reservations) is amended as follows.
- (2) Omit paragraph 2(3).
- (3) In paragraph 3(3), omit paragraph (a).
- (4) After paragraph 3, insert—
  - “3A Without prejudice to paragraphs 2 and 3, paragraph 1 does not reserve—
    - (a) removing or altering functions of, or conferring functions on, the Crown Estate Commissioners in relation to the holding or management of property within paragraph 3(1),
    - (b) where a function of the Crown Estate Commissioners of holding property is so removed, the transfer of any property held in exercise of the function.”.
- (5) Functions relating to Crown property are, so far as they relate to Crown property in or relating to the Scottish offshore region, to be treated for the purposes of the Scotland Act 1998 as exercisable in or as regards Scotland.
- (6) In subsection (5)—
  - “Crown property” means property within paragraph 3(1) of Part 1 of Schedule 5 to the Scotland Act 1998,
  - “Scottish offshore region” has the same meaning as in the Marine and Coastal Access Act 2009 (see section 322 of that Act).
- (7) In section 1(2) of the Civil List Act 1952 (payment of hereditary revenues into the Scottish Consolidated Fund), omit “from *bona vacantia*, *ultimus haeres* and treasure trove”.

## 32 Equal opportunities

- (1) Section L2 in Part 2 of Schedule 5 to the Scotland Act 1998 (equal opportunities) is amended as follows.
- (2) Under the heading “Exceptions”, at the end insert—

“Equal opportunities in relation to an appointment as a member of a Scottish public authority.

Equal opportunities in relation to the Scottish functions of any Scottish public authority or cross-border public authority. The provision falling within this exception does not include any modification of the Equality Act 2006 or the Equality Act 2010, or any subordinate legislation made under those Acts, but does include—

  - (a) provision that supplements or is otherwise additional to provision made by those Acts;
  - (b) in particular, provision imposing a requirement to take action that the Acts do not prohibit;
  - (c) provision that reproduces or applies an enactment contained in those Acts, with or without modification, without affecting the enactment as it applies for the purposes of those Acts.”.
- (3) Under the heading “Interpretation”, at the end insert—

“The references to the Equality Act 2006 and the Equality Act 2010, and to any subordinate legislation made under those Acts, are to be read as references to those enactments, as at the day on which section 32 of the Scotland Act 2015 comes into force, but treating any provision of them that is not yet in force on that day as if it were in force.”.
- (4) The Equality Act 2010 is amended as follows.
- (5) In section 2 (power to amend section 1)—
  - (a) in subsection (7) omit “the Scottish Ministers or”,
  - (b) in subsection (10), before “Ministers” insert “Welsh”.
- (6) In section 152(3) (power to specify public authorities: consultation and consent), for the words after “must” substitute “consult the Commission, and after making such an order they must inform a Minister of the Crown”.
- (7) In the table in section 154(3) (power to impose specific duties: cross-border authorities) in the second column for the words “The Scottish Ministers must consult a Minister of the Crown before” in both places substitute “The Scottish Ministers must inform a Minister of the Crown after”.
- (8) In section 216 (commencement) at the beginning of subsection (3) insert “Subject to subsection (4),” and after that subsection insert—
  - “(4) Part 1 comes into force on such day as the Scottish Ministers may by order appoint so far as it—
    - (a) confers a power on the Scottish Ministers,
    - (b) relates to a public authority in respect of which such a power is exercisable.
- (5) The following do not apply to an order under subsection (4)—

- (a) section 207(2) (see instead section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010: powers exercisable by Scottish statutory instrument), and
- (b) section 210.”.

### 33 Tribunals

- (1) In Part 3 of Schedule 5 to the Scotland Act 1998 (reserved matters: general provisions) after paragraph 2 insert—

*“Tribunals*

- 2A(1) This Schedule does not reserve the transfer to a Scottish tribunal of functions of a tribunal that relate to reserved matters, so far as those functions are exercisable in relation to Scottish cases.
- (2) Sub-paragraph (1) does not apply in relation to functions of any of the following—
- (a) the First-tier Tribunal or the Upper Tribunal that are established under section 3 of the Tribunals, Courts and Enforcement Act 2007;
  - (b) an employment tribunal or the Employment Appeal Tribunal;
  - (c) a tribunal listed in Schedule 1 to the Tribunals and Inquiries Act 1992;
  - (d) a tribunal listed in Schedule 6 to the Tribunals, Courts and Enforcement Act 2007.
- (3) Sub-paragraph (2)(c) and (d) include a tribunal added to the Schedule concerned after this paragraph comes into force.
- (4) This Schedule does not reserve the transfer of all the functions of a tribunal referred to in sub-paragraph (2) to a Scottish tribunal, so far as the functions are exercisable in relation to Scottish cases or a specified category of Scottish cases, in accordance with provision made by Her Majesty by Order in Council.
- (5) Sub-paragraph (1) does not apply in relation to functions of any of the following—
- (a) the Pathogens Access Appeal Commission;
  - (b) the Proscribed Organisations Appeal Commission;
  - (c) the Special Immigration Appeals Commission;
  - (d) the tribunal established by section 65(1) of the Regulation of Investigatory Powers Act 2000 (investigatory powers tribunal);
  - (e) any other tribunal that has functions relating to matters falling with Section B8 of Part 2 of this Schedule.
- (6) Neither sub-paragraph (1) nor sub-paragraph (4) applies in relation to functions of a regulator, or of a person or body that exercises functions on behalf of a regulator.
- (7) Sub-paragraph (4) does not apply in relation to functions of the Comptroller-General of Patents, Designs and Trade Marks.
- (8) For the avoidance of doubt, this Schedule does not reserve—
- (a) a Scottish tribunal’s practice and procedure when exercising functions that have been transferred to it by virtue of this paragraph, or
  - (b) the fees and expenses chargeable for, or in connection with, proceedings before a Scottish tribunal when it is exercising those functions.
- (9) In this paragraph—



a “regulator” means a person or body that has regulatory functions (within the meaning given by section 32 of the Legislative and Regulatory Reform Act 2006);

“Scottish cases” has the meaning given by an Order in Council under this paragraph;

a “Scottish tribunal” means a tribunal in Scotland—

- (a) that does not have functions in or as regards any other country or territory, except for purposes ancillary to its functions in or as regards Scotland, and
- (b) that is not, and does not have as a member, a member of the Scottish Government;

“specified” means specified by an Order in Council under this paragraph.

(10) The powers conferred by this paragraph do not affect the powers conferred by section 30 or section 113.”

- (2) In paragraph 1(2) of Schedule 7 to the Scotland Act 1998 (procedure for subordinate legislation) at the appropriate place insert—

“Schedule 5, Part 3, paragraph 2A | Type A”

- (3) Part 1 of Schedule 1 to the Tribunals and Inquiries Act 1992 (tribunals to which the Act applies) is amended as follows.
- (4) Before paragraph 9A insert—

“Company names | 9ZA Company names adjudicators appointed under section 70(1) of the Companies Act 2006.”

- (5) In paragraph 34 (patents, designs and trademarks)—
  - (a) the words from “the Comptroller-General” to the end become sub-paragraph (a), and
  - (b) after that sub-paragraph insert—
    - “(b) a person appointed under section 27A(1)(a) of the Registered Designs Act 1949;
    - (c) a person appointed under section 77(1) of the Trade Marks Act 1994”.
- (6) In section 7(2) of the Tribunals and Inquiries Act 1992 (tribunals in relation to which section 7 does not apply) after “3,” insert “9ZA,”.
- (7) In section 14(1)(a) of that Act (restricted application of Act in relation to certain tribunals) after “paragraph” insert “9ZA,”.

## **34 Roads**

- (1) In Part 2 of Schedule 5 to the Scotland Act 1998, Section E1 (specific reservations: road transport) is amended as follows.
- (2) In the reservation relating to the subject-matter of certain enactments, for paragraph (c) (reservation of subject-matter of section 17 and other provisions of the Road Traffic Regulation Act 1984) substitute—
  - “(c) section 17 of the Road Traffic Regulation Act 1984 (traffic regulation on special roads) except so far as relating to the speed of vehicles on special roads, and section 87 of that Act (exemption of emergency vehicles from speed limits) so far as relating to the training of drivers of vehicles,”.
- (3) In the exception relating to the Road Traffic Act 1988, after “sections” insert “36 (offence of failing to comply with traffic sign),”.
- (4) After that exception insert—

### *“Interpretation*

The reference to the subject-matter of section 87 of the Road Traffic Regulation Act 1984 is to be construed as a reference to it as at the date when section 34 of the Scotland Act 2015 comes into force (and, accordingly, paragraph 5(1) of Part 3 of this Schedule does not apply to that reference).”.

### **36 Roads: speed limits**

- (1) The Road Traffic Regulation Act 1984 is amended as follows.
- (2) Section 81 (speed limit for restricted roads) is amended as follows.
- (3) In subsection (2)—
  - (a) for “Ministers acting jointly” substitute “national authority”, and
  - (b) omit the words from “made” to “Parliament”.
- (4) After that subsection insert—
  - “(3) An order under subsection (2)—
    - (a) if made by the Secretary of State, is to be made by statutory instrument and approved by a resolution of each House of Parliament;
    - (b) if made by the Scottish Ministers, is subject to the affirmative procedure.
  - (4) Before making an order under subsection (2) the Secretary of State must consult with the Scottish Ministers.
  - (5) Before making an order under subsection (2) the Scottish Ministers must consult with the Secretary of State.”.
- (5) In section 82 (what roads are restricted roads)—
  - (a) in subsection (1)(b) for “Secretary of State” substitute “Scottish Ministers”, and
  - (b) in subsection (3) for “prescribed manner” substitute “manner prescribed in regulations made by the national authority”.
- (6) Section 83 (provisions as to directions by a traffic authority under section 82(2)) is amended as follows.
- (7) In subsection (1)—
  - (a) for “Secretary of State”, in both places, substitute “national authority”, and
  - (b) for “his” substitute “the national authority’s”.
- (8) Section 84 (speed limits on roads other than restricted roads) is amended as follows.
- (9) In subsections (1A) and (1B) for “Secretary of State” substitute “national authority”.
- (10) Section 85 (traffic signs for indicating speed restrictions) is amended as follows.
- (11) In the following places, for “Secretary of State” substitute “national authority”—
  - (a) subsection (1),
  - (b) subsection (2)(a) and (b),
  - (c) subsection (3), and
  - (d) subsection (5A).
- (12) In subsection (1) for “he” substitute “the national authority”.
- (13) In subsection (3)—
  - (a) omit “himself”,
  - (b) omit “by him” in the first place, and
  - (c) for “him”, in the second place, substitute “the national authority”.

- (14) In subsection (5A) omit the words from “or, where” to “officer of the Scottish Ministers”.
- (15) In subsection (7) after “power” insert “of the Secretary of State”.
- (16) After subsection (7) insert—
- “(8) The power of the Scottish Ministers to give general directions under subsection (2) is to be exercisable by Scottish statutory instrument.
  - (9) Before giving any general directions under subsection (2) the Secretary of State must consult with the Scottish Ministers.
  - (10) Before giving any general directions under subsection (2) the Scottish Ministers must consult with the Secretary of State.”.
- (17) In section 87 (exemption of emergency vehicles from speed limits) (as amended by section 19 of the Road Safety Act 2006)—
- (a) in paragraph (b) of subsection (1) for “prescribed purposes” substitute “purposes prescribed by regulations made by the relevant authority”,
  - (b) in that paragraph after “may be” insert “so”,
  - (c) in subsection (2)(a) for “this subsection” substitute “subsection (3)”,
  - (d) in subsection (4) for “The regulations”, in the first place, substitute “Regulations under subsection (3)”,
  - (e) in subsection (5) for “The regulations”, in the first place, substitute “Regulations under subsection (3)”,
  - (f) in subsection (6) for “The regulations” substitute “Regulations under subsection (3)”, and
  - (g) at the end insert—
- “(7) In this section “relevant authority”—
- (a) in relation to vehicles used on roads in Scotland means the Scottish Ministers,
  - (b) otherwise, means the Secretary of State.”.
- (18) In section 130 (application of Act to Crown)—
- (a) in subsection (3) for “Secretary of State” substitute “relevant authority”, and
  - (b) after that subsection insert—
- “(3A) In subsection (3) “relevant authority”—
- (a) in relation to vehicles used on roads in Scotland means the Scottish Ministers,
  - (b) otherwise, means the Secretary of State.”.

#### **41 Onshore petroleum: consequential amendments**

- (1) The Petroleum Act 1998 is amended as follows.
- (2) Section 3 (licences to search and bore for and get petroleum) is amended as follows.
- (3) In subsection (1)—
  - (a) for “Secretary of State” substitute “appropriate Minister”;
  - (b) for “he” substitute “the appropriate Minister”.
- (4) In subsection (3) for “Secretary of State” in the second place substitute “appropriate Minister”.
- (5) After subsection (3) insert—
  - “(3A) Without limiting subsection (3), the Scottish Ministers may grant a licence upon the condition that the licence holder makes an annual rental payment to the Scottish Ministers.
  - (3B) In subsection (3A), “rental payment” means payment of an amount to be calculated by reference to the area of land to which the licence relates.”
- (6) After subsection (4) insert—
  - “(5) In this Part “the appropriate Minister” means—
    - (a) in relation to the Scottish onshore area, the Scottish Ministers;
    - (b) otherwise, the Secretary of State.”
- (7) Section 4 (licences: further provisions) is amended as follows.
- (8) In subsection (1) for “the Secretary of State” substitute “the appropriate Minister”.
- (9) After that subsection insert—
  - “(1A) In relation to licences granted by the Scottish Ministers, regulations made by the Secretary of State under subsection (1)(e) may include model clauses on the consideration payable for a licence and the following (insofar as they relate to such consideration)—
    - (a) the measurement of petroleum obtained from the licensed area (including the facilitation of such measurement), and
    - (b) the keeping of accounts.
  - (1B) Regulations made by the Scottish Ministers under subsection (1)(e) may not include model clauses on the matters mentioned in subsection (1A).”
- (10) In subsection (3) for “Any such regulations” substitute “Any regulations made by the Secretary of State”.
- (11) After that subsection insert—
  - “(3A) Any regulations made by the Scottish Ministers shall be subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).”
- (12) After subsection (4) insert—
  - “(4A) As soon as practicable after granting a licence under section 3, the Scottish Ministers shall publish notice of the fact in the Edinburgh Gazette stating—
    - (a) the name of the licensee; and

- (b) the situation of the area in respect of which the licence has been granted.”
- (13) In section 5(9) (existing licences) for “the Secretary of State” in each place substitute “the appropriate Minister”.
- (14) In section 5A (rights transferred without consent) for “the Secretary of State” in each place substitute “the appropriate Minister”.
- (15) In section 5B(1) (information) for “the Secretary of State” in each place substitute “the appropriate Minister”.
- (16) In section 7 (ancillary rights) in subsection (2)—
- (a) at the end of paragraph (b) omit “and”, and
  - (b) at the end of paragraph (c) insert “; and
  - (d) references to the Minister in section 4 of that Act included the Scottish Ministers in relation to licences granted in relation to the Scottish onshore area.”
- (17) In section 8 (power to inspect plans of mines) for “the Secretary of State” in each place substitute “the appropriate Minister”.
- (18) After section 8 insert—
- “8A Scottish onshore area**
- (1) The Scottish onshore area is the area of Scotland that is within the baselines established by any Order in Council under section 1(1)(b) of the Territorial Sea Act 1987 (extension of territorial sea).
  - (2) In subsection (1) “Scotland” has the same meaning as in the Scotland Act 1998.”
- (19) In section 188(12) of the Energy Act 2004, in the substituted subsection (7A), before paragraph (a) insert—
- “(za) Part 1 of the Petroleum Act 1998.”.
- (20) The Oil Taxation Act 1975 is amended as follows.
- (21) In section 12(1A)(a)(ii) (authorities that can revoke licences) after “Secretary of State” insert “, the Scottish Ministers”.
- (22) In paragraph 1(2) of Schedule 1 (determination of oil fields)—
- (a) in paragraph (a) after “granted” insert “by the Secretary of State”;
  - (b) after paragraph (a) insert—
    - “(aa) is the Scottish Ministers if the area is such that licences can be granted by the Scottish Ministers for all of it under Part 1 of the Petroleum Act 1998;
    - (ab) is the Secretary of State and the Scottish Ministers acting jointly if the area is such that licences can be granted for part of it by the Secretary of State and for part of it by the Scottish Ministers;”.
- (23) The Petroleum (Production) (Landward Areas) Regulations 1995 are amended as follows.
- (24) In regulation 2 (interpretation) after the entry for “principal licence” insert—

““Scottish onshore area” has the meaning given by section 8A of the Petroleum Act 1998;”.

- (25) In regulation 3 (application of the regulations) at the beginning of paragraph (1) insert “Subject to paragraph (1A),”.
- (26) After that paragraph insert—
  - “(1A) These regulations do not apply to applications for licences to search and bore for, and get, petroleum within the Scottish onshore area.”

**43 Consumer protection: advocacy, advice, enforcement and redress**

- (1) Part 2 of Schedule 5 to the Scotland Act 1998 (specific reservations) is amended as follows.
- (2) In Section C7 (consumer protection)—
  - (a) for the heading “Exception” substitute “Exceptions”;
  - (b) after that heading insert—

“The provision of consumer advocacy and advice.  
Enforcement of, and redress for breach of, consumer rights.”
- (3) In Section C8 (product standards, safety and liability) after the heading “Exceptions” insert—

“The provision of consumer advocacy and advice.  
Enforcement of, and redress for breach of, consumer rights.”
- (4) In Section C9 (weights and measures) after the reservations insert—

*“Exceptions*  
The provision of consumer advocacy and advice.  
Enforcement of, and redress for breach of, consumer rights.”
- (5) In Section C10 (telecommunications)—
  - (a) for the heading “Exception” substitute “Exceptions”;
  - (b) after that heading insert—

“The provision of consumer advocacy and advice.  
Enforcement of, and redress for breach of, consumer rights.”
- (6) In Section C11 (posts)—
  - (a) for the heading “Exception” substitute “Exceptions”;
  - (b) after that heading insert—

“The provision of consumer advocacy and advice.  
Enforcement of, and redress for breach of, consumer rights.”
- (7) In Section D1 (electricity)—
  - (a) for the heading “Exception” substitute “Exceptions”;
  - (b) after the exception relating to the Environmental Protection Act 1990 insert—

“The provision of consumer advocacy and advice.  
Enforcement of, and redress for breach of, consumer rights.”
- (8) In Section D2 (oil and gas), at the end of the exceptions insert—

“The provision of consumer advocacy and advice.  
Enforcement of, and redress for breach of, consumer rights.”
- (9) In paragraph 3(2) of Part 3 of Schedule 5 to the Scotland Act 1998 (reserved bodies) at the end insert—

“(e) the Office of Communications,



- (f) the Gas and Electricity Markets Authority.”
- (10) Section 8 of the Utilities Act 2000 (payments by licence holders relating to new arrangements) is amended as follows.
- (11) In subsection (2) at the end insert “or to such proportion of such amounts as the Secretary of State considers reasonable in respect of the provision, in or as regards Scotland, of consumer advocacy and advice by, or by agreement with, a public body or the holder of a public office, in relation to gas or electricity consumers”.
- (12) Omit—
- (a) subsection (3A)(bb) and (cb);
  - (b) in subsections (3A)(da) and (db) the words “and Citizens Advice Scotland”;
  - (c) in subsection (3A)(f) the words “or Citizens Advice Scotland”;
  - (d) in subsection (3B)(a) the words “or Citizens Advice Scotland, as the case may be.”;
  - (e) in subsection (3C) the words “or Citizens Advice Scotland, or by them jointly.”;
  - (f) in subsection (4)(d) the words “or Citizens Advice Scotland”.
- (13) Section 51 of the Postal Services Act 2011 (consumer protection conditions) is amended as follows.
- (14) At the end of subsection (2)(c) omit “and” and insert—
- “(ca) to make payments relating to such proportion of such amounts as the Secretary of State considers reasonable in respect of the provision, in or as regards Scotland, of consumer advocacy and advice by, or by agreement with, a public body or the holder of a public office, in relation to users of postal services, and”.
- (15) In subsection (6) after “(2)(c)” insert “, (ca)”.
- (16) Omit—
- (a) in subsection (2)(c) the words “, Citizens Advice Scotland”;
  - (b) the “and” at the end of subsection (2)(c);
  - (c) in subsection (4) the words “, Citizens Advice Scotland”;
  - (d) subsection (4)(d), (e) and (f);
  - (e) in subsection (4ZA)(b) the words “, Citizens Advice Scotland”.

**44 Functions exercisable within devolved competence: consumer protection**

- (1) The Scotland Act 1998 (“the 1998 Act”) has effect, in relation to any function so far as exercisable within devolved competence by virtue of a provision of section 43, as if references to a “pre-commencement enactment” were to—
- (a) an Act passed before or in the same session as the relevant date,
  - (b) any other enactment made before the relevant date,
  - (c) (subordinate legislation under section 106 of the 1998 Act, to the extent that the legislation states that it is to be treated as a pre-commencement enactment,
- but did not include the 1998 Act or this Act (or any amendment made by either of those Acts) or (subject to paragraph (c)) an enactment comprised in subordinate legislation under either of those Acts.
- (2) In this section—
- (a) expressions used in the 1998 Act have the same meaning as in that Act;
  - (b) the relevant date is the date on which section 43 comes into force.

#### **45 Gaming machines on licensed betting premises**

- (1) In Section B9 in Part 2 of Schedule 5 to the Scotland Act 1998 (betting, gaming and lotteries) at the end insert—

*“Exception*

The number of relevant gaming machines which may be authorised (if any) in respect of premises licences under the Gambling Act 2005.

*Interpretation*

A “relevant gaming machine” is a gaming machine (within the meaning of section 235 of the Gambling Act 2005) for which the maximum charge for use is more than £10.”

- (2) Section 172 of the Gambling Act 2005 (gaming machines) is amended as follows.
- (3) In subsection (11), for “Secretary of State” substitute “appropriate Minister”.
- (4) After that subsection insert—
- “(12) In subsection (11) “the appropriate Minister” means—
- (a) the Scottish Ministers in respect of premises in Scotland in so far as the order varies the number of gaming machines authorised (if any) for which the maximum charge for use is more than £10, or
  - (b) otherwise, the Secretary of State.”
- (5) In section 355 of that Act (regulations, orders and rules)—
- (a) in subsection (1) after “the Secretary of State” insert “or the Scottish Ministers”, and
  - (b) for subsections (9) and (10) substitute—
- “(9) Subsection (3) does not apply to regulations made by the Scottish Ministers (see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010: functions exercised by Scottish statutory instrument).
- (10) Regulations made by the Scottish Ministers under a provision specified in subsection (4), or under section 285, and an order made by the Scottish Ministers under section 172, shall be subject to the affirmative procedure.
- (11) Any other regulations made by the Scottish Ministers under a provision of this Act shall be subject to the negative procedure.”

## **50 Fuel poverty: support schemes**

- (1) The Energy Act 2010 is amended as follows.
- (2) In section 9 (schemes for reducing fuel poverty) after subsection (1) insert—

“(1A) In relation to Scotland, that is subject to section 14A (power of the Scottish Ministers to make schemes).”
- (3) After section 14 (regulations under Part 2: procedure) insert—

**“14A Power of the Scottish Ministers to make schemes under this Part**

  - (1) The power by regulations under section 9 to make one or more schemes in relation to Scotland is exercisable by the Scottish Ministers and not, except as provided by this section, by the Secretary of State.
  - (2) For the purposes of the exercise of that power by the Scottish Ministers, this Part applies—
    - (a) as if references to the Secretary of State in sections 9, 10 and 14(1), (3) and (4) were references to the Scottish Ministers;
    - (b) with the omission in section 9 of subsections (4), (9)(a), (c)(i), (v) and (vi) and (11);
    - (c) as if in section 10(7) “Parliament” were “the Scottish Parliament”.
  - (3) The power of the Scottish Ministers under section 9 does not include power to make provision in relation to the subject matter of sections 88 to 90 of the Energy Act 2008 (smart meters).
  - (4) The Scottish Ministers may not make regulations under section 9 unless they have consulted the Secretary of State about the proposed regulations.
  - (5) Subsection (1) does not prevent the Secretary of State making a support scheme in relation to Scotland under section 9, or varying or revoking regulations made by the Scottish Ministers under that section, with the agreement of the Scottish Ministers.”
- (4) Section 31 (orders and regulations) is amended as follows.
- (5) After subsection (1) insert—

“(1A) Subsection (1) does not apply to regulations made by the Scottish Ministers (see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010).”
- (6) After subsection (4) insert—

“(4A) Regulations made by the Scottish Ministers under section 9 are subject to the affirmative procedure.”
- (7) In subsection (6) after “Regulations” insert “made by the Secretary of State”.
- (8) After subsection (6) insert—

“(6A) Regulations made by the Scottish Ministers may impose obligations or confer functions on a person (including the Scottish Ministers).”
- (9) Where an amendment made by this section imposes a requirement to consult or to obtain consent, the requirement may be satisfied by consultation undertaken or consent obtained before this section comes into force.

## 51 Energy company obligations

- (1) The Gas Act 1986 is amended as follows.
- (2) After section 33BC (promotion of reduction in carbon emissions) insert—

**“33BCA Scottish Ministers’ promotion of reductions in carbon emissions: gas suppliers**

  - (1) Where the Secretary of State under section 33BC imposes on gas suppliers obligations to achieve a target within a specified period, the power to make orders under that section is exercisable by the Scottish Ministers for the purposes of those obligations imposed in relation to Scotland and not, except as provided by subsection (6), by the Secretary of State.
  - (2) An obligation is imposed in relation to Scotland to the extent that measures to meet that obligation may be carried out in Scotland (disregarding any power to elect under section 103 of the Utilities Act 2000).
  - (3) For the purposes of the exercise by the Scottish Ministers of the power to make an order under section 33BC, that section applies with the following modifications—
    - (a) for subsection (1) there is substituted a power by order to specify how gas suppliers may meet their obligations to achieve the carbon emissions reduction target through measures carried out in Scotland;
    - (b) subsections (1A), (3), (5)(a), (7)(a) and (10A) are omitted;
    - (c) in subsection (2A) at the beginning of paragraph (b) there is inserted “where the Secretary of State has apportioned the overall carbon emissions reduction target under section 103(2A) of the Utilities Act 2000, and”;
    - (d) in subsection (11) “Citizens Advice” and “gas transporters” is omitted;
    - (e) in subsection (12), for the words from “shall not be made” to the end is substituted “is subject to the affirmative procedure”;
    - (f) in subsection (12A) for the words from “shall be subject to” to the end is substituted “is subject to the negative procedure”;
    - (g) for “Secretary of State” in each place is substituted with “Scottish Ministers”.
  - (4) The power of the Scottish Ministers under section 33BC does not include power to make provision in relation to the subject matter of sections 88 to 90 of the Energy Act 2008 (smart meters).
  - (5) The Scottish Ministers may not make an order under section 33BC unless they have consulted the Secretary of State about the proposed order.
  - (6) The power of the Secretary of State to make an order under section 33BC is exercisable so as to make any provision that may be made by the Scottish Ministers under that section, or vary or revoke an order made by the Scottish Ministers under that section, but only with the agreement of the Scottish Ministers.”
- (3) After section 33BD (promotion of reduction in home-heating costs) insert—

**“33BDA Scottish Ministers’ promotion of reductions in home-heating costs: gas suppliers**

- (1) Where the Secretary of State under section 33BD imposes on gas suppliers obligations to achieve a target within a specified period, the power to make orders under that section is exercisable by the Scottish Ministers for the purposes of those obligations imposed in relation to Scotland and not, except as provided by subsection (6), by the Secretary of State.
  - (2) An obligation is imposed in relation to Scotland to the extent that measures to meet that obligation may be carried out in Scotland (disregarding any power to elect under section 103A of the Utilities Act 2000).
  - (3) For the purposes of the exercise by the Scottish Ministers of the power to make an order under section 33BD, that section applies with the following modifications—
    - (a) for subsection (1) there is substituted a power by order to specify how gas suppliers may meet their obligations to achieve the home-heating cost reduction target through measures carried out in Scotland;
    - (b) subsection (3) is omitted;
    - (c) subsections (3), (5)(a), (7)(a) and (10A) of section 33BC as applied by subsection (4) are omitted;
    - (d) in subsection (2)(a) at the beginning of sub-paragraph (ii) there is inserted “where the Secretary of State has apportioned the overall home-heating cost reduction target under section 103A(3A) of the Utilities Act 2000, and”;
    - (e) in section 33BC(11) as applied by subsection (4) “Citizens Advice” and “gas transporters” is omitted;
    - (f) in section 33BC(12) as applied by subsection (4) for the words from “shall not be made” to the end is substituted “is subject to the affirmative procedure”;
    - (g) in section 33BC(12A) as applied by subsection (4) for the words from “shall be subject to” to the end is substituted “is subject to the negative procedure”;
    - (h) for “Secretary of State” in each place (including any references in section 33BC that apply by virtue of subsection (4)), is substituted “Scottish Ministers”.
  - (4) The power of the Scottish Ministers under section 33BD does not include power to make provision in relation to the subject matter of sections 88 to 90 of the Energy Act 2008 (smart meters).
  - (5) The Scottish Ministers may not make an order under section 33BD unless they have consulted the Secretary of State about the proposed order.
  - (6) The power of the Secretary of State to make an order under section 33BD is exercisable so as to make any provision that may be made by the Scottish Ministers under that section, or vary or revoke an order made by the Scottish Ministers under that section, but only with the agreement of the Scottish Ministers.”
- (4) The Electricity Act 1989 is amended as follows.

(5) After section 41A (promotion of reduction in carbon emissions) insert—

**“41AA Scottish Ministers’ promotion of reductions in carbon emissions: electricity suppliers**

- (1) Where the Secretary of State under section 41A imposes on electricity suppliers obligations to achieve a target within a specified period, the power to make orders under that section is exercisable by the Scottish Ministers for the purposes of those obligations imposed in relation to Scotland and not, except as provided by subsection (6), by the Secretary of State.
- (2) An obligation is imposed in relation to Scotland to the extent that measures to meet that obligation may be carried out in Scotland (disregarding any power to elect under section 103 of the Utilities Act 2000).
- (3) For the purposes of the exercise by the Scottish Ministers of the power to make an order under section 41A, that section applies with the following modifications—
  - (a) for subsection (1) there is substituted a power by order to specify how electricity suppliers may meet their obligations to achieve the carbon emissions reduction target through measures carried out in Scotland;
  - (b) subsections (1A), (3), (5)(a), (7)(a) and (10A) are omitted;
  - (c) in subsection (2A) at the beginning of paragraph (b) there is inserted “where the Secretary of State has apportioned the overall carbon emissions reduction target under section 103(2A) of the Utilities Act 2000, and”
  - (d) in subsection (11) “Citizens Advice” and “electricity distributors” is omitted;
  - (e) in subsection (12), for the words from “shall not be made” to the end is substituted “is subject to the affirmative procedure”;
  - (f) in subsection (12A) for the words from “shall be subject to” to the end is substituted “is subject to the negative procedure”.
  - (g) for “Secretary of State” in each place is substituted with “Scottish Ministers”.
- (4) The power of the Scottish Ministers under section 41A does not include power to make provision in relation to the subject matter of sections 88 to 90 of the Energy Act 2008 (smart meters).
- (5) The Scottish Ministers may not make an order under section 41A unless they have consulted the Secretary of State about the proposed order.
- (6) The power of the Secretary of State to make an order under section 41A is exercisable so as to make any provision that may be made by the Scottish Ministers under that section, or vary or revoke an order made by the Scottish Ministers under that section, but only with the agreement of the Scottish Ministers.”

(6) After section 41B (promotion of reduction in home-heating costs) insert—

**“41BA Scottish Ministers’ promotion of reductions in home-heating costs: electricity suppliers**

- (1) Where the Secretary of State under section 41B imposes on electricity suppliers obligations to achieve a target within a specified period, the power to make orders under that section is exercisable by the Scottish Ministers for the purposes of those obligations imposed in relation to Scotland and not, except as provided by subsection (6), by the Secretary of State.
- (2) An obligation is imposed in relation to Scotland to the extent that measures to meet that obligation may be carried out in Scotland (disregarding any power to elect under section 103A of the Utilities Act 2000).
- (3) For the purposes of the exercise by the Scottish Ministers of the power to make an order under section 41B, that section applies with the following modifications—
  - (a) for subsection (1) there is substituted a power by order to specify how electricity suppliers may meet their obligations to achieve the home-heating cost reduction target through measures carried out in Scotland;
  - (b) subsection (3) is omitted;
  - (c) subsections (3), (5)(a), (7)(a) and (10A) of section 41A as applied by subsection (4) are omitted;
  - (d) in subsection (2)(a) at the beginning of sub-paragraph (ii) there is inserted “where the Secretary of State has apportioned the overall home-heating costs reduction target under section 103A(3A) of the Utilities Act 2000, and”;
  - (e) in section 41A(11) as applied by subsection (4) “Citizens Advice” and “electricity distributors” is omitted;
  - (f) in section 41A(12) as applied by subsection (4) for the words from “shall not be made” to the end is substituted “is subject to the affirmative procedure”;
  - (g) in section 41A(12A) as applied by subsection (4) for the words from “shall be subject to” to the end is substituted “is subject to the negative procedure”;
  - (h) for “Secretary of State” in each place (including any references in section 41A that apply by virtue of subsection (4)), is substituted “Scottish Ministers”.
- (4) The power of the Scottish Ministers under section 41B does not include power to make provision in relation to the subject matter of sections 88 to 90 of the Energy Act 2008 (smart meters).
- (5) The Scottish Ministers may not make an order under section 41B unless they have consulted the Secretary of State about the proposed order.
- (6) The power of the Secretary of State to make an order under section 41B is exercisable so as to make any provision that may be made by the Scottish Ministers under that section, or vary or revoke an order made by the Scottish Ministers under that section, but only with the agreement of the Scottish Ministers.”



- (7) Where an amendment made by this section imposes a requirement to consult or to obtain consent, the requirement may be satisfied by consultation undertaken or consent obtained before this section comes into force.

**53 Renewable electricity incentive schemes: consultation**

In the Scotland Act 1998 after section 90B (inserted by section 31) insert—

*“Renewable electricity incentive schemes*

**“90C Renewable electricity incentive schemes: consultation**

- (1) The Secretary of State must consult the Scottish Ministers before—
  - (a) establishing a renewable electricity incentive scheme that applies in Scotland, or
  - (b) amending such a scheme as it relates to Scotland.
- (2) In this section a “renewable electricity incentive scheme” means any scheme, whether statutory or otherwise, that provides an incentive to generate, or facilitate the generation of, electricity from sources of energy other than fossil fuel or nuclear fuel.

This includes provision made by or under the following so far as they relate to the generation of electricity from sources of energy other than fossil fuel or nuclear fuel—

- (a) sections 6 to 26 of the Energy Act 2013 (contracts for difference);
  - (b) sections 41 to 43 of the Energy Act 2008 (feed-in tariffs for smallscale generation of electricity);
  - (c) sections 32 to 32Z2 of the Electricity Act 1989 (renewables obligations or certificate purchase obligations).
- (3) Where, before the commencement of this section, the Secretary of State has consulted, or is consulting, the Scottish Ministers regarding a renewable electricity incentive scheme, that consultation is to be treated as fulfilling the obligation in subsection (1).”

**55**      **References to Competition and Markets Authority**

In section 132(5) of the Enterprise Act 2002 (ministerial power to make references to Competition and Markets Authority: meaning of “appropriate Minister”)—

- (a) omit the “or” after paragraph (a), and
- (b) after paragraph (b) insert—
  - “(c) the Scottish Ministers,
  - (d) the Scottish Ministers and the Secretary of State acting jointly; or
  - (e) the Scottish Ministers, the Secretary of State and one or more than one other Minister of the Crown, acting jointly.”

**New clause: Levies in respect of agriculture, taking wild game, aquaculture and fisheries etc.**

- (1) In Part 2 of Schedule 5 to the Scotland Act 1998, Section A1 is amended as follows.
- (2) In the Exceptions, after the exception for devolved taxes insert—

“Levies in respect of agriculture, taking wild game, aquaculture and fisheries (including sea fisheries) or a related activity: their collection and management.”.
- (3) After the exceptions insert—

*“Interpretation*

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, and the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds,

“aquaculture” includes the breeding, rearing or cultivation of fish (of any kind), seafood or aquatic organisms,

“related activity” means the production, processing, manufacture, marketing or distribution of—

- (a) anything (including any creature alive or dead) produced or taken in the course of agriculture, taking wild game or aquaculture, or caught (by any means) in a fishery,
- (b) any product which is derived to any substantial extent from anything so produced or caught.”.

**New clause: Party political broadcasts**

In Section K1 of Part 2 of Schedule 5 to the Scotland Act 1998 (broadcasting), after the reservation insert—

*“Exceptions*

The regulation of—

- (a) party political broadcasts in connection with elections that are within the legislative competence of the Parliament, and
- (b) referendum campaign broadcasts in connection with referendums held under Acts of the Scottish Parliament.”.