



Annex A: Draft clauses



Draft Scotland Clauses 2015

CONTENTS

PART 1

CONSTITUTIONAL ARRANGEMENTS

The Scottish Parliament and the Scottish Government

- 1 The Scottish Parliament and the Scottish Government

The Sewel convention

- 2 The Sewel convention

Changes to constitutional arrangements

- 3 Operation of the Scottish Parliament and Scottish Government
- 4 Super-majority for certain legislation passed by the Scottish Parliament

Elections

- 5 Conduct of Scottish Parliamentary and Local Government Elections
- 6 Elections: franchise and registration
- 7 Campaign and controlled expenditure
- 8 Electoral Commission
- 9 Devolution of the Boundary Commission for Scotland in relation to Scottish Parliament constituency boundaries

PART 2

TAX

Income tax

- 10 Income tax: power of Scottish Parliament to set rates
- 11 Income tax: amendments of Income Tax Act 2007
- 12 Income tax: amendments of Taxation of Chargeable Gains Act 1992

Value added tax

- 13 Assignment of VAT

Devolved taxes

- 14 Tax on carriage of passengers by air
15 Tax on commercial exploitation of aggregate

PART 3

WELFARE BENEFITS AND EMPLOYMENT SUPPORT

Welfare benefits

- 16 Disability, industrial injuries and carer's benefits
17 Benefits for maternity, funeral and heating expenses
18 Discretionary payments
19 Discretionary housing payments
20 Universal credit: costs of claimants who rent accommodation
21 Universal credit: persons to whom, and time when, paid

Employment support

- 22 Employment support

PART 4

OTHER LEGISLATIVE COMPETENCE

- 23 Crown Estate
24 Equal opportunities
25 Scottish tribunals
26 Roads
27 Roads: traffic signs etc
28 Roads: speed limits
29 Roads: procedure for regulations and interpretation
30 Policing of railways and railway property
31 Onshore oil and gas extraction
32 Consumer advocacy and advice
33 Power to change number of fixed odds betting terminals

PART 5

OTHER EXECUTIVE COMPETENCE

- 34 Gaelic Media Service
35 Commissioners of Northern Lighthouses
36 Maritime and Coastguard Agency
37 Rail: franchising of passenger services
38 Fuel poverty: support schemes
39 Energy company obligations
40 Renewable electricity incentive schemes: consultation
41 References to Competition and Markets Authority



PART 6

MISCELLANEOUS

- 42 Gas and Electricity Markets Authority
- 43 Office of Communications
- 44 Bodies that may be required to attend before the Parliament



PART 1

CONSTITUTIONAL ARRANGEMENTS

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

- (1) In section 1 of the Scotland Act 1998 (the Scottish Parliament) after subsection (1) insert— 5
- “(1A) A Scottish Parliament is recognised as a permanent part of the United Kingdom’s constitutional arrangements.”
- (2) In section 44 of the Scotland Act 1998 (the Scottish Government) for the words in subsection (1) before paragraph (a) substitute— 10
- “(1) There shall be a Scottish Government.
- (1A) A Scottish Government is recognised as a permanent part of the United Kingdom’s constitutional arrangements.
- (1B) The members of the Scottish Government shall be—”.

The Sewel convention 15**2 The Sewel convention**

- In section 28 of the Scotland Act 1998 (Acts of the Scottish Parliament) at the end add—
- “(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.” 20

*Changes to constitutional arrangements***3 Operation of the Scottish Parliament and Scottish Government**

- (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— 25
- “(2) This paragraph does not apply to modifying—
- (a) Part 1 (except sections 1(1) and (1A), 2(2A), 12A, 23, 23A, 27(3), 28(1) to (4), (6) to (8), 29 to 35, 36(1)(c) and (6), 37 and 38, and, subject to paragraph (g) below, Schedules 1 to 5), 30

- | | |
|---|---|
| <ul style="list-style-type: none"> (b) Part 2 (except sections 44(1), (1A), (1B)(c), (3) and (4), 48(5), 51 to 59, 60 to 63), (c) section 69(3), sections 81 to 83 and 85, sections 91, 93, 94 and 97, (d) 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), (e) sections 118, 120 and 121, (f) section 124 (insofar as that section applies to any power in this Act of the Scottish Ministers to make subordinate legislation), (g) paragraphs 1(1), 2(1), 2(3) and 3 to 14 of Schedule 1, and Schedule 2 (except paragraph 7)." | <p>5</p> <p>10</p> |
| <ul style="list-style-type: none"> (3) In paragraph 1 of Schedule 7 (procedure for subordinate legislation) in the entry for section 97 for "Type A" substitute "Type D". | <p>15</p> |
| <p>4 Super-majority for certain legislation passed by the Scottish Parliament</p> | |
| <ul style="list-style-type: none"> (1) In section 28(5) (Acts of the Scottish Parliament) at the beginning insert "Subject to section 30A," (2) After section 30 (legislative competence: supplementary) the Scotland Act 1998 insert – | <p>20</p> |
| <p>"30A Super-majority for certain legislation</p> | |
| <ul style="list-style-type: none"> (1) An Act of the Scottish Parliament is not law so far as any provision of the Act would modify the law relating to a protected subject-matter, unless the Bill for the Act was passed by a majority of at least two-thirds. (2) For these purposes, a Bill is passed by a majority of at least two-thirds if at its final stage – <ul style="list-style-type: none"> (a) the Bill is passed without a division, or (b) the number of members voting in favour of it is not less than two-thirds of the total number of seats for members of the Parliament. (3) The following are protected subject-matters for the purposes of subsection (1) – <ul style="list-style-type: none"> (a) the persons entitled to vote as electors at an election for membership of the Parliament, (b) the systems by which members of the Parliament are returned for the constituencies and regions, (c) the number of constituencies under this Act, (d) the number of regions under this Act, and (e) the number of regional members to be returned for each region." | <p>25</p> <p>30</p> <p>35</p> <p>40</p> |
| <ul style="list-style-type: none"> (3) In section 31 (scrutiny of Bills before introduction) after subsection (2) insert – | <p>45</p> |
| <ul style="list-style-type: none"> (2A) The Presiding Officer shall, on or before the introduction of a Bill in the Parliament, decide whether or not in his view the provisions of the Bill would modify the law relating to a protected subject-matter and state his decision." | <p>45</p> |

Draft Scotland Clauses 2015
Part 1 – Constitutional arrangements

- (4) In section 32 (submission of Bills for Royal Assent) in subsection (3)(a) after “the Parliament” insert “or that the Bill or any provision of it would modify the law relating to a protected subject-matter”.
- (5) In section 33(1) (scrutiny of Bills by the Supreme Court), after “the question of” insert “– (a)”, and for “to the Supreme Court for decision” substitute “, or (b) whether a Bill or any provision of a Bill would modify the law relating to a protected subject-matter, to the Supreme Court for decision.” 5
- (6) In section 33(2) for “at any time during” to the end substitute – 10
 “(a) at any time during –
 (i) the period of four weeks beginning with the passing of the Bill, and
 (ii) any period of four weeks beginning with any subsequent approval of the Bill in accordance with standing orders made by virtue of section 36(5), or 15
 (b) in the case of a reference under subsection (1)(b), after the Presiding Officer has stated his decision under section 31(2A) but before the Bill is passed.”
- (7) In section 33(3) – 20
 (a) after “He shall not make a reference” insert “under subsection (1)(a)”;
 (b) after “intend to make” insert “such”.
- (8) In paragraph 1 of Schedule 6 (devolution issues) after sub-paragraph (a) insert – 25
 “(aa) a question whether an Act of the Scottish Parliament or any provision of an Act of the Scottish Parliament would modify the law relating to a protected subject-matter”.

Elections

5 Conduct of Scottish Parliamentary and Local Government Elections

- (1) The Scotland Act 1998 is amended as follows.
- (2) In section 2 (ordinary general elections), at the beginning of subsection (2) insert “Subject to subsection (2A),” and after that subsection insert – 30
 “(2A) The poll shall be held no less than two months but no more than six months after the day fixed by subsection (2) if that day is the date of the poll at –
 (a) a parliamentary general election, other than an early parliamentary general election within the meaning of section 2 of the Fixed-term Parliaments Act 2011, 35
 (b) a European parliamentary general election, or
 (c) an ordinary local government election in Scotland, which is not an election to fill a casual vacancy.” 40
- (3) For section 12 (power of the Scottish Ministers to make provision about elections) and 12A (power of the Secretary of State to make provision about

elections) substitute –

“12 Power of the Scottish Ministers to make provision about elections

- | | |
|--|----|
| (1) The Scottish Ministers may by order make provision as to – | |
| (a) the conduct of elections for membership of the Parliament, | |
| (b) the questioning of such an election and the consequences of irregularities, and | 5 |
| (c) the return of members of the Parliament otherwise than at an election. | |
| (2) The provision that may be made under subsection (1)(a) includes, in particular, provision – | 10 |
| (a) about the registration of electors, | |
| (b) for disregarding alterations in the register of electors, | |
| (c) about the limitation of election expenses of candidates, | |
| (d) for the combination of polls where – | |
| (i) the poll at an ordinary general election for membership of the Parliament and the poll for a local government by-election in Scotland are to be held on the same date, | 15 |
| (ii) the poll at an extraordinary general election for membership of the Parliament and the poll at an ordinary local government election in Scotland are to be held on the same date, or | 20 |
| (iii) the poll at an extraordinary general election for membership of the Parliament and the poll for a local government by-election in Scotland are to be held on the same date. | 25 |
| (e) for modifying the application of section 7(1) where the poll at an election for the return of a constituency member is abandoned (or notice of it is countermanded), and | |
| (f) for modifying section 8(7) to ensure that allocation of the correct number of seats for the region. | 30 |
| (3) The provision that may be made under subsection (1)(c) includes, in particular, provision modifying section 10(4) and (5). | |
| (4) The provision that may be made under subsection (2)(a) does not include provision about the use of the digital service for applications for registration or for verifying information contained in applications for registration | 35 |
| (5) An order under subsection (1) may – | |
| (a) apply, with or without modifications or exceptions, any provision made by or under the Representation of the People Acts or the European Parliamentary Elections Act 2002 or by any other enactment relating to parliamentary elections, European Parliamentary elections or local government elections, and | 40 |
| (b) so far as may be necessary in consequence of any provision made by an order under subsection (1), modify any provision made by any enactment relating to the registration of parliamentary electors or local government electors. | 45 |

- (6) The return of a member of the Parliament at an election may be questioned only under Part III of the Representation of the People Act 1983 as applied by an order under subsection (1).
- (7) For the purposes of this Act, the regional returning officer for any region is the person designated as such in accordance with an order made by the Scottish Ministers under this subsection. 5
- (8) “Digital service” has the meaning given by regulation 3(1) of the Representation of the People (Scotland) Regulations 2001.
- 12A Power of the Secretary of State to make provision about the combination of polls** 10
- (1) The Secretary of State may by regulations make provision for the combination of the polls listed in subsection (2) with—
- (a) ordinary general elections for membership of the Parliament,
- (b) extraordinary general elections for membership of the Parliament, and 15
- (c) by-elections for membership of the Parliament.
- (2) The polls are—
- (a) parliamentary general elections,
- (b) early parliamentary general elections,
- (c) parliamentary by-elections, 20
- (d) European parliamentary general elections, and
- (e) European parliamentary by-elections.
- (3) The Secretary of State must obtain the agreement of the Scottish Ministers before making regulations under this section.”
- (4) In Section B3 of Schedule 5 (elections) before the heading “Interpretation” insert— 25
- “*Exception*
- The subject-matter of sections 1(2) to (4), 2(2) and (3) to (6), 3 to 10 and 12 of this Act, insofar as those sections relate to the conduct of elections for membership of the Parliament.”. 30
- (5) In Section B3 of Schedule 5 after the heading “Interpretation” insert—
- ““The conduct of elections for membership of the Parliament” does not include provision about the combination of polls at elections for membership of the Parliament with polls at other elections except where— 35
- (a) the poll at an ordinary general election for membership of the Parliament and the poll for a local government by-election are to be held on the same date,
- (b) the poll at an extraordinary general election for membership of the Parliament and the poll at an ordinary local government election in Scotland are to be held on the same date, or 40
- (c) the poll at an extraordinary general election for membership of the Parliament and the poll for a local government by-election in Scotland are to be held on the same date.” 45
- (6) Omit paragraph 5A of Part 1 of Schedule 5 (referendums).

- (7) Article 13 and Schedule 5 of the Scottish Parliament (Elections etc.) Order 2010 are revoked.
- (8) Omit sections 1 and 2 of the Scotland Act 2012.

6 Elections: franchise and registration

- (1) The Scotland Act 1998 is amended as follows. 5
- (2) In Section B3 of Schedule 5 omit “The franchise at local government elections.”.
- (3) In Section B3 of Schedule 5 after the exception inserted by section 5(4) insert –
“The franchise at elections for membership of the Parliament.
The registration of electors for elections for membership of the
Parliament and local government elections, but not provision 10
about the use of the digital service for applications for
registration or for verifying information contained in
applications for registration.”
- (4) In Section B3 of Schedule 5 after the heading “Interpretation” insert –
““digital service” has the meaning given by regulation 3(1) of
the Representation of the People (Scotland) Regulations 2001.” 15
- (5) In section 53 of the Representation of the People Act 1983 (power to make
regulations about registration etc.) after subsection (8) insert –
- “(9) Subject to subsection (11), the Scottish Ministers may make regulations
under subsection (1) and (3) containing provision under paragraphs 20
1A, 3ZA and 8C of Schedule 2 relating to the use of the digital service
in relation to Scotland.”
- (10) In subsection (9) –
- (a) “digital service” has the meaning given by regulation 3(1) of the
Representation of the People (Scotland) Regulations 2001, and 25
- (b) “use of the digital service” means use of that service for
applications for registration or for verifying information
contained in applications for registration.
- (11) Regulations under subsection (9) may not be made without the
agreement of the Secretary of State.” 30

7 Campaign and controlled expenditure

- (1) In the Scotland Act 1998, Section B3 in Part 2 of Schedule 5 (reservation of
elections) is amended as follows.
- (2) After the exception inserted by section 6(3) insert –
“The subject-matter of Parts 5 and 6 of the Political Parties,
Elections and Referendums Act 2000 in relation to elections the
conduct of which is within the legislative competence of the
Parliament, except where the polls at such elections and other
elections are combined.” 35
- (3) In section 155 of the Political Parties, Elections and Referendums Act 2000
(power to vary specified sums or percentages) – 40
- (a) at the beginning of subsection (1) insert “Except where subsection (1A)
applies,”

- (b) after subsection (1) insert –
- “(1A) The Scottish Ministers may by order vary any sum for the time being specified in Part 5 or 6 and Schedule 9, 10 or 11 insofar as that sum relates to –
- (a) an election the conduct of which is within the legislative competence of the Scottish Parliament, or 5
- (b) elections the polls at which are combined, if all the elections concerned are within the legislative competence of the Scottish Parliament.”,
- (c) in subsection (2) – 10
- (i) after “the Secretary of State” insert “or the Scottish Ministers”, and
- (ii) in paragraph (a) after “he” insert “or they”, and
- (d) after subsection (4) insert –
- “(4A) Subsection (4) applies to the Scottish Parliament as it applies to Parliament as if the references to the Secretary of State were to the Scottish Ministers.” 15
- 8 Electoral Commission**
- (1) Section B3 (elections) of Schedule 5 to the Scotland Act 1998 is amended as follows. 20
- (2) After the exception inserted by section 7(2) insert –
- “The subject-matter of sections 5 to 10, 13, 145 to 148, and 150 to 154 of the Political Parties, Elections and Referendums Act 2000 in relation to elections for membership of the Parliament.”
- (3) After the heading “Interpretation” insert – 25
- “References to provisions of the Political Parties, Elections and Referendums Act 2000 are to be read as at the day on which section 8 of the Scotland Act 2015 comes into force.”
- 9 Devolution of the Boundary Commission for Scotland in relation to Scottish Parliament constituency boundaries** 30
- (1) Paragraphs 3 to 7 of Schedule 1 to the Scotland Act 1998 (Boundary Commission reports and notices, and Orders in Council) are amended as follows.
- (2) For “the Secretary of State” in each place, and for “he” in paragraphs 3(9) and 6(1), substitute “the Scottish Ministers”. 35
- (3) For –
- (a) “each House of Parliament”, “either House of Parliament” or “the House” in each place, and
- (b) “Parliament” in all other places, except in paragraph 6(7), substitute “the Parliament”. 40
- (4) In paragraph 3(4) –
- (a) after “Boundary Commission for Scotland” insert “to the Scottish Ministers”;

Draft Scotland Clauses 2015
Part 1 – Constitutional arrangements

- (b) for “not later than 30 June 2010” substitute “no earlier than 1 May 2018 and no later than 1 May 2022”.
- (5) In paragraph 3(6) omit “(but not before the submission of their first report)”.
- (6) Omit paragraph 3(11).
- (7) In paragraph 6(1) for “thinks” substitute “think”. 5
- (8) In Section B3 of Part 3 of Schedule 5 to the Scotland Act 1998 (elections) after the exception inserted by section 8(2) insert –
 “The functions of the Boundary Commission for Scotland under paragraphs 3 to 14 of Schedule 1.
 The number of constituencies, regions and regional members; but that does not except the specification of constituencies or regions by or under paragraphs 1(2) or 2(2) of Schedule 1.” 10

PART 2

TAX

Income tax 15

10 Income tax: power of Scottish Parliament to set rates

- (1) Section 80C of the Scotland Act 1998 (power to set a Scottish rate for Scottish taxpayers) is amended as follows.
- (2) In subsection (1) (power to set Scottish rate) for the words from “the Scottish rate” to the end substitute “the Scottish basic rate, and any other rates, for the purposes of section 11A of the Income Tax Act 2007 (which provides for the income of Scottish taxpayers which is charged at those rates)”. 20
- (3) For subsection (2) substitute –
 “(2A) Where a Scottish rate resolution sets more than one rate it must also set limits (or a limit) for the purpose of enabling it to be ascertained, for the purposes of section 11A of that Act, which rates apply in relation to a Scottish taxpayer.” 25
- (4) Omit subsection (4).
- (5) In subsection (5) (Scottish rate to be a whole number or half a whole number) for “The Scottish rate” substitute “A rate set by a Scottish rate resolution”. 30
- (6) After that subsection insert –
 “(5A) A limit set by a Scottish rate resolution must be a whole number of pounds.”
- (7) In the title for “Scottish rate” substitute “rates”.
- (8) Other provisions of Part 4A of the Scotland Act 1998 are amended as follows. 35
- (9) In section 80A(1)(a) (overview of Part 4A) after “rate” insert “or rates”.
- (10) Section 80G (supplemental powers to modify enactments) is amended as follows.

- (11) In subsection (1) (power to modify section 11A of the Income Tax Act 2007) for “basic, higher and additional rates” substitute “basic rate and any other rates set by a Scottish rate resolution”.
- (12) In subsection (1A) (power to modify references to certain rates of income tax in relation to Scottish taxpayers) for the words from “so that” to the end substitute “that contains a reference to the basic rate, higher rate or additional rate so as to make any provision that they consider necessary or expedient in consequence of or in connection with a Scottish rate resolution”. 5
- (13) In subsection (1B) (power to postpone effect of Scottish rate etc in relation to PAYE regulations) for paragraphs (a) and (b) substitute – 10
 “(a) provision made by a Scottish rate resolution for a tax year, or
 (b) the absence of, or of particular provision in, a Scottish rate resolution for a tax year.”
- (14) In section 80HA(3)(b) (report by the Comptroller and Auditor General: meaning of “Scottish rate provisions”) for “the Scottish higher rate or the Scottish additional rate” substitute “or another rate set by a Scottish rate resolution”. 15
- (15) The amendments made by this section have effect so that a Scottish rate resolution, under Part 4A of the Scotland Act 1998 as it has effect without those amendments, may not be passed so as to set a rate for any tax year following such tax year as is appointed by the Treasury by order under this subsection (as the last year for which that Part is to have effect without those amendments). 20
- (16) A Scottish rate resolution made under Part 4A of the Scotland Act 1998 as amended by this section may not apply for a tax year preceding such tax year as is appointed by the Treasury by order under this subsection (as the first year for which that Part is to have effect with the amendments made by this section). 25
- (17) The tax year appointed under subsection (15) must precede the tax year appointed under subsection (16).
- 11 Income tax: amendments of Income Tax Act 2007** 30
- (1) The Income Tax Act 2007 is amended as follows.
- (2) Section 6 (rates at which income tax is charged) is amended as follows.
- (3) In subsection (3) omit paragraph (za).
- (4) After that subsection insert – 35
 “(4) See also section 80C of the Scotland Act 1998 which makes provision for the purposes of section 11A (income charged at Scottish rates).”
- (5) Omit section 6A (the Scottish basic, higher and additional rates).
- (6) In section 10(4) for “the Scottish basic, higher and additional” substitute “Scottish”.
- (7) Section 11A (income charged at the Scottish basic, higher and additional rates) is amended as follows. 40

- (8) For subsections (1) to (3) substitute –
- “(1A) Income tax is charged at the Scottish basic rate, and any other rates set by a Scottish rate resolution for the tax year in question, on the non-savings income of a Scottish taxpayer.”
- (9) Omit subsection (6). 5
- (10) In the title for “the Scottish basic, higher and additional” substitute “Scottish”.
- (11) In section 13 (income charged at dividend rates) –
- (a) in subsection (1)(b) omit “or the Scottish basic rate,”,
- (b) in subsection (2)(b) omit “or the Scottish higher rate,”,
- (c) in subsection (2A)(b) omit “or the Scottish additional rate,” 10
- (d) in subsection (4) omit “or the Scottish basic, higher or additional rate”, and
- (e) after subsection (4) insert –
- “(5) In relation to an individual who is a Scottish taxpayer, references in this section to income that would otherwise be charged at a particular rate are to be read as references to income that would, if the individual were not a Scottish taxpayer, be charged at that rate (and subsection (4) is to be read accordingly).” 15
- (12) In section 989 (definitions for the purposes of the Income Tax Acts) – 20
- (a) omit the definitions of “Scottish additional rate” and “Scottish higher rate”,
- (b) in the definition of “Scottish basic rate”, for the words after “Scottish basic rate” substitute “in relation to a tax year, means the Scottish basic rate set by a Scottish rate resolution for that year”, and 25
- (c) at the appropriate place insert –
- ““Scottish rate resolution” means a resolution of the Scottish Parliament under section 80C of the Scotland Act 1998,”.
- (13) In Schedule 4 (index of defined expressions) – 30
- (a) omit the entries relating to the Scottish higher rate and the Scottish additional rate, and
- (b) in the entry relating to the Scottish basic rate for “6A (as applied by section 989)” substitute “989”.
- (14) The amendments made by this section have effect in relation to the tax year appointed by the Treasury under section 10(16) and subsequent tax years. 35

12 Income tax: amendments of Taxation of Chargeable Gains Act 1992

- (1) Section 4 of the Taxation of Chargeable Gains Act 1992 (rates of capital gains tax) is amended as follows.
- (2) In subsections (4) and (5) omit “, the Scottish higher rate”. 40
- (3) At the end insert –
- “(10) For the purposes of the following references, an individual who is a Scottish taxpayer is to be treated as if income tax were chargeable in

- relation to that individual as it is chargeable in relation to an individual who is not a Scottish taxpayer –
- (a) the references in subsections (4) and (5) to income tax being chargeable at the higher rate;
 - (b) the reference in subsection (7) to the basic rate limit. 5
- (11) Section 4A(5) is to be read accordingly.”
- (4) In section 4A(5) of that Act (section 4: special cases) omit “, the Scottish higher rate”.
- (5) The amendments made by this section have effect in relation to the tax year appointed by the Treasury under section 10(16) and subsequent tax years. 10

*Value added tax***13 Assignment of VAT**

- (1) The Scotland Act 1998 is amended as follows.
- (2) In section 64 (Scottish Consolidated Fund), after subsection (2) insert –
- “(2A) The Secretary of State shall in accordance with section 64A pay into the Fund out of money provided by Parliament any amounts payable under that section.” 15
- (3) After that section insert –
- “64A Assignment of VAT**
- (1) Where there is an agreement between the Treasury and the Scottish Ministers for identifying an amount agreed to represent the standard rate VAT attributable to Scotland for any period (“the agreed standard rate amount”), the amount described in subsection (3) is payable under this section in respect of that period. 20
- (2) Where there is an agreement between the Treasury and the Scottish Ministers for identifying an amount agreed to represent the reduced rate VAT attributable to Scotland for that period (“the agreed reduced rate amount”), the amount described in subsection (4) is payable under this section in respect of that period. 25
- (3) The amount payable in accordance with subsection (1) is the amount obtained by multiplying the agreed standard rate amount by – 30
- $$\frac{10}{SR}$$
- where SR is the number of percentage points in the rate at which value added tax is charged under section 2(1) of the Value Added Tax Act 1994 for the period. 35
- (4) The amount payable in accordance with subsection (2) is the amount obtained by multiplying the agreed reduced rate amount by –
- $$\frac{2.5}{RR}$$

where RR is the number of percentage points in the rate at which value added tax is charged under section 29A(1) of the Value Added Tax Act 1994 for the period.

- (5) The payment of those amounts under section 64(2A) is to be made in accordance with any agreement between the Treasury and the Scottish Ministers as to the time of the payment or otherwise.” 5
- (4) The Commissioners for Revenue and Customs Act 2005 is amended as follows.
- (5) In subsection (2) of section 18 (confidentiality: exceptions) omit “or” after paragraph (i), and after paragraph (j) insert “, or
(k) which is made in connection with (or with anything done with a view to) the making or implementation of an agreement referred to in section 64A(1) or (2) of the Scotland Act 1998 (assignment of VAT).” 10
- (6) After that subsection insert –
“(2A) Information disclosed in reliance on subsection (2)(k) may not be further disclosed without the consent of the Commissioners (which may be general or specific).” 15
- (7) In section 19 (wrongful disclosure) in subsections (1) and (8) after “18(1)” insert “or (2A)”. 20

Devolved taxes

20

14 Tax on carriage of passengers by air

- (1) In Part 4A of the Scotland Act 1998, after Chapter 4 insert –

“CHAPTER 5

TAX ON CARRIAGE OF PASSENGERS BY AIR

80L Tax on carriage of passengers by air 25

A tax charged on the carriage of passengers by air from airports in Scotland is a devolved tax.”

- (2) Tax may not be charged in accordance with that provision on the carriage of passengers boarding aircraft before the date appointed under subsection (4).
- (3) In section 28(4) of the Finance Act 1994 (air passenger duty), for “the United Kingdom” substitute “England, Wales or Northern Ireland”. 30
- (4) Subsection (3) has effect in relation to flights beginning on or after such date as the Treasury appoint by regulations made by statutory instrument.
- (5) The Treasury may by regulations made by statutory instrument make further provision relating to the disapplication of air passenger duty in relation to flights beginning at airports in Scotland. 35

15 Tax on commercial exploitation of aggregate

- (1) In Part 4A of the Scotland Act 1998, after the Chapter 5 inserted by section 14 insert –

“CHAPTER 6**TAX ON COMMERCIAL EXPLOITATION OF AGGREGATE 5****80M Tax on commercial exploitation of aggregate**

A tax charged on aggregate subjected to commercial exploitation in Scotland is a devolved tax.”

- (2) Tax may not be charged in accordance with that provision on commercial exploitation of aggregate before the date appointed under subsection (4). 10
- (3) In section 16(2) of the Finance Act 2001 (aggregates levy) for “the United Kingdom” substitute “England, Wales or Northern Ireland”.
- (4) Subsection (3) has effect in relation to commercial exploitation of aggregate on or after such date as the Treasury appoint in regulations made by statutory instrument. 15
- (5) The Treasury may by regulations made by statutory instrument make further provision relating to the disapplication of aggregates levy in relation to commercial exploitation of aggregate in Scotland.

PART 3**WELFARE BENEFITS AND EMPLOYMENT SUPPORT 20***Welfare benefits***16 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 – 25

“Exception 1

Any of the following benefits –

- (a) disability benefits, other than severe disablement benefit or industrial injuries benefits, 30
- (b) severe disablement benefit, so far as payable in respect of a relevant person, and
- (c) industrial injuries benefits, so far as relating to employment which is employed earner’s employment for the purposes of section 94 of the Social Security Contributions and Benefits Act 1992 as at the relevant date or to participation in training for such employment; 35

Draft Scotland Clauses 2015
Part 3 – Welfare benefits and employment support

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.”

5

- (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 – 10

- (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 15

(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. 20

“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 25
- (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 16 of the Scotland Act 2015 comes into force as respects severe disablement benefit. 30

“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 35
- (b) a person’s having developed a disease or personal injury due to the nature of his or her employment; 40

and “the relevant date”, in relation to industrial injuries benefit, means the date of introduction into Parliament of the Bill that becomes the Scotland Act 2015.

“Carer’s benefit” means a benefit which is normally payable in respect of the regular and substantial provision of care by a relevant carer to a disabled person; and for this purpose – 45

- (a) “relevant carer” means a person who –
- (i) is 16 or over,
- (ii) is not in full-time education, and

- (iii) is not gainfully employed;
- (b) “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), 5
- (b) a benefit, entitlement to which, or the amount of which, is normally determined to any extent by reference to a person’s national insurance contributions or would be so determined but for the person’s being of a particular age (for example, employment and support allowance under section 1(2)(a) of the Welfare Reform Act 2007), or 10
- (c) a benefit payable by way of lump sum in respect of a person’s having, or having had – 15
- (i) pneumoconiosis,
- (ii) byssinosis,
- (iii) diffuse mesothelioma,
- (iv) bilateral diffuse pleural thickening, or 20
- (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, in relation to industrial injuries benefit, includes participation in training for employment (and “employed” is to be read accordingly).” 25
- 17 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. 30
- (2) In the Exceptions, after exception 3 (see section 16(3) above) insert –
- “Exception 4**
 Providing financial assistance for the purposes of meeting –
- (a) maternity expenses,
- (b) funeral expenses, or 35
- (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 7**
 Nothing in exceptions 1 to 7 is to be read as excepting – 40
- (a) payments out of the National Insurance Fund,
- (b) payments out of 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.” 45

Draft Scotland Clauses 2015
Part 3 – Welfare benefits and employment support

- (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.”

18 Discretionary payments

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 – 5

“Exception 5

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 short-term need that requires to be met to avoid a risk to the well-being of an individual. 10

This exception does not except providing assistance where the requirement for it arises from reduction, non-payability or suspension of a benefit as a result of an individual’s conduct (for example, non-compliance with work-related requirements relating to the benefit) unless – 15

- (a) the need for it also arises from some exceptional event or exceptional circumstances, and
- (b) the need is immediate as well as short-term.

Exception 6 20

Providing occasional 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, 25
- and who appear to require the assistance to establish or maintain a settled home.”

19 Discretionary housing payments

In Section F1 of Part 2 of Schedule 5 to the Scotland Act 1998, in the Exceptions, after exception 6 (see section 18 above) insert – 30

“Exception 7

Providing financial assistance to individuals who –

- (a) are entitled to –
 - (i) housing benefit, or
 - (ii) any other reserved benefit payable in respect of a liability to make rent payments, and 35
- (b) appear to require further financial assistance to meet or help to meet housing costs.

This exception does not except providing financial assistance to an individual where the requirement for the assistance arises from – 40

- (a) a liability to meet charges for water, sewerage or related environmental services,
- (b) a liability to meet payments of local taxes,
- (c) a liability to meet a service charge in respect of which a reserved benefit is not payable in the individual’s case, 45

- (d) a liability to pay increased rent, interest or other charges on account of late payment or non-payment of housing costs,
 - (e) suspension of a reserved benefit,
 - (f) reduction or non-payability of a reserved benefit as a result of an individual’s conduct (for example, non-compliance with work-related requirements relating to the benefit), or 5
 - (g) reduction or non-payability of a reserved benefit as a result of the recovery of an overpayment.
- This exception also does not except providing financial assistance to an individual on a regular basis in respect of accommodation where the assistance exceeds – 10
- (a) in a case where the individual is entitled to housing benefit, the total amount of the payments in respect of which housing benefit is payable less any charges for which housing benefit is not payable in the individual’s case, and 15
 - (b) in a case where the individual is entitled to any other reserved benefit, the maximum amount that the individual could receive by way of that benefit in respect of that accommodation.
- For the purposes of this exception – 20
- “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 25
 - (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.” 30
- 20 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. 35
 - (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 40
 - (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 – 45
 - (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).

Draft Scotland Clauses 2015
Part 3 – Welfare benefits and employment support

- (4) The Scottish Ministers may not exercise the function of making regulations to which this section applies unless –
- (a) they have consulted the Secretary of State about the practicability of implementing the regulations, and
 - (b) the Secretary of State has given his or her agreement as to when any change made by the regulations is to start to have effect, such agreement not to be unreasonably withheld. 5
- (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. 10

21 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. 15
- (3) The Scottish Ministers may not exercise the function of making regulations to which this section applies unless –
- (a) they have consulted the Secretary of State about the practicability of implementing the regulations, and 20
 - (b) the Secretary of State has given his or her agreement as to when any change made by the regulations is to start to have effect, such agreement not to be unreasonably withheld.
- (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. 25

Employment support

22 Employment support

- (1) In Part 2 of Schedule 5 to the Scotland Act 1998, Section H3 (job search and support) is amended as follows. 30
- (2) For the heading “Exception” substitute “Exceptions”.
- (3) After that heading insert –
- “Exception 1**
- 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 – 35
- (a) assisting disabled persons to select, obtain and retain employment;
 - (b) assisting persons claiming reserved benefits who are at risk of long-term unemployment to select, obtain and retain employment, where the assistance is for at least a year; 40

- (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 another person; 5
 - (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, 10
 - (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 the date of introduction into Parliament of the Bill that becomes the Scotland Act 2015; 15
 - (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 – 20
- “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.

PART 4

OTHER LEGISLATIVE COMPETENCE 25

23 Crown Estate

- (1) In Part 5 of the Scotland Act 1998, before the heading “Miscellaneous” insert –

“The Crown Estate

90B The Crown Estate

- (1) The Treasury may make a scheme transferring on the transfer date all the existing Scottish functions of the Crown Estate Commissioners (“the Commissioners”) to the Scottish Ministers or a person nominated by the Scottish Ministers (“the transferee”). 30
- (2) The existing Scottish functions are the Commissioners’ functions relating to the part of the Crown Estate that, immediately before the transfer date, consists of – 35
 - (a) property, rights or interests in land in Scotland, excluding property, rights or interests mentioned in subsection (3), and
 - (b) rights in relation to the Scottish zone.
- (3) Subsection (2)(a) excludes property, rights or interests held by a limited partnership registered under the Limited Partnerships Act 1907. 40

Draft Scotland Clauses 2015
Part 4 – Other legislative competence

- (4) The scheme must provide for the transfer to the transferee of designated rights and liabilities of the Commissioners in connection with the functions transferred.
- (5) The scheme must include provision to secure that the employment of any person in Crown employment (within the meaning of section 191 of the Employment Rights Act 1996) is not adversely affected by the transfer. 5
- (6) The scheme must include such provision as the Treasury consider necessary or expedient –
- (a) in the interests of defence or national security, 10
 - (b) in connection with access to land for the purposes of telecommunications, or with other matters falling within Section C10 in Part 2 of Schedule 5,
 - (c) for securing that the management of such property, rights or interests does not conflict with the exploitation of resources falling within Section D2 in Part 2 of Schedule 5, or with other reserved matters in connection with their exploitation, and 15
 - (d) for securing consistency, in the interests of consumers, in the management of such property, rights or interests and of property, rights or interests to which other functions of the Commissioners relate, so far as it affects the transmission or distribution of electricity or the provision or use of electricity interconnectors. 20
- (7) Any transfer by the scheme is subject to any provision under subsection (6). 25
- (8) On the transfer date, the existing Scottish functions and the designated rights and liabilities are transferred and vest in accordance with the scheme.
- (9) A certificate by the Treasury that anything specified in the certificate has vested in any person by virtue of the scheme is conclusive evidence for all purposes. 30
- (10) The scheme may provide –
- (a) for the scheme to be modified by agreement after it comes into effect;
 - (b) for modifications to have effect from the transfer date. 35
- (11) The scheme may include –
- (a) incidental, supplemental and transitional provision;
 - (b) consequential provision, including provision amending an enactment, instrument or other document;
 - (c) provision conferring or imposing a function on any person including any successor of the transferee; 40
 - (d) provision for the creation of new rights or liabilities in relation to the functions transferred.
- (12) In this section –
- “designated” means specified in or determined in accordance with the scheme; 45
 - “the transfer date” means a date specified by the scheme as the date on which the scheme is to have effect.

- (13) The Treasury may make a scheme under this section only with the agreement of the Scottish Ministers.
- (14) The power to make a scheme under this section is exercisable by statutory instrument.”
- (2) In Part 1 of Schedule 5 to the Scotland Act 1998 (general reservations) in paragraph 2(3) after “Crown Estate” insert “(that is, the property, rights and interests under the management of the Crown Estate Commissioners)”. 5
- (3) In section 1(2) of the Civil List Act 1952 (payment of hereditary revenues into the Scottish Consolidated Fund) after “treasure trove” insert “and from the property, rights and interests the management of which is transferred by the scheme under section 90B of the Scotland Act 1998”. 10
- 24 Equal opportunities**
- (1) Section L2 (equal opportunities) in Part 2 of Schedule 5 to the Scotland Act 1998 is amended as follows.
- (2) For the words from “including” to the end of paragraph (d) substitute “including the subject-matter of—
 (a) the Equality Act 2006, and
 (b) the Equality Act 2010.” 15
- (3) Under the heading “Exceptions”, at the end insert—
 “The subject matter of Part 1 of the Equality Act 2010 (socio-economic inequalities).” 20
- (4) Under the heading “Exceptions”, at the end insert—
 “Equal opportunities in relation to the Scottish functions of any Scottish public authority or cross-border public authority, except to the extent that provision is made by the Equality Act 2006 or the Equality Act 2010.” 25
- (5) Under the heading “Interpretation”, at the end insert—
 “The references to the subject-matter of, or provision made by, the Equality Act 2006, the Equality Act 2010 and Part 1 of that Act are to be read as references to that subject-matter or provision as at the day on which section 24 of the Scotland Act 2015 comes into force, but treating any provision of those enactments that is not yet in force on that day as if it were in force.” 30
- 25 Scottish tribunals**
- (1) In Part 3 of Schedule 5 to the Scotland Act 1998 (reserved matters: general provisions) after paragraph 2 insert—
“Scottish tribunals
- 2A (1) This Schedule does not reserve the transfer to a Scottish tribunal of tribunal functions relating to reserved matters, so far as those functions are exercisable in relation to Scottish cases. 40
- (2) Sub-paragraph (1) does not apply in relation to functions of any of the following—

Draft Scotland Clauses 2015
Part 4 – Other legislative competence

- (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; 5
- (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 established after this paragraph comes into force. 10
- (4) In the case of a tribunal referred to in sub-paragraph (2), this Schedule does not reserve the transfer of a specified function of the tribunal to a specified Scottish tribunal, so far as the function is exercisable in relation to Scottish cases, in accordance with provision made by an Order in Council. 15
- (5) The Order in Council may make any provision which Her Majesty considers necessary or expedient for the purposes of or in consequence of the transfer of the function and its exercise by the Scottish tribunal. 20
- (6) Such provision may –
- (a) include provision that –
- (i) modifies the function;
- (ii) imposes conditions or restrictions (including conditions or restrictions relating to the composition or rules of procedure of the Scottish tribunal, or to its staff or accommodation); 25
- (iii) specifies the category or categories of Scottish cases in relation to which the transfer is to have effect;
- (b) be made with a view to purposes including – 30
- (i) securing consistency in any respect in practice or procedure or otherwise between the Scottish tribunal and other tribunals;
- (ii) promoting judicial co-operation in the interests of consistency. 35
- (7) Sub-paragraph (6) does not limit the provision that may be made by an Order in Council by virtue of sub-paragraph (5).
- (8) In this paragraph –
- “Scottish cases” has the meaning given by an Order in Council;
- a “Scottish tribunal” means a tribunal in Scotland 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); 40
- “specified” means specified by an Order in Council;
- “tribunal functions” means any functions of a tribunal, other than functions of – 45
- (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 with functions relating to matters falling within Section B8 of Part 2 of Schedule 5. 5
- (9) 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 (procedure for subordinate legislation) at the appropriate place insert – 10

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

26 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 – 15
- “(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 vehicles used in connection with any other reserved matter or to the training of drivers of vehicles,” 20
- (3) In the exception relating to the Road Traffic Act 1988, after “sections” insert “36 (offence of failing to comply with traffic sign),” 25
- (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 26 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).” 30

27 Roads: traffic signs etc

- (1) The Road Traffic Regulation Act 1984 is amended as follows.
- (2) Section 25(1) (Secretary of State to make pedestrian crossing regulations) for “Secretary of State” substitute “national authority”. 35
- (3) In section 64 (general provisions as to traffic signs) –
- (a) in subsections (1) and (2) for “Secretary of State” substitute “national authority”,
 - (b) in subsection (1) for “Ministers acting jointly” substitute “national authority, 40

Draft Scotland Clauses 2015
Part 4 – Other legislative competence

- (c) omit subsections (2A) to (2C), and
(d) omit subsections (7) and (8).
- (4) Section 65 (powers of highway authorities as to placing of traffic signs) is amended as follows.
- (5) In subsection (1) omit “as may be given by the Ministers acting jointly”. 5
- (6) In subsections (1), (2), (3A)(ii) and (4) for “Secretary of State” substitute “national authority”.
- (7) In subsection (3) after “power” insert “of the Secretary of State”.
- (8) After that subsection insert –
- “(3ZA) The power of the Scottish Ministers to give general directions under subsection (1) is to be exercisable by Scottish statutory instrument. 10
- (3ZB) Before giving a general direction under subsection (1) the Secretary of State must consult with the Scottish Ministers.
- (3ZC) Before giving a general direction under subsection (1) the Scottish Ministers must consult with the Secretary of State.” 15
- (9) In subsection (3A)(ii) after “prescribed” insert “in regulations made by the national authority”.
- (10) In section 69(3) (Secretary of State’s directions for removal of traffic signs) for “Secretary of State” substitute “national authority”.
- (11) In section 70(1) (default powers of Secretary of State as to traffic signs) – 20
- (a) for “Secretary of State” substitute “national authority”,
(b) omit “himself”,
(c) omit “by him” in the first place,
(d) for “him”, in the second place, substitute “the national authority”, and
(e) after “the authority” insert “that failed to comply with the direction”. 25
- (12) In section 71(1) (power to enter land in connection with traffic signs) for “Secretary of State” substitute “national authority”.
- (13) In section 77 (modification of provisions relating to directions where Secretary of State is the traffic authority) for “Secretary of State”, in both places, substitute “national authority”. 30
- (14) Section 79 (advances by Secretary of State towards expenses of traffic signs) is amended as follows.
- (15) In subsection (1), for the words from “Secretary of State to “Parliament,” substitute “The national authority may”.
- (16) After subsection (1) insert – 35
- “(1A) An advance by the Secretary of State under this section is to be made out of moneys provided by Parliament.”
- (17) In subsections (3) and (5) for “Secretary of State” substitute “national authority”.
- (18) Section 36 of the Road Traffic Act 1988 (offence of failing to comply with traffic sign) is amended as follows. 40

- (19) In subsections (1)(b) and (3)(a) for “Secretary of State” substitute “national authority”.
- (20) In subsection (5) for the words from “Secretary of State for the Environment” to “jointly” substitute “national authority”.
- (21) After subsection (5) insert – 5
- “(5A) In this section “national authority” has the meaning given by section 142(1) of the Road Traffic Regulation Act 1984.”

28 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. 10
- (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) – 15
- (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. 20
- (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) – 25
- (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. 30
- (7) In subsection (1) –
- (a) for “Secretary of State”, in both places, substitute “national authority”, and
- (b) for “his” substitute “the authority’s”. 35
- (8) After subsection (3) insert –
- “(4) An order of the Scottish Ministers containing a direction under section 82(2) is to be made by Scottish statutory instrument.”
- (9) Section 84 (speed limits on roads other than restricted roads) is amended as follows. 40

Draft Scotland Clauses 2015
Part 4 – Other legislative competence

- (10) In subsections (1A) and (1B) for “Secretary of State” substitute “national authority”.
- (11) After subsection (6) insert –
- “(7) An order of the Scottish Ministers under subsection (1) is to be made by Scottish statutory instrument.” 5
- (12) Section 85 (traffic signs for indicating speed restrictions) is amended as follows.
- (13) In the following places, for “Secretary of State” substitute “national authority” –
- (a) subsection (1),
- (b) subsection (2)(a) and (b), 10
- (c) subsection (3), and
- (d) subsection (5A).
- (14) In subsection (3) –
- (a) omit “himself”,
- (b) omit “by him” in the first place, and 15
- (c) for “him”, in the second place, substitute “the national authority”.
- (15) In subsection (5A) omit the words from “or, where” to “officer of the Scottish Ministers”.
- (16) In subsection (7) after “power” insert “of the Secretary of State”.
- (17) After subsection (7) insert – 20
- “(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.” 25
- (18) 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”, 30
- (b) in that paragraph after “may be” insert “so”,
- (c) in subsection (2)(a) for “this section” 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)”, 35
- (f) in subsection (6) for “The regulations” substitute “Regulations under subsection (3)”, and
- (g) at the end insert –
- “(7) In this section “relevant authority” – 40
- (a) in relation to vehicles used on roads in Scotland, except vehicles used in connection with reserved matters (within the meaning of the Scotland Act 1998), means the Scottish Ministers,

(b) otherwise, means the Secretary of State.”

29 Roads: procedure for regulations and interpretation

- (1) The Road Traffic Regulation Act 1984 is amended as follows.
- (2) In section 17 (traffic regulation on special roads) –
 - (a) omit subsection (3ZD), and 5
 - (b) omit paragraph (b) of subsection (3A) (and the “and” before it).
- (3) In section 86 (speed limits for particular classes of vehicles) omit subsection (9).
- (4) In section 88 (temporary speed limits) omit subsection (7A).
- (5) Section 134 (regulations) is amended as follows.
- (6) In subsection (2) omit “82(1)(b)”. 10
- (7) After subsection (3) insert –

“(3A) Before making regulations under section 25, 64 or 87(1)(b) the Secretary of State must consult with the Scottish Ministers.”
- (8) After subsection (5) insert –
 - “(6) Regulations made by the Scottish Ministers under this Act (except section 86) are subject to the negative procedure. 15
 - (7) Before making regulations under section 25, 64 or 87(1)(b) the Scottish Ministers must consult with the Secretary of State.
 - (8) Before making regulations under this Act, except section 82(1)(b), the Scottish Ministers must consult with such representative organisations as they think fit.” 20
- (9) In section 142(1) (general interpretation) at the appropriate place insert –

““national authority” –

 - (a) in relation to roads in England and Wales, means the Secretary of State; 25
 - (b) in relation to roads in Scotland, means the Scottish Ministers.”
- (10) In section 195 of the Road Traffic Act 1988 (regulations) after subsection (4) insert –

“(4ZA) Regulations made by the Scottish Ministers under section 36(5) are subject to the negative procedure.” 30

30 Policing of railways and railway property

- (1) In Part 2 of Schedule 5 to the Scotland Act 1998, Section E2 (specific reservations: rail transport) is amended as follows.
- (2) Under the heading “Exceptions”, after the exception relating to the promotion and construction of railways insert –

“Policing of railways and railway property.” 35

- (3) Under the heading “Interpretation”, after the definition of “railway” insert –
 ““Railway property” has the meaning given by section 75(3) of the
 Railways and Transport Safety Act 2003.”

31 Onshore oil and gas extraction

- (1) The Petroleum Act 1998 is amended as follows. 5
- (2) In section 3 (licences to search and bore for and get petroleum) –
- (a) for “the Secretary of State” in subsection (1), and in the second place in
 subsection (3), substitute “the appropriate Minister”, and
- (b) after subsection (3) insert –
- “(3A) In this Part “the appropriate Minister” means – 10
- (a) in relation to the Scottish onshore area, the Scottish
 Ministers;
- (b) otherwise, the Secretary of State.”
- (3) Section 4 (licences: further provisions) is amended as follows.
- (4) In subsection (1) for “the Secretary of State” substitute “the appropriate 15
 Minister”.
- (5) After that subsection insert –
- “(1A) Regulations made by the Secretary of State under subsection (1)(e) may
 include model clauses on the following matters in relation to licences
 granted by the Scottish Ministers – 20
- (a) the consideration payable for a licence,
- (b) the measurement of petroleum obtained from the licensed area,
 and
- (c) the keeping of accounts.
- (1B) Regulations made by the Scottish Ministers under subsection (1)(e) 25
 may not include model clauses on the matters listed in subsection
 (1A).”
- (6) In subsection (3) for “Any such regulations” substitute “Any regulations made
 by the Secretary of State”.
- (7) After that subsection insert – 30
- “(3A) Any regulations made by the Scottish Ministers shall be subject to the
 negative procedure in the Scottish Parliament.”
- (8) In subsection (4) omit the words after paragraph (b), and after that subsection
 insert –
- “(4A) As soon as practicable after granting a licence under section 3, the 35
 Scottish Ministers shall publish notice of the fact in the Edinburgh
 Gazette stating –
- (a) the name of licensee; and
- (b) the situation of the area in respect of which the licence has been 40
 granted.”
- (9) In section 5A (rights transferred without consent) for “the Secretary of State” in
 each place substitute “the appropriate Minister”.

- (10) In section 5B(1) (information) for “the Secretary of State” in each place substitute “the appropriate Minister”.
- (11) In section 7 (ancillary rights) in subsection (2) –
- (a) in 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 regarding the Scottish onshore area.”. 5
- (12) In section 8 (power to inspect plans of mines) for “the Secretary of State” in each place substitute “the appropriate Minister”. 10
- (13) After section 8 insert –
- “8A Scottish onshore area**
- (1) The Scottish onshore area is the area of Scotland that is within the baseline provided for in article 3 of the Territorial Sea (Baselines) Order 2014 (or any order replacing that order). 15
 - (2) In subsection (1) “Scotland” has the same meaning as in the Scotland Act 1998.”
- (14) In section 188(12) of the Energy Act 2004 in subsection (7A) of the substituted text before paragraph (a) insert –
- “(za) Part 1 of the Petroleum Act 1998,”. 20
- (15) Section D2 in Part 2 of Schedule 5 to the Scotland Act 1998 (oil and gas) is amended as follows.
- (16) Under the heading “Exceptions” insert –
- “The granting of licences to search and bore for and get petroleum within the Scottish onshore area, except for any consideration payable for such licences. 25
- Access to petroleum within the Scottish onshore area.”
- (17) After the heading “Exceptions” insert –
- “*Interpretation*
- The Scottish onshore area is the area of Scotland that is within the baseline provided for in article 3 of the Territorial Sea (Baselines) Order 2014 (or any order replacing that order).” 30
- 32 Consumer advocacy and advice**
- (1) Part 2 of Schedule 5 to the Scotland Act 1998 (specific reservations) is amended as follows. 35
- (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 by, or by agreement with, a public body or the holder of a public office.” 40
- (3) In Section C8 (product standards, safety and liability) after the heading

- “Exceptions” insert –
- “The provision of consumer advocacy and advice by, or by agreement with, a public body or the holder of a public office.”
- (4) In Section C9 (weights and measures) after the reservations insert –
- “*Exceptions*” 5
- The provision of consumer advocacy and advice by, or by agreement with, a public body or the holder of a public office.”
- (5) In Section C11 (posts) –
- (a) for the heading “Exception” substitute “Exceptions”;
- (b) after the exception relating to financial assistance insert – 10
- “The provision of consumer advocacy and advice by, or by agreement with, a public body or the holder of a public office; but this does not except any modification of the functions of the Office of Communications.”
- (6) In Section D1 (electricity) – 15
- (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 by, or by agreement with, a public body or the holder of a public office; but this does not except any modification of the functions of the Gas and Electricity Markets Authority.” 20
- (7) In Section D2 (oil and gas), at the end of the exceptions insert –
- “The provision in relation to gas of consumer advocacy and advice by, or by agreement with, a public body or the holder of a public office; but this does not except any modification of the functions of the Gas and Electricity Markets Authority.” 25
- 33 Power to change number of fixed odds betting terminals**
- (1) In Section B9 in Part 2 of Schedule 5 to the Scotland Act 1998 (betting, gaming and lotteries) at the end insert – 30
- “*Exception*”
- The number of gaming machines for which the maximum charge for use is more than £10 that a betting premises licence issued under the Gambling Act 2005 authorises the holder to make available for use.” 35
- (2) The Gambling Act 2005 is amended as follows.
- (3) In section 172 (gaming machines) in subsection (11) for “Secretary of State” substitute “appropriate Minister”.
- (4) After that subsection insert –
- “(12) In subsection (11) the “appropriate Minister” means – 40
- (a) the Scottish Ministers, so far as the order varies the number of gaming machines for which the maximum charge for use is

- more than £10 authorised by a betting premises licence in respect of premises in Scotland;
- (b) otherwise, the Secretary of State.”
- (5) In section 355 (regulations, orders and rules) –
- (a) in subsections (1) and (3) after “the Secretary of State” insert “or the Scottish Ministers”, and 5
- (b) for subsections (9) and (10) insert –
- “(9) Regulations or orders made by Scottish Ministers under subsection (4) or sections 172 or 285 shall be subject to the affirmative procedure. 10
- (10) Regulations made by Scottish Ministers under any other provision of this Act shall be subject to the negative procedure.”
- (6) The amendments made by this section do not apply in relation to a betting premises licence issued before this section comes into force.

PART 5 15

OTHER EXECUTIVE COMPETENCE

34 Gaelic Media Service

- (1) In section 183A of the Broadcasting Act 1990 (membership of the Gaelic Media Service) –
- (a) in subsection (4) for “the Secretary of State and the Scottish Ministers” substitute “the Scottish Ministers”, and 20
- (b) in subsection (6)(b) for “the Secretary of State with the agreement of the Scottish Ministers” substitute “the Scottish Ministers”.
- (2) Section 17(4) to (6) of the Scotland Act 2012 is repealed.

35 Commissioners of Northern Lighthouses 25

- (1) Schedule 8 of the Merchant Shipping Act 1995 is amended as follows.
- (2) In paragraph 1(2) (Commissioners of Northern Lighthouses), after paragraph (e) insert –
- “(f) a person appointed by the Secretary of State (in addition to the person nominated under paragraph (d)); 30
- (g) a person appointed by the Scottish Ministers.”
- (3) In paragraph 2(2) (elections by the Commissioners) for “five” substitute “three”.
- (4) After paragraph 4 (Commissioners constituting quorum) insert –
- “4A (1) The Commissioners shall send to the Scottish Ministers a copy of any accounts that they have been required to provide under section 218. 35
- (2) The Scottish Ministers shall lay those accounts before the Scottish Parliament.
- (3) The Commissioners shall send to the Scottish Ministers any report made under section 198(4)(b) (reports on inspections). 40

- (4) The Scottish Ministers shall lay any such report before the Scottish Parliament.”

36 Maritime and Coastguard Agency

- (1) In section 1 of the Coastguard Act 1925 (transfer of the coastguard to the Board of Trade), at the end insert – 5
- “(4) The Secretary of State must consult the Scottish Ministers about the strategic priorities of the Secretary of State in exercising functions under subsection (1) in relation to activities of the Coastguard in Scotland.
- (5) In subsection (4) “Scotland” has the same meaning as in the Scotland Act 1998.” 10
- (2) In section 292 of the Merchant Shipping Act 1995 (general functions of the Secretary of State) after subsection (2) insert –
- “(3) The Secretary of State must consult the Scottish Ministers about the strategic priorities of the Secretary of State in exercising functions under subsection (1) in relation to the safety standards of ships and seafarers in Scotland. 15
- (4) In subsection (3) “Scotland” has the same meaning as in the Scotland Act 1998.”

37 Rail: franchising of passenger services 20

In section 25 of the Railways Act 1993 (public sector operators not to be franchisees) after subsection (2) insert –

- “(2A) This section does not apply in relation to Scottish franchise agreements.”

38 Fuel poverty: support schemes 25

- (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 – 30
- “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 – 35
- (a) as if references to the Secretary of State in sections 9, 10 and 14(1) 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); 40

- (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). 5
- (4) The Scottish Ministers may not make regulations under section 9 unless—
- (a) they have consulted the Secretary of State about the proposed regulations, and
- (b) the Secretary of State has agreed to the regulations being made. 10
- (5) Subsection (1) does not prevent the Secretary of State making a support scheme in relation to Scotland with the agreement of the Scottish Ministers.
- (6) Subsection (1) does not prevent the Secretary of State making a support scheme in relation to Scotland without the agreement of the Scottish Ministers if subsection (7) or (9) applies. 15
- (7) This subsection applies if—
- (a) a scheme in relation to England and Wales has been made, or the Secretary of State intends to make such a scheme, and
- (b) the Secretary of State is satisfied, after consulting the Scottish Ministers, that, to ensure that a scheme in relation to Scotland is made with a corresponding scheme period, it is necessary for the Secretary of State to exercise the power under section 9 to make such a scheme. 20
- (8) In paragraph (b) of subsection (7) a “corresponding scheme period” means a scheme period beginning and ending at the same time as that specified or to be specified in the scheme mentioned in paragraph (a). 25
- (9) This subsection applies if it appears to the Secretary of State, in the case of a support scheme made by the Scottish Ministers (the “Scottish scheme”), that the Scottish scheme is, alone or in conjunction with a scheme made or to be made by the Secretary of State in relation to England and Wales, likely to—
- (a) cause detriment to the United Kingdom, or
- (b) adversely affect the ability of the United Kingdom to comply with any international obligation in relation to climate change or energy efficiency, 30
- and the Scottish Ministers have failed to comply with a request made to them by the Secretary of State to make specified modifications to the Scottish scheme.
- (10) In determining for the purposes of subsection (9), whether detriment is likely to be caused to the United Kingdom, considerations that the Secretary of State may take into account include the costs imposed on suppliers by virtue of schemes made by the Secretary of State and the Scottish Ministers under section 9. 40
- (11) A request by the Secretary of State to the Scottish Ministers for the purposes of subsection (9)—
- (a) must be in writing; 45

- (b) must specify only modifications that appear to the Secretary of State to be necessary to prevent the effect mentioned in subsection (9)(a) or (b);
- (c) must specify the time within which the modifications are to be made, which must not be less than 2 months from the date of the request. 5
- (12) Where the Secretary of State makes a scheme in accordance with subsection (6), section 14(5) does not prevent the Secretary of State, by regulations under section 9, revoking any scheme made by the Scottish Ministers so far as it is inconsistent with the scheme made by the Secretary of State.” 10
- 39 Energy company obligations**
- (1) The Gas Act 1986 is amended as follows.
- (2) In section 33BC (promotion of reduction in carbon emissions) after subsection (1) insert – 15
- “(1ZA) In relation to Scotland, that is subject to section 33BCA (power of the Scottish Ministers to impose obligations on gas suppliers in order to promote reductions in carbon emissions).”.
- (3) After section 33BC insert –
- “33BCA Scottish Ministers’ promotion of reductions in carbon emissions: gas suppliers** 20
- (1) The power by order under section 33BC to impose obligations on gas suppliers 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 section 33BC applies – 25
- (a) with the omission of “(or each gas supplier of a specified description)”, “within a specified period and” and “under the order for that transporter or supplier” in subsection (1),
- (b) with the addition, in subsection (1) after “gas supplier” in each place, of “on whom the Secretary of State has decided to impose an obligation”, 30
- (c) with the omission of subsections (3), (5)(a), (7)(a) and (10A),
- (d) with the omission of “Citizens Advice” and “gas transporters” in subsection (11), 35
- (e) as if references to the Secretary of State were to the Scottish Ministers, and
- (f) as if references to each or either House of Parliament were to the Scottish Parliament.
- (3) 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). 40
- (4) The Scottish Ministers may not make an order under section 33BC unless –
- (a) they have consulted the Secretary of State about the proposed order, and 45

- (b) the Secretary of State has agreed to the order being made.
- (5) Subsection (1) does not prevent the Secretary of State imposing obligations in relation to Scotland with the agreement of the Scottish Ministers.
- (6) Subsection (1) does not prevent the Secretary of State imposing obligations in relation to Scotland without the agreement of the Scottish Ministers if subsection (7) or (9) applies. 5
- (7) This subsection applies if –
- (a) obligations in relation to England and Wales have been imposed, or the Secretary of State intends to impose such obligations, and 10
- (b) the Secretary of State is satisfied, after consulting the Scottish Ministers, that, to ensure that obligations in relation to Scotland are made with a corresponding obligation period, it is necessary for the Secretary of State to exercise the power under section 33BC to impose such a scheme. 15
- (8) In paragraph (b) of subsection (7) a “corresponding obligation period” means an obligation period beginning and ending at the same time as that specified or to be specified by the obligations mentioned in paragraph (a). 20
- (9) This subsection applies if it appears to the Secretary of State, in the case of obligations imposed by the Scottish Ministers (the “Scottish obligations”), that the Scottish obligations are, alone or in conjunction with obligations imposed or to be imposed by the Secretary of State in relation to England and Wales, likely to – 25
- (a) cause detriment to the United Kingdom, or
- (b) adversely affect the ability of the United Kingdom to comply with any international obligation in relation to climate change or energy efficiency,
- and the Scottish Ministers have failed to comply with a request made to them by the Secretary of State to make specified modifications to the Scottish obligations. 30
- (10) In determining for the purposes of subsection (9), whether detriment is likely to be caused to the United Kingdom, considerations that the Secretary of State may take into account include the costs imposed on suppliers by virtue of schemes made by the Secretary of State and the Scottish Ministers under section 33BC. 35
- (11) A request by the Secretary of State to the Scottish Ministers for the purposes of subsection (9) –
- (a) must be in writing; 40
- (b) must specify only modifications that appear to the Secretary of State to be necessary to prevent the effect mentioned in subsection (9)(a) or (b);
- (c) must specify the time within which the modifications are to be made, which must not be less than 2 months from the date of the request. 45
- (12) Where the Secretary of State imposes obligations in accordance with subsection (6), the Secretary of State, by order under section 33BC, may

Draft Scotland Clauses 2015
Part 5 – Other executive competence

- revoke any order made by the Scottish Ministers so far as it is inconsistent with the order made by the Secretary of State.
- (13) The power by notice under section 103B(1)(b) and (c) of the Utilities Act 2000 to require information to review the operation of an order made by the Scottish Ministers and maintain a measures record is exercisable by the Scottish Ministers. 5
- (14) Information obtained by virtue of subsection (13) may be disclosed by the Scottish Ministers –
- (a) to the Secretary of State for the purpose of enabling them to review the operation and effect in England of an order made under section 33BC; 10
- (b) to the Welsh Ministers for the purpose of enabling them to review the operation and effect in Wales of an order made under section 33BC.”
- (4) In section 33BD (promotion of reduction in home-heating costs) after subsection (1) insert – 15
- “(1A) In relation to Scotland, that is subject to section 33BDA (power of the Scottish Ministers to impose obligations to promote reductions in home-heating costs).”.
- (5) After section 33BD insert – 20
- “33BDAScottish Ministers’ promotion of reductions in home-heating costs: gas suppliers**
- (1) The power by order under section 33BD to impose obligations on gas suppliers in relation to Scotland is exercisable by the Scottish Ministers and not, except as provided by this section, by the Secretary of State. 25
- (2) For the purposes of the exercise of that power by the Scottish Ministers section 33BD applies –
- (a) with the omission of “(or each gas supplier of a specified description)”, “within a specified period and” and “under the order for that transporter or supplier” in subsection (1), 30
- (b) with the addition, in subsection (1) after “gas supplier” in each place, of “on whom the Secretary of State has decided to impose an obligation”
- (c) with the omission of “(3)” in subsection (4),
- (d) as if in subsection (4) for “(10A)” there were substituted “(11)”, 35
- (e) as if the duty to consult under section 33BC(11) (as applied by subsection (4)) did not refer to “Citizens Advice” and “gas transporters”,
- (f) with the omission of subsection (4)(e),
- (g) as if references to the Secretary of State were to the Scottish Ministers, and 40
- (h) as if references to each or either House of Parliament were to the Scottish Parliament.
- (3) 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). 45

- (4) The Scottish Ministers may not make an order under section 33BD unless –
- (a) they have consulted the Secretary of State about the proposed order, and
 - (b) the Secretary of State has agreed to the order being made. 5
- (5) Subsection (1) does not prevent the Secretary of State imposing obligations in relation to Scotland with the agreement of the Scottish Ministers.
- (6) Subsection (1) does not prevent the Secretary of State imposing obligations in relation to Scotland without the agreement of the Scottish Ministers if subsection (7) or (9) applies. 10
- (7) This subsection applies if –
- (a) obligations in relation to England and Wales have been imposed, or the Secretary of State intends to impose such obligations, and 15
 - (b) the Secretary of State is satisfied, after consulting the Scottish Ministers, that, to ensure that obligations in relation to Scotland are made with a corresponding obligation period, it is necessary for the Secretary of State to exercise the power under section 33BC to impose such a scheme. 20
- (8) In paragraph (b) of subsection (7) a “corresponding obligation period” means an obligation period beginning and ending at the same time as that specified or to be specified by the obligations mentioned in paragraph (a).
- (9) This subsection applies if it appears to the Secretary of State, in the case of obligations imposed by the Scottish Ministers (the “Scottish obligations”), that the Scottish obligations are, alone or in conjunction with obligations imposed or to be imposed by the Secretary of State in relation to England and Wales, likely to – 25
- (a) cause detriment to the United Kingdom, or 30
 - (b) adversely affect the ability of the United Kingdom to comply with any international obligation in relation to climate change or energy efficiency,
- and the Scottish Ministers have failed to comply with a request made to them by the Secretary of State to make specified modifications to the Scottish obligations. 35
- (10) In determining for the purposes of subsection (9), whether detriment is likely to be caused to the United Kingdom, considerations that the Secretary of State may take into account include the costs imposed on suppliers by virtue of schemes made by the Secretary of State and the Scottish Ministers under section 33BD. 40
- (11) A request by the Secretary of State to the Scottish Ministers for the purposes of subsection (9) –
- (a) must be in writing;
 - (b) must specify only modifications that appear to the Secretary of State to be necessary to prevent the effect mentioned in subsection (9)(a) or (b); 45

Draft Scotland Clauses 2015
Part 5 – Other executive competence

- (c) must specify the time within which the modifications are to be made, which must not be less than 2 months from the date of the request.
- (12) Where the Secretary of State imposes obligations in accordance with subsection (6), the Secretary of State, by order under section 33BD, may revoke any order made by the Scottish Ministers so far as it is inconsistent with the order made by the Secretary of State. 5
- (13) The power by notice under section 103B(1)(b) and (c) of the Utilities Act 2000 to require information to review the operation of an order made by the Scottish Ministers and maintain a measures record is exercisable by the Scottish Ministers. 10
- (14) Information obtained by virtue of subsection (13) may be disclosed by the Scottish Ministers –
- (a) to the Secretary of State for the purpose of enabling them to review the operation and effect in England of an order made under section 33BD; 15
- (b) to the Welsh Ministers for the purpose of enabling them to review the operation and effect in Wales of an order made under section 33BD.”
- (6) The Electricity Act 1989 is amended as follows. 20
- (7) In section 41A (promotion of reduction in carbon emissions) after subsection (1) insert –
- “(1ZA) In relation to Scotland, that is subject to section 41AB (power of the Scottish Ministers to impose obligations to promote reductions in carbon emissions).” 25
- (8) After section 41A insert –
- “41AB Scottish Ministers’ promotion of reductions in carbon emissions:
electricity suppliers**
- (1) The power by order under section 41A to impose obligations on electricity suppliers in relation to Scotland is exercisable by the Scottish Ministers and not, except as provided by this section, by the Secretary of State. 30
- (2) For the purposes of the exercise of that power by the Scottish Ministers section 41A applies –
- (a) with the omission of “(or each electricity supplier of a specified description)”, “within a specified period and” and “under the order for that distributor or supplier” in subsection (1), 35
- (b) with the addition, in subsection (1) after “electricity supplier” in each place, of “on whom the Secretary of State has decided to impose an obligation”, 40
- (c) with the omission of subsections (3), (5)(a), (7)(a) and (10A),
- (d) with the omission of “Citizens Advice” and “electricity distributors” in subsection (11),
- (e) as if references to the Secretary of State were to the Scottish Ministers, and 45
- (f) as if references to each or either House of Parliament were to the Scottish Parliament.

- (3) 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).
- (4) The Scottish Ministers may not make an order under section 41A unless – 5
- (a) they have consulted the Secretary of State about the proposed order, and
- (b) the Secretary of State has agreed to the order being made.
- (5) Subsection (1) does not prevent the Secretary of State imposing obligations in relation to Scotland with the agreement of the Scottish Ministers. 10
- (6) Subsection (1) does not prevent the Secretary of State imposing obligations in relation to Scotland without the agreement of the Scottish Ministers if subsection (7) or (9) applies.
- (7) This subsection applies if – 15
- (a) obligations in relation to England and Wales have been imposed, or the Secretary of State intends to impose such obligations, and
- (b) the Secretary of State is satisfied, after consulting the Scottish Ministers, that, to ensure that obligations in relation to Scotland are made with a corresponding obligation period, it is necessary for the Secretary of State to exercise the power under section 41A to impose such a scheme. 20
- (8) In paragraph (b) of subsection (7) a “corresponding obligation period” means an obligation period beginning and ending at the same time as that specified or to be specified by the obligations mentioned in paragraph (a). 25
- (9) This subsection applies if it appears to the Secretary of State, in the case of obligations imposed by the Scottish Ministers (the “Scottish obligations”), that the Scottish obligations are, alone or in conjunction with obligations imposed or to be imposed by the Secretary of State in relation to England and Wales, likely to – 30
- (a) cause detriment to the United Kingdom, or
- (b) adversely affect the ability of the United Kingdom to comply with any international obligation in relation to climate change or energy efficiency, 35
- and the Scottish Ministers have failed to comply with a request made to them by the Secretary of State to make specified modifications to the Scottish obligations.
- (10) In determining for the purposes of subsection (9), whether detriment is likely to be caused to the United Kingdom, considerations that the Secretary of State may take into account include the costs imposed on suppliers by virtue of schemes made by the Secretary of State and the Scottish Ministers under section 41A. 40
- (11) A request by the Secretary of State to the Scottish Ministers for the purposes of subsection (9) – 45
- (a) must be in writing;

Draft Scotland Clauses 2015
Part 5 – Other executive competence

- | | |
|--|------------------------------------|
| <ul style="list-style-type: none"> <li style="margin-left: 40px;">(b) must specify only modifications that appear to the Secretary of State to be necessary to prevent the effect mentioned in subsection (9)(a) or (b); <li style="margin-left: 40px;">(c) must specify the time within which the modifications are to be made, which must not be less than 2 months from the date of the request. | 5 |
| <p>(12) Where the Secretary of State imposes obligations in accordance with subsection (6), the Secretary of State, by order under section 41A, may revoke any order made by the Scottish Ministers so far as it is inconsistent with the order made by the Secretary of State.</p> | 10 |
| <p>(13) The power by notice under section 103B(1)(b) and (c) of the Utilities Act 2000 to require information to review the operation of an order made by the Scottish Ministers and maintain a measures record is exercisable by the Scottish Ministers.</p> | |
| <p>(14) Information obtained by virtue of subsection (13) may be disclosed by the Scottish Ministers –</p> <ul style="list-style-type: none"> (a) to the Secretary of State for the purpose of enabling them to review the operation and effect in England of an order made under section 41A; (b) to the Welsh Ministers for the purpose of enabling them to review the operation and effect in Wales of an order made under section 41A.” | 15

20 |
| <p>(9) In section 41B (promotion of reduction in home-heating costs) after subsection (1) insert –</p> | |
| <p>“(1A) In relation to Scotland, that is subject to section 41BB (power of the Scottish Ministers to impose obligations to promote reductions in home-heating costs).”.</p> | 25 |
| <p>(10) After section 41B insert –</p> | |
| <p>“41BB Scottish Ministers’ promotion of reductions in home-heating costs: electricity suppliers</p> | 30 |
| <p>(1) The power by order under section 41B to impose obligations on electricity suppliers in relation to Scotland is exercisable by the Scottish Ministers and not, except as provided by this section, by the Secretary of State.</p> | |
| <p>(2) For the purposes of the exercise of that power by the Scottish Ministers section 41B applies –</p> <ul style="list-style-type: none"> (a) with the omission of “(or each electricity supplier of a specified description)”, “within a specified period and” and “under the order for that distributor or supplier” in subsection (1), (b) with the addition, in subsection (1) after “electricity supplier” in each place, of “on whom the Secretary of State has decided to impose an obligation”, (c) with the omission of “(3)” in subsection (4), (d) as if in subsection (4) for “(10A)” there were substituted “(11)”, (e) as if the duty to consult under section 41A (as applied by subsection (4)) did not refer to “Citizens Advice” and “electricity distributors”, | 35

40

45 |

- (f) as if references to the Secretary of State were to the Scottish Ministers, and
- (g) as if references to each or either House of Parliament were to the Scottish Parliament.
- (3) 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
- (4) The Scottish Ministers may not make an order under section 41B unless—
- (a) they have consulted the Secretary of State about the proposed order, and 10
- (b) the Secretary of State has agreed to the order being made.
- (5) Subsection (1) does not prevent the Secretary of State imposing obligations in relation to Scotland with the agreement of the Scottish Ministers. 15
- (6) Subsection (1) does not prevent the Secretary of State imposing obligations in relation to Scotland without the agreement of the Scottish Ministers if subsection (7) or (9) applies.
- (7) This subsection applies if—
- (a) obligations in relation to England and Wales have been imposed, or the Secretary of State intends to impose such obligations, and 20
- (b) the Secretary of State is satisfied, after consulting the Scottish Ministers, that, to ensure that obligations in relation to Scotland are made with a corresponding obligation period, it is necessary for the Secretary of State to exercise the power under section 41B to impose such a scheme. 25
- (8) In paragraph (b) of subsection (7) a “corresponding obligation period” means an obligation period beginning and ending at the same time as that specified or to be specified by the obligations mentioned in paragraph (a). 30
- (9) This subsection applies if it appears to the Secretary of State, in the case of obligations imposed by the Scottish Ministers (the “Scottish obligations”), that the Scottish obligations are, alone or in conjunction with obligations imposed or to be imposed by the Secretary of State in relation to England and Wales, likely to— 35
- (a) cause detriment to the United Kingdom, or
- (b) adversely affect the ability of the United Kingdom to comply with any international obligation in relation to climate change or energy efficiency, 40
- and the Scottish Ministers have failed to comply with a request made to them by the Secretary of State to make specified modifications to the Scottish obligations.
- (10) In determining for the purposes of subsection (9), whether detriment is likely to be caused to the United Kingdom, considerations that the Secretary of State may take into account include the costs imposed on suppliers by virtue of schemes made by the Secretary of State and the Scottish Ministers under section 41B. 45

- | | |
|--|----|
| (11) A request by the Secretary of State to the Scottish Ministers for the purposes of subsection (9) – | 5 |
| (a) must be in writing; | |
| (b) must specify only modifications that appear to the Secretary of State to be necessary to prevent the effect mentioned in subsection (9)(a) or (b); | |
| (c) must specify the time within which the modifications are to be made, which must not be less than 2 months from the date of the request. | |
| (12) Where the Secretary of State imposes obligations in accordance with subsection (6), the Secretary of State, by order under section 41B, may revoke any order made by the Scottish Ministers so far as it is inconsistent with the order made by the Secretary of State. | 10 |
| (13) The power by notice under section 103B(1)(b) and (c) of the Utilities Act 2000 to require information to review the operation of an order made by the Scottish Ministers and maintain a measures record is exercisable by the Scottish Ministers. | 15 |
| (14) Information obtained by virtue of subsection (13) may be disclosed by the Scottish Ministers – | 20 |
| (a) to the Secretary of State or the purpose of enabling them to review the operation and effect in England of an order made under section 41B; | |
| (b) to the Welsh Ministers for the purpose of enabling them to review the operation and effect in Wales of an order made under section 41B.” | 25 |

40 Renewable electricity incentive schemes: consultation

In the Scotland Act 1998 after section 90B (inserted by section 23) insert –

Renewable electricity incentive schemes

90C Renewable electricity incentive schemes: consultation

- | | |
|--|----|
| (1) The Secretary of State must consult the Scottish Ministers before – | 30 |
| (a) establishing any renewable incentive scheme that applies in Scotland, or | |
| (b) amending such a scheme as it relates to Scotland. | |
| (2) Subsection (1) does not apply to amendments that are of a minor, technical or administrative nature; and the Secretary of State is not to be taken to establish or amend a scheme by exercising a power under a scheme, other than a power that is exercisable subject to any parliamentary procedure. | 35 |
| (3) In subsection (1) a “renewable 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. | 40 |
| This includes the following insofar as they relate to the generation of electricity from sources of energy other than fossil fuel or nuclear fuel – | |

- (a) the contracts for difference scheme, as provided for in sections 6 to 26 of the Energy Act 2013;
- (b) feed-in tariffs for small-scale generation of electricity, as provided for in sections 41 to 43 of the Energy Act 2008;
- (c) renewables obligations, as provided for in sections 32 to 32Z2 of the Electricity Act 1989.” 5

41 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”) – 10

- (a) omit the “or” after paragraph (a), and
- (b) after paragraph (b) insert –
 - “(c) the Scottish Ministers and the Secretary of State acting jointly; or
 - (d) the Scottish Ministers, the Secretary of State and one or more than one other Minister of the Crown, acting jointly.” 15

PART 6

MISCELLANEOUS

42 Gas and Electricity Markets Authority 20

- (1) The Utilities Act 2000 is amended as follows.
- (2) In section 5 (annual and other reports of Authority) –
 - (a) in subsection (5) omit “and” at the end of paragraph (a) and insert –
 - “(aa) send a copy of the report to the Scottish Ministers, and”, 25
 - and
 - (b) after subsection (5) insert –
 - “(5A) The Scottish Ministers shall lay a copy of each annual report before the Scottish Parliament.”

(3) After section 5 insert – “5XA Laying of accounts before Scottish Parliament 30

- (1) The Comptroller and Auditor General must send to the Authority, in respect of each of its accounting years, a copy of the certified accounts and report of the Authority no later than 15th January of the financial year following that to which the accounts relate.
- (2) The Authority must send to the Scottish Ministers, in respect of each of its accounting years, a copy of the certified accounts and report of the Authority no later than 31st January of the financial year following that to which the accounts relate. 35
- (3) The Scottish Ministers must lay a copy of whatever is sent to them under subsection (2) before the Scottish Parliament. 40
- (4) In subsections (1) and (2) “certified accounts and report” means those accounts certified under sections 5 and 7 of the Government Resources

and Accounts Act 2000, and the report issued by the Comptroller and Auditor General under section 6(3)(a) of that Act.”

43 Office of Communications

- (1) Section 1 of the Office of Communications Act 2002 (the Office of Communications) is amended as follows. 5
- (2) In subsection (3) after paragraph (a) insert –
“*(aa)* a member appointed by the Scottish Ministers;”.
- (3) After subsection (3) insert –
“*(3A)* Before appointing a member under subsection (3)*(aa)* the Scottish Ministers must consult the Secretary of State.” 10
- (4) After subsection (10) insert –
“*(11)* Paragraphs 1 and 2 of the Schedule apply in relation to the appointment made under subsection (3)*(aa)* as if –
 - (a) any reference to the Secretary of State was to the Scottish Ministers, and
 - (b) after paragraph 2(6) there were inserted –
 - “*(7)* Before the Scottish Ministers remove a person from office they must consult the Secretary of State.””.
- (5) The Schedule to the Office of Communications Act 2002 is amended as follows.
- (6) In paragraph 11(3) (accounts and audit) – 20
 - (a) omit “and” at the end of paragraph (a), and
 - (b) at the end of paragraph (b) insert “and
 - (c) shall send a copy of the statement and of his report to the Scottish Ministers.”
- (7) After paragraph 11(3) insert – 25
 - “*(4)* The Scottish Ministers shall lay a copy of the statement and report sent to them under sub-paragraph (3) before the Scottish Parliament.”
- (8) In paragraph 12 (annual report) – 30
 - (a) in sub-paragraph (1) after “Secretary of State” insert “and the Scottish Ministers”, and
 - (b) after sub-paragraph (3) insert –
 - “*(4)* The Scottish Ministers shall lay a copy of every report sent to them under this paragraph before the Scottish Parliament.”.
- (9) In article 2(2) of the Public Appointments Order in Council 2014 (interpretation) in paragraph (a) of the definition of “appointing authority” after “as the case may be,” insert “the Scottish Ministers,”. 35

44 Bodies that may be required to attend before the Parliament

- (1) The Scotland Act 1998 is amended as follows.

(2) After section 23 insert –

“23A Power to impose requirements on specific bodies

- (1) Section 23 applies in relation to requirements imposed on a person in connection with the discharge of the functions of a body mentioned in subsection (2) in relation to Scotland with the omission of – 5
 - (a) the words after paragraph (b) in subsection (1), and
 - (b) subsections (2) and (6).

- (2) The bodies are – 10
 - (a) the Commissioners of Northern Lighthouses,
 - (b) the Office of Communications, and
 - (c) the Gas and Electricity Markets Authority.”