

## SCOTLAND BILL

### Memorandum concerning the Delegated Powers in the Bill for the Delegated Powers and Regulatory Reform Committee

#### A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Scotland Bill (“the Bill”). The Bill was introduced in the House of Commons on 28 May 2015, and will be introduced in the House of Lords on 10 November 2015. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

#### B. PURPOSE AND EFFECT OF THE BILL

2. The government made a commitment in its manifesto to bring forward legislation to implement the Smith Commission Agreement (“the SCA”) <sup>1</sup>. This Bill delivers that commitment and provides for other matters consequential on that change.
3. In outline, the Bill strengthens the devolution settlement in Scotland and increases the financial accountability of the Scottish Parliament. The Bill transfers new powers to the Scottish Parliament and the Scottish Government, for example, the powers over particular benefits, taxes and over Scottish Parliament and local government elections in Scotland, powers over speed limits, road signs, onshore oil and gas extraction, consumer advocacy and advice. It also includes provisions that enable the devolution of the management of the Crown Estate in Scotland and reserved functions of tribunals to Scottish Tribunals.
4. The Queen’s Speech included a commitment to introduce a Bill within the first session to deliver the SCA.

<sup>1</sup> [http://www.smith-commission.scot/wp-content/uploads/2014/11/The\\_Smith\\_Commission\\_Report-1.pdf](http://www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf)

a. \_\_\_\_\_

5. The Smith Commission was established in September 2014 by the Prime Minister to consider further powers that should be devolved to Scotland following the Scottish referendum on independence, where the people of Scotland voted to remain part of the United Kingdom. The aim of the Commission was to convene cross-party talks and facilitate an inclusive engagement process across Scotland and agree further devolution of powers to the Scottish Parliament and the Scottish Ministers, particularly more financial, welfare and taxation powers, strengthening the Scottish Parliament and the Scottish Government within the United Kingdom. The SCA was published on 27 November 2014, agreed by the five main political parties in Scotland and the UK Government produced a command paper and draft clauses<sup>2</sup> on 22 January 2015 that indicated how the Agreement would be implemented.
  
6. The Bill will implement parts of the SCA that require legislative change to be given effect. The Bill is an enabling Bill and the majority of the provisions in the Bill set out the powers that are being transferred to the Scottish Parliament and or the Scottish Ministers. In particular the Scotland Bill amends sections of the Scotland Act 1998 and rebalances the devolved and reserved responsibilities between the administrations. The Bill also includes provisions which set out the constitutional relationship of the Scottish Parliament and Scottish Government within the United Kingdom's constitutional arrangements. It does not amend this relationship.

In summary the Bill:

7. Declares that a Scottish Parliament and a Scottish Government are considered permanent parts of the UK's constitutional arrangements, and that the UK Parliament will not normally legislate in devolved areas without the consent of the Scottish Parliament, whilst retaining the sovereignty to do so.
8. Gives increased autonomy to the Scottish Parliament and the Scottish Ministers in relation to the operation of Scottish Parliament and local government elections in Scotland.

a. \_\_\_\_\_  
<sup>2</sup> Cm 8990; <https://www.gov.uk/government/publications/scotland-in-the-united-kingdom-an-enduring-settlement>

9. Gives increased autonomy to the Scottish Parliament in relation to the operation of the Scottish Parliament and the Scottish Government within the United Kingdom by enabling the Scottish Parliament to amend relevant sections of the Scotland Act 1998.
10. Increases the financial accountability of the Scottish Parliament through devolution of the rates and bands of income tax, devolution of Air Passenger Duty and the Aggregates Levy, and assignment of VAT revenues.
11. Increases responsibility of welfare policy and delivery in Scotland through the devolution of welfare powers to the Scottish Parliament and / or the Scottish Ministers.
12. Gives significant responsibility to Scotland for areas such as roads, speed limits, onshore oil and gas extraction, consumer advocacy and advice, amongst others by devolution of powers in relation to these fields to the Scottish Parliament and the Scottish Ministers.
13. Provides powers to enable the devolution of the management of the Crown Estate in Scotland and provisions to enable the transfer of reserved functions of tribunals to Scottish Tribunals.
14. Increases scrutiny for the Scottish Government of specific bodies and increases the ability of the Scottish Government to design schemes relating to energy efficiency and fuel poverty by the devolution of functions to the Scottish Ministers.

### **C. DELEGATED POWERS**

15. The Scotland Bill contains delegated powers that fall into the two broad categories, both of which are included in this memorandum. First, provision that creates new delegated powers. Second, existing delegated powers that will be transferred to, or exercised concurrently with, the Scottish Ministers. The second category of delegated powers can be further divided into those provisions that (a) give executive competence only to the Scottish Ministers and those that (b) give executive competence to the Scottish Ministers as part of the process of transferring legislative competence to the Scottish Parliament. The parliamentary procedure applicable to existing delegated functions that are transferred to, or exercised concurrently with, the Scottish Ministers is the equivalent in the Scottish Parliament. On the rare occasion this is not the case, this has been highlighted in the memorandum below.

*Delegated Powers created by the Scotland Bill*

*PART 1*

**Clause 4 - Power to making provision about elections**

*Powers conferred on: the Scottish Ministers*

*Powers exercised by: Order exercisable by Scottish statutory instrument*

*Parliamentary procedure: Affirmative procedure*

16. By substituting a new section 12 into the Scotland Act 1998, this clause extends the Scottish Ministers' order-making power to make provision about the conduct of Scottish Parliamentary elections. The order-making power of the Scottish Ministers under new section 12 will be limited to making provision that would be within the legislative competence of the Scottish Parliament, if included in an Act of the Scottish Parliament. Certain powers relating to the conduct of elections were originally transferred to the Scottish Ministers by section 1 of the Scotland Act 2012. The new section 12 extends the power by transferring powers, previously exercised by the Secretary of State under section 12A of the Scotland Act 1998, to the Scottish Ministers. The exercise of this power is subject to the Scottish Parliament's affirmative procedure, consistent with the procedural requirements under current sections 12 and 12A.

*Powers conferred on: the Secretary of State*

*Powers exercised by: Regulations by statutory instrument*

*Parliamentary procedure: Affirmative procedure*

17. Clause 4 also substitutes a new section 12A into the Scotland Act 1998 which gives the Secretary of State the power to make regulations to combine certain Scottish Parliamentary elections with certain UK Parliamentary elections and European Parliamentary elections. The exercise of this power is subject to the agreement of the Scottish Ministers and subject to the affirmative resolution procedure in the UK Parliament, consistent with the procedural requirements under current section 12A.
18. In addition, clause 4 inserts a subsection (5C) into section 15 of the Representation of the People Act 1985 (combination of polls). This means that the Secretary of State

must consult the Scottish Ministers before making regulations under section 15(5), where one of the elections is a local government election in Scotland.

#### **Clause 5 - Timing of elections**

*Powers conferred on: the Scottish Ministers*

*Powers exercised by: Order exercisable by Scottish statutory instrument*

*Parliamentary procedure: Affirmative procedure*

19. This clause gives the Scottish Ministers order-making powers to change the date of: (i) a Scottish Parliamentary ordinary general election, which would otherwise, under section 2(2) of the Scotland Act 1998, fall on the same date or within two months before, a UK Parliamentary general election or a European Parliamentary general election; and (ii) an ordinary local government election in Scotland, which would otherwise, under section 43(1) of the Representation of the People Act 1983, fall on the same date at a Scottish Parliamentary ordinary general election. The exercise of these powers is subject to the Scottish Parliament's affirmative procedure.

#### **Clause 6 - Electoral registration: the digital service**

*Powers conferred on: the Scottish Ministers and the Secretary of State*

*Powers exercised by: Regulations*

*Parliamentary procedure: negative procedure*

20. This clause gives the Scottish Ministers certain functions that the Secretary of State currently has relating to the Individual Electoral Registration Digital Service ("the Digital Service"), under sections 10ZC, 10ZD and 53 of the Representation of the People Act 1983 (the "1983 Act"). Section 10ZC concerns the procedure for applications to the electoral register; section 10ZD concerns the alteration of the name or address of a person on the electoral register; section 53 concerns the power to make regulations as to registration. The functions of the Scottish Ministers under this clause are to be exercisable concurrently with a Minister of the Crown, and subject to the agreement of a Minister of the Crown. The powers are exercisable in relation to Scottish Parliament elections and local government elections in Scotland. The powers, when exercised by the Scottish Ministers, will be subject to the same or equivalent procedures and requirements as the procedures and requirements to which the Secretary of State and Scottish Ministers are subject when exercising powers under those sections, except that the powers of the Scottish Ministers under this clause will

be subject to the negative procedure in the Scottish Parliament. The negative procedure is appropriate because the regulations under sections 10ZC, 10ZD and 53 of the 1983 Act will make changes of a procedural nature only to the process of registration through the Digital Service or to the process for verifying such applications.

#### **Clause 7- Expenditure in connection with elections**

*Powers conferred on: the Scottish Ministers*

*Powers exercised by: various*

*Parliamentary procedure: various*

21. This clause transfers to the Scottish Ministers the powers the Secretary of State currently has under Parts 5 and 6 of the Political Parties, Elections and Referendums Act 2000 (“PPERA”) to make provision in connection with campaign expenditure and controlled expenditure. The powers that will transfer to the Scottish Ministers are powers under: paragraph 3(3) of Schedule 8 PERA (power to approve a draft code of practice prepared by the Electoral Commission in relation to campaign expenditure); paragraph 4(1) of Schedule 8 PERA (power to amend Part 1 of Schedule 8 PERA regarding qualifying expenses); paragraph 3(3) of Schedule 8A PERA (power to approve a draft code of practice prepared by the Electoral Commission in relation to controlled expenditure); paragraph 4(1) of Schedule 8A PERA (power to amend Part 1 of Schedule 8A PERA regarding qualifying expenses); paragraph 3(4) of Schedule 11 PERA (power to change meaning of defined expenses and sponsorship); paragraph 6A(6) of Schedule 11 PERA (power to make regulations about how the value of a benefit is calculated); and paragraph 6B(4) of Schedule 11 PERA (power to make regulations about the retention of declarations). By this clause, the Secretary of State will cease to have these powers insofar as they relate to elections to the Scottish Parliament. The powers that will be transferred to the Scottish Ministers by this clause will be subject to the same, or equivalent, procedures in the Scottish Parliament, as those to which subordinate legislation made by the Secretary of State is currently subject to in the UK Parliament.
22. This clause also transfers to the Scottish Ministers certain powers the Secretary of State currently has under section 155 of PERA to vary certain sums in relation to Parts 5 and 6 of and Schedules 9, 10 and 11 to that Act. By this clause, the Secretary of

State will cease to have the power to vary the relevant sums for campaign expenditure and controlled expenditure relating to elections to the Scottish Parliament, and this power will transfer to the Scottish Ministers. The powers that will be transferred to the Scottish Ministers by this clause will be subject to the same, or equivalent, procedures in the Scottish Parliament, as those to which subordinate legislation made by the Secretary of State is currently subject to in the UK Parliament.

#### **Clause 8- Review of electoral boundaries by the Local Government Boundary Commission for Scotland**

*Powers conferred on: The Queen in Council*

*Powers exercised by: Order in Council exercisable by Scottish statutory instrument*

*Parliamentary procedure: Affirmative Procedure in the Scottish Parliament before Order in Council is made*

23. Clause 8(3) amends paragraphs 3 to 7 of Schedule 1 to the Scotland Act 1998 by substituting references to the Secretary of State with references to the Scottish Ministers. The effect of these amendments is that the Local Government Boundary Commission for Scotland will report to the Scottish Ministers in relation to its reviews of constituency and regional boundaries for the Scottish Parliament. It will be for the Scottish Ministers to lay the draft of an Order in Council before the Scottish Parliament giving effect to the Local Government Boundary Commission for Scotland's recommendations. Once approved by resolution of the Scottish Parliament, the Scottish Ministers shall submit the draft order to Her Majesty in Council under paragraph 6 of Schedule 1 to the Scotland Act 1998.

#### **Clause 9 - Functions exercisable within devolved competence: elections**

24. Further to the specific provisions made elsewhere in the Bill, this clause makes general provision for functions relating to elections, that are exercisable within devolved competence by virtue of a provision of clause 3, to be exercisable by the Scottish Ministers instead of Ministers of the Crown. The approach reflects that which is set out at point (b) in paragraph 15 above; executive competence is to be transferred in respect of various elections matters to the Scottish Ministers as part of the process of transferring legislative competence to the Scottish Parliament.

25. The powers that will be transferred to the Scottish Ministers by this clause will be subject to the same, or equivalent, procedures in the Scottish Parliament as those to which subordinate legislation made by Ministers of the Crown is currently subject to in the UK Parliament.

## **PART 2**

### **Clause 15 [8]: Income Tax: Consequential amendments - amendments in connection with clause 13 and clause 14**

*Powers conferred on: the Treasury  
Powers exercised by: Regulations made by statutory instrument  
Parliamentary procedure: Affirmative resolution procedure*

#### *Power*

26. Sub-section [8] and [14] allow the Treasury power to modify by Order enactments to reflect the changes made by clauses 13 and 14.
27. The changes made by clauses 13 and 14 amend, respectively, elements of the Scotland Act 1998 and Income Tax Act 2007 that set out how Scottish income tax rates and thresholds will operate within structure of the UK Income Tax regime. Given the central nature of the amended provisions, some detailed technical consequential amendments may be required to other areas of tax legislation as a result. It would not be appropriate to set such details out in primary legislation. In particular, it is likely there will be time between the date on which the Bill receives Royal Assent and the date on which the Scottish Parliament exercises its setting power for the first time. Wide powers to make consequential amendments, very similar to those contained within the 2012 Act, are required in order to both make any necessary consequential amendments to existing legislation and to “future proof” the powers set out in the Bill.

#### *Procedure*

28. Orders under this clause will be made by statutory instrument and will be subject to the draft affirmative resolution procedure in the House of Commons.



29. It is submitted that the draft affirmative procedure is appropriate here to allow the House of Commons to scrutinise the impact of the Scottish rate on the wider income tax system. These regulations will be laid before the House of Commons only, following the convention that tax matters are dealt with only by the House of Commons.

**Clause 17: Tax on carriage of passengers by air**

*Powers conferred on: the Treasury*

*Powers exercised by: Regulations made by statutory instrument*

*Parliamentary procedure: See below*

30. This clause provides for the devolution of the power to impose tax on the carriage of passengers by air (air passenger duty). Sub-section 7 confers a new power on HM Treasury to make regulations by statutory instrument to specify the date upon which the clause is to take effect.

*Procedure*

31. The Treasury's power to make provision under sub-section 7 is exercisable by regulations made by statutory instrument, without being subject to a prescribed parliamentary procedure in this Bill.

**Clause 18 - Tax on commercial exploitation of aggregate**

*Powers conferred on: the Treasury*

*Powers exercised by: Regulations made by statutory instrument*

*Parliamentary procedure: See below*

32. Sub-section (2) confers powers on HM Treasury to appoint the date in regulations made by statutory instrument on which the disapplication of UK aggregates levy to Scotland is to apply.

*Procedure*

33. The Treasury's power to make provision under sub-section 7 is exercisable by regulations made by statutory instrument, without being subject to a prescribed parliamentary procedure in this Bill.

## **Clause 19 – Devolved Taxes: further provision**

*Powers conferred on: the Treasury*

*Powers exercised by: Regulations made by statutory instrument*

*Parliamentary procedure: See below*

34. This clause applies to both the provisions on *Tax of Carriage of Passengers by Air* (clause 17) and *Tax on Commercial Exploitation of Aggregate* (clause 18). Sub-section (2) confers powers on HM Treasury to make further provision in regulations made by statutory instrument relating to the disapplication of air passenger duty in relation to flights beginning at airports in Scotland and the disapplication of the aggregates levy in relation to commercial exploitation of aggregate in Scotland. By virtue of sub-section (3), this includes the power to make transitional or saving provision and to amend, repeal, revoke or otherwise modify an enactment.
35. In the January 2015 publication “Scotland in the United Kingdom: An Enduring Settlement” the UK Government committed to working with the Scottish Government to ensure that double taxation is avoided. This may require legislative changes to the way that air passenger duty and the aggregates levy operate in the rest of the UK. The powers conferred by sub-section (2) and (3) will allow the Treasury to make any changes as are required in secondary legislation after discussion with the Scottish Government and consultation with the sector.

### *Procedure*

36. The Treasury’s power to make provision under sub-section 2 is exercisable by regulations made by statutory instrument. Such regulations will be subject to the negative resolution procedure unless they amend an enactment in which case they will be subject to the affirmative resolution procedure which requires them to be laid in draft before, and approved by, the House of Commons before being made.

### Part 3

#### **Clause 27 - Universal Credit: costs of claimants who rent accommodation**

*Powers conferred on: the Scottish Ministers*

*Powers exercised by: regulations made by Scottish statutory instrument*

*Parliamentary procedure: negative procedure*

37. This clause gives Scottish Ministers powers to make regulations for Scotland in respect of the housing costs within Universal Credit for claimants who rent their home in Scotland, while ensuring that the powers remain exercisable by the Secretary of State.
38. The clause provides that the functions conferred upon the Secretary of State, by section 11(4) of the Welfare Reform Act 2012 and 5(l)(p) of the Social Security Administration Act 1992, are also exercisable (in or as regards Scotland) by the Scottish Ministers. This is done to give effect to the SCA (see paragraphs 44 and 45 of the Agreement).
39. Subsection (1) enables Scottish Ministers to make regulations on the matters set out in subsection (2). This power can be exercised concurrently with the Secretary of State, which means that both the UK Government and Scottish Government have the same power to make regulations for Scotland on the matters covered by this section which they can exercise independently.
40. Subsection (2) sets out the scope of the regulation-making powers. Under subsection (2)(a), Scottish Ministers can make regulations to amend the way in which the housing costs within Universal Credit are calculated for claimants who rent accommodation. Under subsection (2)(b), Scottish Ministers can make regulations which enable the housing costs to be paid to someone on behalf of a claimant such as the claimant's landlord.
41. Universal credit remains a reserved benefit administered by the Secretary of State for the whole of Great Britain. Therefore, before making regulations under this clause, Scottish Ministers will be required to consult with the Secretary of State about the practicability of implementing the regulations (subsection (4)).

42. Subsection (5) is a new power. This enables the Secretary of State to make regulations to postpone the date from which any regulations start to take effect if he or she considers that it is not practicable to implement the changes in the proposed timescale. There is no parliamentary procedure as the power only affects timing. It is intended as a safeguard to avoid a change in the law coming into effect for Scotland before it can be delivered.
43. Subsection (7) provides that the Secretary of State cannot make any regulations under this section without first consulting with Scottish Ministers.
44. Regulations made by Scottish Ministers will be subject to the negative resolution procedure as set out at subsection (8). This mirrors the procedure that would apply by virtue section 189(3) and 1990 of the Social Security Administration Act 1992 and of section 43(2) of the Welfare Reform Act 2012 to regulations made by the Secretary of State. Under section 43(3) of the Welfare Reform Act 2012 only the first regulations under section 11 of that Act were affirmative and those have already been made. The Scottish Parliament has the ability to annul the regulations within 40 days of them being laid before the Parliament, which mirrors the negative procedure in the UK Parliament. There is therefore no reason to impose the affirmative procedure on Scottish Ministers.

**Clause 28- Universal Credit: persons to whom, and time when, paid**

*Powers conferred on: the Scottish Ministers*

*Powers exercised by: regulations made by Scottish statutory instrument*

*Parliamentary procedure: negative resolution*

45. This clause gives Scottish Ministers regulation-making powers for Scotland to provide for alternative payment arrangements in relation to Universal Credit claimants living in Scotland, while ensuring that the powers remain exercisable by the Secretary of State.
46. The clause provides that the functions conferred upon the Secretary of State, by section 5(1)(i) of the Social Security Administration Act 1992, are also exercisable (in or

as regards Scotland) by the Scottish Ministers. This is done to give effect to the SCA (see paragraph 44 of the Agreement).

47. Subsection (1) enables Scottish Ministers to make regulations on the matters set out in subsection (2). This power can be exercised concurrently with the Secretary of State, which means that both the UK Government and Scottish Government have the same power to make regulations for Scotland on the matters covered by this section which they can exercise independently.
48. Subsection (2) sets out the scope of this regulation-making power. Scottish Ministers can make regulations dealing with the persons to whom payments of Universal Credit can be made and the frequency of those payments.
49. Universal credit remains a reserved benefit administered by the Secretary of State for the whole of Great Britain. Therefore, before making regulations under this clause, Scottish Ministers will be required to consult with the Secretary of State about the practicability of implementing the regulations (subsection (3)).
50. Subsection (4) is a new power. This enables the Secretary of State to make regulations to postpone the date from which regulations made by Scottish Ministers start to take effect if he or she considers that it is not practicable to implement the changes in the proposed timescale. There is no parliamentary procedure as the power only affects timing. It is intended as a safeguard to avoid a change in the law coming into effect for Scotland before it can be delivered.
51. Subsection (6) provides that the Secretary of State cannot make any regulations under this section without first consulting with Scottish Ministers.
52. Regulations made by Scottish Ministers will be subject to the negative resolution procedure as set out at subsection (7). This mirrors the procedure that would apply by virtue of section 189(3) and 1990 of the Social Security Administration Act 1992 and section 43(2) of the Welfare Reform Act 2012 to regulations made by the Secretary of State. Under section 43(3) of the Welfare Reform Act 2012 only the first regulations under section 11 of that Act were affirmative and those have already been made. The

Scottish Parliament has the ability to annul the regulations within 40 days of them being laid before the Parliament, which mirrors the negative procedure in the UK Parliament. There is therefore no reason to impose the affirmative procedure on Scottish Ministers.

#### **Clause 29: Employment Support**

*Powers conferred on: Scottish Ministers/Minister of the Crown*

*Powers exercised by: n/a*

*Parliamentary procedure: n/a*

53. Subsection (5) of clause 29 modifies section 56(1)(g) of the Scotland Act 1998 so that it has effect as if it included a reference to section 17B of the Jobseekers Act 1995. Section 56(1) of the 1998 Act provides that, despite the transfer of a function to the Scottish Ministers by virtue of section 53 of that Act, certain functions shall also be exercisable by a Minister of the Crown; paragraph (g) of that subsection lists powers to make arrangements for employment and training under the Employment and Training Act 1973 as one of those functions.
54. Section 17B of the Jobseekers Act 1995 provides a power to provide facilities and support in respect of schemes under that Act assisting persons to obtain employment.
55. Subsection (5) therefore alters the position which would otherwise be provided by the legislation, whereby the functions under section 17B would be exercisable within devolved competence solely by the Scottish Ministers. In doing so, as regards Scotland it brings the position in respect of powers to make arrangements under the Jobseekers Act 1995 in respect of assistance for persons to obtain employment into line with that in respect of employment and training already set out in legislation.

#### **Clause 30: Functions exercisable within devolved competence**

*Powers conferred on: Scottish Ministers*

*Powers exercised by: various*

*Parliamentary procedure: various*

56. Under section 53 of the Scotland Act 1998, functions conferred on a Minister of the Crown under a pre-commencement enactment and exercisable within devolved competence are transferred to the Scottish Ministers.

57. Clause 30 glosses section 53 to provide that, for the purposes of the functions being devolved by virtue of a provision of clauses 19, 20, 21, 22, 26, or NC14 - welfare foods, of the Bill, a pre-commencement enactment is an enactment passed or made before a certain date. This ensures that the functions transferred by section 53 of the 1998 Act include the functions in relation to the areas devolved by virtue of those clauses of the Bill which amend the reservations in Section F1 and H3 in Part 2 of Schedule 5 to the 1998 Act; that transfer has effect, broadly, from the date on which those amendments come into force.
58. The functions transferred to the Scottish Ministers by section 53, as glossed by this clause, will include powers to make secondary legislation. Clause 59 ensures that the parliamentary procedure applicable to those delegated functions will be the equivalent in the Scottish Parliament.
59. It is considered appropriate that the procedure applicable to the delegated functions in the Scottish Parliament should be the equivalent to that applicable to the functions in the Parliament. The Scottish Parliament will have power to legislate in this area and could, once competence has transferred, alter the parliamentary procedure that applies to those powers. This is in keeping with the principle of devolution.

**Clause 32: Information-sharing**

*Powers conferred on: the Secretary of State*  
*Powers exercised by: regulations (Statutory Instrument)*  
*Parliamentary procedure: affirmative procedure*

60. Clause 32 makes provision for social security information to be shared between the Secretary of State (and his or her service providers) and the Scottish Ministers (and their service providers). This is needed to enable both the reserved and devolved benefit systems to operate effectively following the devolution of responsibility for certain functions to Scotland.
61. The information that may be shared by the Secretary of State (and his or her service providers) is limited to information that is held for the purpose of a social security function. "Social security function" is defined in subsection (7). It covers functions of

the Secretary of State relating to social security, the investigation or prosecution of offences relating to tax credits, employment or training and war pensions.

62. Similarly, the information that may be shared by the Scottish Ministers (and their service providers) is limited to information that is held for the purpose of a relevant Scottish social security function. "Relevant Scottish social security function" is also defined in subsection (7), by reference to the social security functions being devolved to Scotland.
63. The definitions of "social security function" and "relevant Scottish social security function" are also relevant to the purposes for which information may be used once it has been shared under this clause.
64. These definitions attempt to capture the main types of information which will need to be shared (and the purposes for which that information will need to be used) as a result of the devolution of responsibility for certain social security functions to Scotland. However, a degree of flexibility is needed.
65. At present, the Government does not know what new schemes or modes of delivery the Scottish Ministers intend to introduce once responsibility for these social security functions is devolved to Scotland. As this develops over time, it may become necessary to share additional types of information in order for Scottish Ministers to be able to effectively carry out these social security functions and to calculate and pay the devolved social security benefits correctly and efficiently.
66. In light of this, paragraph (f) of the definition of "social security function" permits the Secretary of State to prescribe additional social security functions and paragraph (d) of the definition of "relevant Scottish social security function" permits the Secretary of State to prescribe additional functions for the purposes of the clause. That is, the Secretary of State may prescribe that information which is held by the Secretary of State, Scottish Ministers or their service providers for additional purposes may also be supplied under this clause.



67. Subsection (8)(c) provides that this power is exercisable by regulations made by the Secretary of State. Subsections (9) and (10) provide that a statutory instrument containing regulations under subsection (8)(c) are subject to the affirmative resolution procedure. This will give Parliament the opportunity to actively debate any additions to the types of information that may be shared and the purposes for which that information may be used and will provide a high degree of transparency over any such additions.

#### **Part 4**

##### **Clause 34 – Crown Estate**

68. Clause 34 provides for the devolution to Scottish Parliament of the functions of managing the Crown Estate’s wholly-owned assets in Scotland (“the Scottish assets”), the revenue arising from those assets and competence to legislate about those functions. It contains two separate powers to make subordinate legislation, each of which is considered below.

##### ***New section 90B(1) of the Scotland Act 1998***

*Powers conferred on: Treasury*

*Powers exercised by: Scheme exercisable by statutory instrument*

*Parliamentary procedure: Affirmative resolution procedure in both Houses of Parliament; amendments to scheme subject to negative procedure before both Houses unless it adds to, replaces or omits any part of the text of an Act or makes provision by virtue of subsection 90B(8) or (15).*

69. Currently, the management of the Crown Estate is a reserved matter. Under the Crown Estate Act 1961 (c.55), the Crown Estate Commissioners (“the Commissioners”) are required to manage the Crown Estate on a commercial basis.

70. Depending on any future legislation passed by the Scottish Parliament, the Scottish Ministers may be able to take a different approach to managing the Scottish assets (for example, to adopt a less commercial approach to some aspects of management, including widening the role of social enterprise). To ensure both that the Scottish Ministers can manage the Scottish assets as they see fit, whilst at the same time ensuring that the Commissioners continue to meet their existing commercial

management obligations under the Crown Estate Act 1961, clause 31 effects devolution by means of a transfer of functions.

71. Clause 31(1) inserts new section 90B (the Crown Estate) into the Scotland Act 1998 (c.46).
72. New section 90B(1) enables the Treasury to make a scheme transferring all the existing Scottish functions of the Commissioners to the Scottish Ministers or a person nominated by the Scottish Ministers (“the transferee”). The existing Scottish functions are defined for these purposes in subsections (2) and (3) of new section 90B.
73. In addition to effecting the transfer of functions, the scheme will include the following matters-
  - A full (but non-exhaustive) list of the property, rights and liabilities which appear to the Treasury to relate to the transfer (new section 90B(5)).
  - The transfer of associated rights and liabilities of the Commissioners and provision ensuring that no person in Crown employment is adversely affected by the transfer (subsections (6) and (7) of new section 90B).
  - Such provision as the Treasury consider necessary or expedient in relation to defence or national security, telecommunications, oil and gas, and the interests of consumers in relation to electricity networks (new section 90B(8)).
  - Any necessary incidental, supplemental, transitional and consequential provision (new section 90B(10)).
74. The transfer is subject to any provision made under new section 90B(8) and on the transfer date specified in the scheme the existing Scottish functions, and the associated rights and liabilities, will vest in the transferee in accordance with the scheme (subsections (9) and (11) of new section 90B). However, the scheme can only be made by the Treasury with the agreement of the Scottish Ministers (new section 90B(13)).
75. The power to make the scheme is exercisable by statutory instrument (new section 90B(14)) and the scheme will be subject to the usual draft affirmative procedure before both Houses of Parliament (also known as the type C procedure) (clause 34(3)). We think the usual draft affirmative procedure is appropriate for the following reasons.

76. The scheme will contain matters of detail which it is appropriate to include in subordinate legislation. Also, whilst most of this detail will give effect to the transfer of functions, the principle of that transfer and the functions which are to be transferred are specified in the Bill (see subsections (1) to (3), (4A) to (4D) and (11) of new section 90B).
77. Generally in these circumstances the usual negative resolution procedure would be appropriate. However, because of the provision which will be made under new section 90B(8) to protect strategic interests we consider that the usual draft affirmative procedure is appropriate in this case and that both Houses of Parliament should be given the opportunity to debate the scheme.
78. Amendments of the scheme will be made in the same way as the scheme itself. However, under clause 31(4) such amendments will be subject to the usual negative procedure before both Houses of Parliament (also known as the type I procedure) if there is no amendment of primary legislation, no retrospective provision (under new section 90B(15)) and no amendment made under new section 90B(8). We think the usual negative procedure is appropriate in these circumstances, since – (i) the reasons for applying the draft affirmative procedure to the scheme would not apply, and (ii) other provision which typically triggers the usual draft affirmative procedure would also be absent.

**Clause 34(7)**

*Powers conferred on: Her Majesty*

*Powers exercised by: Order in Council exercisable by Scottish statutory instrument*

*Parliamentary procedure: Affirmative procedure in the Scottish Parliament*

79. The functions of the Commissioners which are to be transferred by the scheme are contained in the Crown Estate Act 1961. Clause 34(5) modifies these functions for the purposes of the transfer, but the application of this modified version of the Crown Estate Act 1961 is subject to any provision made by another enactment or an Order in Council under clause 34(7) (see clause 34(6)).
80. As mentioned above, the Scottish Ministers may wish to adopt a different form of management for the Scottish assets.

81. Following the coming into force of the scheme, the Scottish Parliament will be able to legislate about the management of the Scottish assets. If the Scottish Parliament legislates in this way, subject to subsections (4A) to (4D) of new section 90B clause 34(6) will enable that legislation to disapply the Crown Estate Act 1961 as modified by clause 34(5).
82. However, it will be potentially cumbersome to start the management of the Scottish assets under a modified Crown Estate Act 1961 and then to change the management of those assets following an Act of the Scottish Parliament. For that reason clause 34(7) enables Her Majesty by Order in Council to make provision about the exercise of the functions transferred by the scheme including provision taking effect on or before the transfer date. Consequently, clause 34(7) enables provision similar to that mentioned in the previous paragraph to be made *before* the coming into force of the scheme, but to take effect immediately following transfer.
83. Subject to subsections (4A) to (4D) of new section 90B, by either means the Scottish Government is able to make alternative provision about the management of the Scottish assets (that is, alternative to the Crown Estate Act 1961 as modified by clause 34(5)). However, an Order in Council under clause 34(7) potentially enables the Scottish Ministers to receive the transferring functions and begin the management of the Scottish assets, with their preferred management approach already in place.
84. The power in clause 34(7) is exercisable by Scottish statutory instrument. Because the clause enables legislation to be made otherwise than in an Act of the Scottish Parliament, clause 34(8) applies the affirmative procedure Clause 34(9) also applies certain provisions in the Scotland Act 1998 to the power in clause 34(7).

## **Clause 37- Transfer of responsibility for Scottish Reserved Tribunals**

*Power conferred on: The Queen in Council*

*Power exercisable by: Order in Council made by Statutory Instrument*

*Parliamentary procedure: Affirmative Resolution in both Houses of Parliament and the Scottish Parliament before Order in Council is made*

### ***Background***

85. Clause 37 creates a new Order in Council making power the purpose of which is to enable the transfer of reserved functions from UK wide tribunals to Scottish tribunals. Orders in Council made under this power will be of “type A” (adopting the terminology for the procedure by which delegated legislation under the Scotland Act 1998 (the 1998 Act) is classified in Schedule 7 to that Act). The procedure entails affirmative resolutions by each House of Parliament and by the Scottish Parliament before an Order in Council can be made by Her Majesty in Council.
86. Schedule 5 of the 1998 Act defines “reserved matters” for the purposes of the 1998 Act. The definition of reserved matters serves a key purpose in the 1998 Act by making clear those matters on which the Scottish Parliament cannot legislate.
87. “Tribunals” as a topic does not appear in the list of reserved matters in Schedule 5 to the 1998 Act. The Scottish Parliament has already used its legislative competence to create a tribunal system in the Tribunals (Scotland) Act 2014. It is currently undertaking a process by which it will transfer into that tribunal system (the First-tier Tribunal for Scotland and the Upper Tribunal for Scotland) the appeals or other rights to access a tribunal which have been conferred in devolved areas of law. However, the Scottish Parliament cannot currently pass legislation enabling the tribunal system established by the 2014 Act to be applied for the purposes of determining disputes where the substantive right of appeal and the remedies are conferred by reserved legislation.
88. New paragraph 2A in Part 3 of Schedule 5 to the 1998 Act will enable the tribunal system established by the Tribunals (Scotland) Act 2014 to be applied (i.e. using the rules of procedures, types of judicial membership, provision for staffing etc specified by that Act) for this purpose.

89. The transfer of reserved functions from UK tribunals to Scottish tribunals will require a package of legislative measures. Responsibility for this legislation will be split between Westminster and the Scottish Parliament.
90. Where the functions to be transferred are subject to “qualified transfer” (paragraph 2A(4)), an Order in Council under paragraph 2A(4) will specify the functions which are to be transferred to a specified Scottish tribunal. This Order will include all those provisions which are considered necessary or expedient for the purposes of or in consequence of the transfer (these may include conditions or restrictions). If the Order is made, the transfer of those functions will then become non-reserved. The Scottish Parliament can then, in an Act of the Scottish Parliament, make the actual transfer of the functions in accordance with the provisions of the Order in Council.
91. It is possible that there will be UK tribunals whose functions are neither subject to qualified transfer nor excluded from transfer. It is expected that these situations will arise infrequently. Provision could be made by Westminster for the transfer of the functions of these tribunals by an Act of the Scottish Parliament by providing for a definition of “Scottish cases” under paragraph 2A(2) that would apply to them.

### *Detail*

92. It will be within the competence of the Scottish Parliament to transfer to a specified Scottish tribunal the functions of a tribunal in sub-paragraph (6), if that transfer is in accordance the Order in Council made under sub-paragraph (4). The Order in Council will define what constitutes a “Scottish case” (sub-paragraph (2)), specify the functions to which it relates and identify the Scottish tribunal which can take over that jurisdiction.
93. New paragraphs 2A(5)(c) and (8) specify that the Order in Council made under sub-paragraph (4) can make any provision necessary or expedient for the purposes of or consequential on such transfer. New paragraph 2A(8) gives examples of the types of provision that may be made under new paragraph 2A(5) but without restricting the breadth of the power (new paragraph 2A(9)).

94. The procedure, organisation and management of the Scottish tribunal to which functions are transferred will remain devolved. However, new paragraph 2A(5)(c) enables necessary or expedient conditions in relation to these matters to be imposed by the Order in Council. This will be done as a condition of the transfer of the reserved function to the tribunal.
95. Most of the consequential amendments that need to be covered by the Order in Council will be very similar to those made when transferring tribunals into the reserved tribunal system under the Tribunals, Courts and Enforcement Act 2007. Each right of appeal or reference to a statutory tribunal is set out in legislation and names the tribunal which has jurisdiction over that right. Reserved legislation contains a large number of specific rights of appeal, all of which have to be amended to identify the correct Scottish tribunal for Scottish cases. There will also need to be transitional provisions governing what happens to cases pending at the time the Order in Council comes into force and providing for continuity of legal force and effect of decisions made by the predecessor tribunals.
96. Other consequential amendments will be needed for some tribunals but not others. An Order in Council to devolve, for example the functions of the Employment Appeal Tribunal (EAT) for Scottish cases would, for example, need to consider which provisions of the Employment Tribunals Act 1996 (the 1996 Act) are no longer needed because devolved legislation already makes sufficient provision, or because the function stated in the 1996 Act ceases to apply in relation to Scottish cases.
97. For example, the Lord Chancellor's function under the 1996 Act of making the EAT's rules of procedure would be amended so as to apply only in relation to England and Wales.
98. Similarly, the Lord Advocate's responsibilities in relation to the making of applications relating to vexatious litigants might no longer need to be stated in the reserved legislation if those functions are only ever likely to apply in Scottish cases and if there is already similar provision in Scottish law for his functions in such cases.

99. New paragraph 2A(8) identifies some of the matters and purposes which are anticipated as being relevant or expedient when making the Order.
100. New paragraph 2A(8)(a)(i) identifies that the Order in Council might modify the function that is being transferred. New paragraph 2A(8)(a)(ii) provides that it may impose certain conditions or restrictions. This could mean, for example, that in any application in which the Employment Tribunal has to determine a question as to entitlement to a payment from the National Insurance Fund, provision must be made to enable the Secretary of State for Business, Innovation and Skills to be treated as a party to the case.
101. The Order might also impose a restriction on the functions that are transferred. One example might be an amendment to the reserved legislation stating that in Scottish cases, in certain situations rules of procedure must make similar provision on a certain matter to those in force in the reserved tribunal.
102. New paragraph 2A(8)(b) also identifies some of the purposes for which provisions may be included in the Order in Council under paragraph 2A(5)(c). These include securing consistency in relation to matters of practice and procedure between the Scottish tribunal and the tribunals that continue to deal with cases arising in other parts of the United Kingdom. An example here might be a restriction on applying for interim relief where such a restriction applies in the determination of similar non Scottish cases in the reserved tribunal system.
103. The purposes mentioned in sub-paragraph (8)(b)(ii) would also include the promotion of judicial co-operation in the interests of consistency in the determination of cases in different parts of the United Kingdom. An example of the use that might be made of that includes encouraging the Presidents of the respective tribunals in Scotland and the rest of the United Kingdom to co-operate in emphasising common interpretation of the reserved law which they will both be charged with applying, via the issuing of joint or mutually agreed Practice Directions.
104. The reserved tribunals whose functions are eligible for transfer under the Order making power deal with a very diverse range of disputes and issues. They



range from those dealing with individuals challenging decisions of the state on personal welfare benefit claims to those involving a claim against an employer for breach of contract. This diversity, all of which relates to the effective delivery of reserved matters is likely to generate some situations where limits or constraints or additional requirements may need to be applied by the devolved tribunal and that these may differ depending upon the matters being heard.

105. There will need to be a clear jurisdictional boundary as to which cases should proceed in the reserved tribunals and which should proceed in the devolved tribunal. In this context, we anticipate, for example, that the definition of a “Scottish case” will be very different in the context of welfare benefit appeals from the context of employment claims. There might also be a need to transfer cases from one jurisdiction to another if, for example, parties move.

106. As set out in the Command Paper *Scotland in the United Kingdom: An enduring settlement*, the use of clause 33 and the preparation and timing of the resulting Orders in Council will need to be developed in collaboration with the Scottish Government and the judiciary in both Scotland and England and Wales so that the process of transfer is managed in such a way as to respect the need to ensure that all those accessing the tribunals during the process of change continue to enjoy effective access to justice.

107. The Order in Council making power in new paragraph 2A is also intended to deal with the possibility that a UK tribunal falls outside those listed in sub-paragraph (6). We consider it unlikely that an Order in Council would often be required for this purpose: however, this provision is required to enable the transfer of the relevant cases from a tribunal to a Scottish tribunal under sub-paragraph (1). As with the reserved tribunals subject to qualified transfer, there will need to be a clear jurisdictional boundary as to which cases should proceed in the reserved tribunals and which should proceed in the devolved tribunal. In this context, we anticipate, for example, that the definition of a “Scottish case” could be very different in different jurisdictions.

## **Clauses 38, 39, 40 and 41 - Roads**

*Powers conferred on: the Scottish Ministers*

*Powers exercised by: various*

*Parliamentary procedure: various*

108. Clause 38 amends Section E1, Part 2 of Schedule 5 to the Scotland Act 1998 to devolve to the Scottish Parliament legislative competence for most aspects of road signs and speed limits. The existing functions of the Secretary of State relating to those newly devolved areas of competence, including delegated powers functions, are transferred to the Scottish Ministers.

109. The executive functions conferred by the following provisions of the Road Traffic Act 1988 which include delegated powers will be devolved from UK Ministers to Scottish Ministers so far as they concern roads in Scotland:-

- Section 36(5) - power to specify any traffic sign for the purposes of column 5 of the entry in Schedule 2 to the Road Traffic Offenders Act 1988 relating to offences committed by failing to comply with certain signs which involve discretionary disqualification.

110. The executive functions conferred by the following provisions of the Road Traffic Regulation Act 1984 which include delegated powers will be devolved from UK Ministers to Scottish Ministers so far as they concern roads in Scotland (but see paragraph 111 below):-

- Section 15(3) - power to direct that an order made by a traffic authority under section 14 (temporary prohibition or restriction on roads) which is subject to the time limit of eighteen months applicable to certain orders under section 15(1)(b) shall continue in force for a further period not exceeding six months.
- Section 15(5) - power to direct that an order made by a traffic authority under section 14 (temporary prohibition or restriction on roads) which is subject to the time limit of six months applicable to certain orders under section 15(1)(a) shall continue in force for a further period.
- Section 15(7) - power to alter the number of days for the time being specified in that subsection as the time limit applicable to notices issued by a traffic authority under section 14 (temporary prohibition or restriction on roads).

- Section 16(2) – power to make regulations with respect to the procedure to be followed in connection with the making of orders and the issue of notices by traffic authorities under section 14 (temporary prohibition or restriction on roads).
- Section 16(2A) – power to make appropriate provision for the making and consideration of objections to an order proposed to be made by a traffic authority under section 14 (temporary prohibition or restriction on roads) and for any of the matters mentioned in paragraph 22(1) of Schedule 9.
- Section 25(1) – power to make regulations with respect to the precedence of vehicles and pedestrians and generally with respect to the movement of traffic at and in the vicinity of crossings.
- Section 28(1) – power to approve a uniform worn by a school crossing patrol.
- Section 28(4) – power to prescribe the size, colour and type of sign exhibited by a school crossing patrol (or to authorise the use of signs not so prescribed).
- Section 64(1) – power to specify (or to authorise) any object or device for conveying to traffic on roads (or any specified class of traffic) warnings, information, requirements, restrictions or prohibitions of any description.
- Section 64(2) – power to prescribe the size, colour and type of traffic signs (or to authorise the erection or retention of a sign of another character).
- Section 65(1) and (1A) – power to give general (or other) directions with which a traffic authority must comply when causing or permitting traffic signs to be placed on or near a road, including power to require equipment used in connection with traffic signs to be of a type approved in accordance with the directions.
- Section 65(2) – power to give directions to a local traffic authority for the placing (or replacing) of traffic signs of any prescribed type or authorised character.
- Section 65(3A)(ii) – power to prescribe a body appearing to be representative of the interests of road users or any class of road users.
- Section 69(3) – power to give directions to a local traffic authority requiring the authority to remove (or cause to be removed) any traffic sign.
- Section 79(3) – power to determine the terms and conditions applicable to advances towards expenses incurred by a council.

- Section 81(2) – power to increase or reduce the general speed limit for restricted roads.
- Section 82(1)(b) – power to specify the classification or type of road in Scotland which is a restricted road.
- Section 82(3) – power to prescribe the manner in which a notice must be published by a traffic authority declaring the date on which a special road (or the relevant part of the special road) is open for use as a special road.
- Section 84(1A) – power to authorise that an order made under section 84(1)(c) (order which prohibits the driving of vehicles on a road at a speed exceeding that indicated by traffic signs in accordance with the order) does not have to comply with regulations made under section 84(1B).
- Section 84(1B) – power to make regulations governing the provision which may be made by orders of local traffic authorities under section 84(1)(c) (order which prohibits the driving of vehicles on a road at a speed exceeding that indicated by traffic signs in accordance with the order).
- Section 85(2)(a) – power to give general (or other) directions to a local traffic authority to erect and maintain signs and to alter or remove traffic signs.
- Section 87(1)(b) – power to prescribe the purposes for (and circumstances in) which vehicles other than emergency vehicles may be used without complying with statutory provisions imposing speed limits.
- Section 131 – power to direct, with the consent of the appropriate Crown authority, that all or any of the road traffic enactments shall apply to Crown roads, or to any specified Crown road (etc.).
- Schedule 9, paragraph 1 – power to give directions to local authorities as to certain orders made by local authorities under the Act.
- Schedule 9, paragraph 3 – power to exercise the powers of local authorities to make certain orders under the Act.
- Schedule 9, paragraph 7(1) – power to vary or revoke certain orders made by local authorities under the Act.
- Schedule 9, paragraph 13(1) – power to consent to certain orders made by local authorities under the Act.
- Schedule 9, paragraph 15(1) – power to add to or remove certain orders made by local authorities under the Act.

- Schedule 9, paragraph 17(1) – power to grant a general consent for the making of certain orders by local authorities under the Act.
- Schedule 9, paragraph 21 – power to make regulations providing for the procedure to be followed in connection with the making (etc.) of certain orders by local authorities under the Act.
- Schedule 9, paragraph 24 – power to make regulations with respect to the procedure in connection with the making of certain orders under Schedule 9.

111. In a few of the cases in the list above some aspects of the executive functions concerned were non-textually transferred to the Scottish Ministers by the Scotland Act 1998 (see section 53 of that Act in particular). In these cases the textual amendments made by the Bill complete the transfer of the function. There are also a very few cases where the whole of an executive function was non-textually transferred by that Act so that a textual amendment made by the Bill does not effect any substantive change. In these cases the amendment is being made for the sake of readability given the proximity of the relevant provision to other provisions that are being amended by the Bill.

112. The procedure by which the powers will be exercised by Scottish Ministers in the Scottish Parliament will remain the same as the procedure by which they are currently exercised by UK Ministers in the UK Parliament. In the following cases, there will be a reciprocal requirement for Scottish Ministers and UK Ministers to consult each other before exercising those functions:-

#### Road Traffic Act 1988

- Section 36(5)

#### Road Traffic Regulation Act 1984

- Section 16
- Section 25
- Section 64
- Section 65(1)
- Section 81(2)
- Section 85(2)

- Section 87(1)(b)

113. Clause 41(3) to (6) has been included because new regulations and general directions on the size, colour and type of traffic signs and their placing (including provisions about pedestrian crossings) are currently being prepared for spring 2016. This part of the clause will allow the Secretary of State, on one occasion only, to make those regulations and general directions for Scotland (in addition to England and Wales) in reliance on section 36(5) of the 1988 Act and sections 25, 64, 65(1), and 85(2) of the 1984 Act. The Secretary of State will not, however, be able to do this unless Scottish Ministers consent.

### **Clause 45 Onshore Petroleum: Consequential Amendments**

#### ***Sub-sections 6 to 10: Licences: further provisions***

*Powers conferred on: The Scottish Ministers*

*Powers exercised by: Order made by Scottish statutory instrument and regulations made by statutory instrument*

*Scottish Parliamentary procedure: Negative procedure*

114. Section 4 of the Petroleum Act currently confers powers on the Secretary of State to make regulations prescribing the application process for petroleum licences, the conditions regulating the size and shape of areas to be licensed and the model clauses to be inserted into a licence, unless he or she sees fit to exclude or modify them.
115. Sub-sections (6), (7) and (8) transfer the power to make regulations, currently exercisable by the Secretary of State, to the Scottish Ministers in relation to the Scottish onshore area. The subsections will, though, reserve to the Secretary of state power to make regulations on the following matters:
1. the consideration payable for a licence;
  2. the measurement of petroleum, including the facilitation of such measurement
  3. the keeping of accounts;
116. The clauses do not create any new delegated powers, but rather redistribute the way in which the current powers conferred by section 4 may be exercised. This is to give

effect to the recommendations of the Smith Commission that the licensing of onshore oil and gas extraction underlying Scotland be devolved.

117. Sub-sections (6), (9) and (10) transfer powers to annul regulations made by Scottish Ministers to the Scottish Parliament. Any regulations made by the Secretary of State remain subject to annulment by negative procedure in the Houses of Parliament.
118. The sub-sections do not create any new delegated powers, but rather redistribute the way in which current powers conferred by section 4 of the Petroleum Act 1998 may be exercised. This is to give effect to the recommendations of the Smith Commission that the licensing of onshore oil and gas extraction underlying Scotland be devolved.

#### **Clause 46 Onshore Petroleum: Existing Licences**

##### *Sub-sections 1 to 4: Existing Licences*

*Powers conferred on: The Secretary of State*

*Powers exercised by: Regulations made by statutory instrument*

*Parliamentary procedure: Affirmative procedure*

119. Sub-section (1) confers the Secretary of State with the power to make amendments to the provisions of an existing licence in onshore Scotland and to the model clauses that are incorporated or have the effect as if incorporated into such an existing licence where the Secretary of State deems it necessary or expedient to do so. The power is limited to giving effect to section 40 which amends the competence of the Scottish Parliament such that it includes the licensing of onshore petroleum in Scotland.
120. This new power addresses the fact that the existing licences cannot be transferred wholesale. Most clauses in existing licences in the onshore Scottish area will be amended so as to have effect towards Scottish Ministers, rather than towards the Secretary of State. However, some clauses, related to consideration, measurement and the keeping of accounts, are being reserved and will therefore continue to apply in relation to the Secretary of State. In addition, the content of these existing licences, in terms of model clauses incorporated and other provisions, can vary considerably.

121. The provision also confers on the Secretary of State the power to split existing licences where part of the licensed area falls within onshore Scotland and the remainder of the licence falls outwith onshore Scotland.
122. This power addresses the issue of cross-border licences issued between Scotland and England by the Secretary of State. Such licences will require splitting to ensure that the administration of the acreage in onshore Scotland can be transferred to Scottish Ministers while the administration of acreage in onshore England remains with the Secretary of State.
123. It will be necessary for these amendments to the clauses within existing licences to come into effect at the same time or after the time of commencement of section 40 as the licences are transferred to Scottish Ministers. The delegated power represents the most practical approach to ensuring that the limited number of existing Scottish onshore licences are transferred appropriately within the timeframe required to give effect to the Smith Commission Agreement.

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

*Powers conferred on: Scottish Ministers*  
*Powers exercised by: various*  
*Parliamentary procedure: various*

124. This clause is identical to that in clause 30 except that this glosses section 53 to transfer functions devolved by virtue of clause 47. Under section 53 of the Scotland Act 1998, functions conferred on a Minister of the Crown under a pre-commencement enactment and exercisable within devolved competence, are transferred to the Scottish Ministers.
125. This clause glosses section 53 to provide that, for the purposes of the functions being devolved by virtue of clause 47, a pre-commencement enactment is an enactment passed or made before a certain date. This ensures that the functions transferred by section 53 of the 1998 Act include the functions in relation to the areas devolved by virtue of Clause 47 which amend the reservations in Sections C7, C8, C9, C11, D1 and



D2 in Part 2 of Schedule 5 to the 1998 Act; that transfer has effect from the date on which Clause 47 comes into force.

126. The functions transferred to the Scottish Ministers by section 53, as glossed by this clause, will include powers to make secondary legislation. Clause 65 ensures that the parliamentary procedure applicable to those delegated functions will be the equivalent in the Scottish Parliament.

127. It is considered appropriate that the procedure applicable to the delegated functions in the Scottish Parliament should be the equivalent to that applicable to the functions in the Parliament. The Scottish Parliament will have power to legislate in this area and could, once competence has transferred, alter the parliamentary procedure that applies to those powers. This is in keeping with the principle of devolution.

**Clause 49- Gaming machines on licensed betting premises**

*Powers conferred on: the Scottish Ministers*

*Powers exercised by: order made by Scottish statutory instrument*

*Parliamentary procedure: affirmative resolution*

128. This clause will insert a specific exception into Section B9 in Part 2 of Schedule 5 to the 1998 Act, so that the Scottish Parliament has legislative competence to vary the number of certain gaming machines authorised for which the maximum charge for use is more than £10. Such a variation may include a reduction to zero. The various categories and sub-categories of gaming machines are defined in the Categories of Gaming Machine Regulations 2007/2158.

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

130. At present, section 172(11) of the 2005 Act gives the Secretary of State power to vary the number and category of gaming machines authorised by specified kinds of premises licence, including a betting premises licence. In line with the transfer of

legislative competence, the functions of the Secretary of State to vary the number of gaming machines authorised for which the maximum charge for use is more than £10 or whether such machines are authorised, are transferred to the Scottish in the case of betting premises licence in Scotland.

131. The order is subject to the affirmative procedure in the Scottish Parliament. This is consistent with the procedure which currently applies to orders made by the Secretary of State under section 172(11): see section 355(6) of the 2005 Act.

### **Part 5**

#### ***Clause 55 - Fuel poverty: support schemes***

*Power conferred on: The Scottish Ministers*

*Power exercised by: Regulations*

*Parliamentary procedure: Affirmative procedure in the Scottish Parliament*

132. Clause 55 confers power on the Scottish Ministers to make regulations under section 9 of the Energy Act 2010 (“the 2010 Act”) (*schemes for reducing fuel poverty*) in relation to Scotland, by inserting a new section 14A into that Act.

133. Regulations made by the Secretary of State under section 9 of that Act are subject to the Affirmative Resolution procedure and may only be made with the consent of HM Treasury. HM Government considers that the power conferred on the Scottish Ministers should be subject to the equivalent parliamentary procedure in the Scottish Parliament, but that the requirement to obtain the consent of HM Treasury is not necessary. Accordingly, regulations made by the Scottish Ministers under section 9 of the 2010 Act are subject to the affirmative procedure.

134. In order to give effect to paragraph 68 of the Smith Commission Agreement, this clause does not confer on the Scottish Ministers the power to make regulations under section 9(4), (9)(a) and (9)(c)(v) and (vi) of the 2010 Act. The power to determine, inter alia, the obligated parties and the total benefits to be provided under a scheme, and the reconciliation mechanism by virtue of which benefits provided by an obligated party under a scheme may be adjusted to secure an equitable distribution between obligated parties, therefore remain reserved.

135. In order to give effect to paragraph 68 of the Smith Commission Agreement, that the devolution of this power is implemented in a way that is not to the detriment of the rest of the UK or to the UK's international obligations and commitments on energy efficiency and climate change, new section 14A(5) of the 2010 Act provides that the Scottish Ministers may not make regulations under section 9 unless they have consulted, and obtained the agreement of, the Secretary of State. New section 14A (6) to (13) sets out the circumstances in which the Secretary of State may make regulations under section 9 in relation to Scotland, in order to give further effect to the Smith Commission Agreement.

### **Clause 56 Energy Company Obligation**

*Power conferred on: The Scottish Ministers*

*Power exercised by: Order*

*Parliamentary procedure: Affirmative procedure in the Scottish Parliament (except in certain limited cases when the negative procedure shall apply)*

136. Under section 33BC of the Gas Act 1986 ("the 1986 Act") the Secretary of State may by order impose obligations on gas suppliers to achieve targets for the promotion of reductions in carbon emissions. The Secretary of State may specify the period over which the target is to be achieved and the gas suppliers that are to be subject to the obligation. Subsection (2) of this clause confers a power on the Scottish Ministers to specify how gas suppliers may meet their obligations to achieve the target imposed by the Secretary of State through measures carried out in Scotland. It also transfers many of the powers under section 33BC of the 1986 Act to the Scottish Ministers in relation to Scotland. It also imposes a duty on the Scottish Ministers, when orders are made under section 33BC, to exercise those powers in the way they think most likely to secure that the costs of the obligation relating to Scotland, when expressed as a proportion of the total costs of the obligation across Great Britain, do not exceed the share of any overall target apportioned to Scotland (power to apportion the overall carbon emissions reduction target is conferred on the Secretary of State by clause 52). Subsection (3) confers similar powers and duties on the Scottish Ministers in relation to home-heating cost reduction targets imposed by the Secretary of State on gas suppliers under section 33BD of the 1986 Act. Subsections (5) and (6) confer similar powers and duties on the Scottish Ministers in relation to carbon emission reduction targets and home-heating cost reduction targets imposed by the Secretary of State on

electricity suppliers under sections 41A and 41B of the Electricity Act 1989 (“the 1989 Act”).

137. The powers under sections 33BC and 33BD of the 1986 Act and under sections 41A and 41B of the 1989 Act have previously been used by the Secretary of State to impose targets on gas and electricity suppliers in relation to Great Britain, including for the period up to 31 March 2017.

138. Orders under sections 33BC and 33BD of the 1986 Act and under sections 41A and 41B of the 1989 Act are generally subject to the affirmative resolution procedure. This is considered appropriate as these sections set out a framework of powers. However, the negative resolution procedure applies if the order is made only for the purpose of amending an earlier order made under those sections so as to alter the provisions:

- as to the action which qualifies for the purpose of meeting the targets;
- requiring part of the targets to be met by action of a specified description;
- determining, or specifying the method for determining, the contribution that any action makes towards meeting the targets.

139. In these limited number of cases, the amendments relate to less central, more technical matters, and in these cases we believe the negative resolution procedure to be an appropriate level of scrutiny, given the essentially administrative nature of the matters in question.

140. HM Government considers that the powers conferred on the Scottish Ministers should be subject to equivalent procedure in the Scottish Parliament. Accordingly, where a power exercised by the Secretary of State would be subject to the Affirmative Resolution procedure in the UK Parliament, it is subject to the affirmative procedure in the Scottish Parliament when exercised by the Scottish Ministers. Similarly, where a power exercised by the Secretary of State would be subject to the Negative Resolution procedure in the UK Parliament, it is subject to the negative procedure in the Scottish Parliament when exercised by the Scottish Ministers.

141. In addition to the powers described above as being subject to the negative procedure in certain cases, the powers conferred on the Scottish Ministers by this clause can, in particular, be used to:

- where the overall target has been apportioned between England & Wales and Scotland, specify the body to act as administrator of the part of the target apportioned to Scotland and provide for enforcement by the administrator;
- require all or part of the target (or the part apportioned to Scotland) to be met by action in Scotland relating to individuals, properties or areas of a specified descriptions. For example, vulnerable and lower income households entitled to certain benefits, or living in properties with poor energy performance or living in rural areas;
- enable the administrator to direct a supplier to meet part of the target by action in Scotland relating to a named individual (this would confer powers on the Scottish Ministers to establish a system of "mandated referrals", whereby specific vulnerable households might be referred to suppliers with a requirement to offer assistance);
- enable actions in Scotland to count for more towards the target if they relate to individuals or properties of a specified description (this incentivises these actions);
- allow earlier actions and actions in Scotland by other persons to count towards the target;
- give directions to the administrator as to how it should carry out its functions; and
- make exceptions, supplementary, incidental and transitional provision.

142. We consider that delegated powers are necessary so that each target can be designed and set in a way that is considered appropriate in light of the circumstances applying at the time. Delegated powers enable the energy company obligations to cover a wide range of measures and circumstances, such as facilitating the transfer of measures between suppliers. Rules for the calculation of the targets and for determining the contribution made by each measure towards the targets can be technical and need to be capable of being kept up to date.

143. In order to give effect to the elements set out in paragraph 68 of the Smith Commission Agreement that responsibility for setting the scale, costs and apportionment of the obligations, and the obligated parties should remain reserved, this clause does not confer on the Scottish Ministers the powers under section

33BC(1), (1A), (3), (5)(a) and (7)(a) of the 1986 Act (nor the equivalent powers under section 33BD of the 1986 Act and under sections 41A and 41B of the 1989 Act). These are the powers to determine the obligated parties; the period of the obligation; the criteria by reference to which the target for each supplier is to be determined by the Administrator; the treatment of new suppliers and the circumstances in which a supplier's target may be altered. These powers remain exercisable by the Secretary of State.

144. In order to give effect to paragraph 68 of the Smith Commission Agreement, that the devolution of these powers should be implemented in a way that is not to the detriment of the rest of the UK or to the UK's international obligations and commitments on energy efficiency and climate change, the Scottish Ministers may not make orders under sections 33BC or 33BD of the 1986 Act or under sections 41A or 41B of the 1989 Act unless they have consulted, and obtained the agreement of, the Secretary of State (subsection (8) of the new sections inserted by this clause). In order to give further effect to the Smith Commission, the Secretary of State may continue to exercise the powers conferred on the Scottish Ministers by this clause in relation to Scotland in the circumstances set out in subsections (10) to (12) of new sections 33BCA and 33BDA of the 1986 Act and sections 41AA and 41BA of the 1989 Act.

#### **Clause 57 - Apportionment of targets**

*Power conferred on: The Secretary of State*

*Power exercised by: Order*

*Parliamentary procedure: Affirmative resolution in the UK Parliament*

145. Under section 103(1) of the Utilities Act 2000 ("the 2000 Act"), the Secretary of State may by order specify an overall target for the promotion of measures by gas and electricity suppliers for reductions in carbon emissions. Where the Secretary of State has specified an overall target, subsection (3) of this clause confers a power on the Secretary of State to apportion the target between England & Wales and Scotland, by reference to such criteria as may be specified in the order.

146. Where the overall target has been apportioned, subsection (4) of this clause confers a power on the Secretary of State to make provision for a gas or electricity supplier to

elect that a measure carried out in Scotland is to be treated instead as having been carried out in England & Wales. It also confers a power on the Secretary of State, with the agreement of the Scottish Ministers, to make provision for a gas or electricity supplier to elect that a measure carried out in England & Wales is to be treated instead as having been carried out in Scotland.

147. The power to elect may be made subject to conditions specified in the order. This power may be used to give suppliers some additional flexibility in how they achieve their targets, and may enable measures promoted by a supplier to count towards their targets even if the supplier has over-achieved in the measures delivered in one part of Great Britain, and under-achieved in the measures delivered in the other part. The power to impose conditions is necessary to ensure that the same measure is not submitted towards both the Scottish and England and Wales parts of an apportioned target, if an election has been made.

148. Subsections (6) and (7) of this clause confer similar powers on the Secretary of State in relation to any overall target set under section 103A(1) of the 2000 Act for the promotion of measures by gas and electricity suppliers for reductions in home-heating costs.

**Clause 59 Renewable energy installations - powers to make regulations in relation to safety zones**

*Power conferred on: The Scottish Ministers*

*Power exercised by: regulations made by Scottish statutory instrument*

*Parliamentary procedure: negative procedure in the Scottish Parliament*

149. Subsections (7) and (8) and (17) to (19) of clause 59 will amend section 96 (prohibited activities in safety zones) of and Schedule 16 (applications and proposals for notices under section 95) to the Energy Act 2004 (“the 2004 Act”) to confer on the Scottish Ministers the power to make regulations in relation to declaring safety zones, and applications for notices declaring safety zones, around renewable energy installations which are wholly in Scottish waters or an area of waters in a Scottish part of a Renewable Energy Zone.

150. Regulations made by the Scottish Ministers under section 96 of the 2004 Act may include provision setting out the general permissions allowing vessels to enter safety zones and carry out activities in areas declared to be safety zones. This is in addition to any individual permissions granted in a notice issued by the Scottish Ministers. Regulations made by the Scottish Ministers under Schedule 16 to the 2004 Act is may include provision prescribing the manner in which notices issued by the Scottish Ministers should be published and the persons on whom they should be served.

151. The powers conferred on the Scottish Ministers are to be exercised by Scottish statutory instrument and subject to the negative procedure in the Scottish Parliament (under section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).

152. This level of Parliamentary scrutiny by the Scottish Parliament is considered appropriate as regulations made by the Secretary of State under section 96 of and Schedule 16 to the 2004 Act in relation to the same matters are subject to the negative resolution procedure in the UK Parliament.

**Clause 59 Renewable energy installations - power to make regulations in relation to decommissioning programmes**

*Power conferred on: The Scottish Ministers*

*Power exercised by: regulations made by Scottish statutory instrument*

*Parliamentary procedure: negative procedure in the Scottish Parliament*

153. Subsections (13) and (14) of clause 54 will amend sections 111 (regulations about decommissioning) and 112 (duty to inform Secretary of State: regulations) of the 2004 Act to confer on the Scottish Ministers the power to make regulations in relation to the decommissioning of renewable energy installations which are wholly in Scottish waters or an area of waters in a Scottish part of the Renewable Energy Zone and those parts of related electric lines in such waters.



154. Regulations made by the Scottish Ministers under section 111 may include provision prescribing standards for decommissioning; about the financial security that a responsible person may be required to provide; for the prevention of pollution; and for inspections. Regulations made by the Scottish Ministers under section 111 may also include provision making it an offence to contravene the provisions of the regulations, but does not include a power to impose: (a) on summary conviction - a penalty of imprisonment or a fine of more than the statutory maximum; or (b) on conviction on indictment - a term of imprisonment of more than two years. Regulations made by the Scottish Ministers under section 112 may include provision prescribing the period within which a person must notify the Scottish Ministers that he is a responsible person.

155. The powers conferred on the Scottish Ministers are to be exercised by Scottish statutory instrument subject to the negative procedure in the Scottish Parliament (under section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).

156. This level of Parliamentary scrutiny by the Scottish Parliament is considered appropriate as regulations made by the Secretary of State under section 111 and section 112 of the 2004 Act in relation to the same matters are subject to the negative resolution procedure in the UK Parliament.

#### **Clause 64 – Fines, Forfeitures and Fixed Penalties**

*Powers conferred on: the Secretary of State and the Treasury*

*Powers exercised by: Regulations by statutory instrument*

*Parliamentary procedure: Affirmative procedure in the Commons*

157. This clause allows the Secretary of State with the consent of the Treasury, to make amendments to primary or secondary legislation, where a fine, forfeiture, or fixed penalty is required or authorised to be paid into the Consolidated Fund.

158. The Secretary of State is empowered to change the destination of the fine, forfeiture or fixed penalty to the Scottish Consolidated Fund.

*Procedure*

159. Orders under this clause will be made by statutory instrument and, where primary legislation is being amended, will be subject to the draft affirmative resolution procedure in the House of Commons.

160. It is submitted that the draft affirmative procedure is appropriate here to allow the House of Commons to scrutinise the changes to the destination of fine, forfeiture, and fixed penalty income. These regulations will be subject to approval before the House of Commons only, following the convention that financial matters are dealt with only by that House.

**Part 7**

**Clause 66 – Transfer of property etc to the Scottish Ministers**

*Power conferred on: The Queen in Council or a Minister of the Crown*

*Power exercised by: Order in Council or order*

*Parliamentary procedure: Negative resolution procedure but affirmative resolution procedure where the orders add to, replace or omit any part of the text of an Act.*

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

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

- by way of general transfer of functions (see the gloss of section 53 by clause 30 and clause 48).

- by textual amendment where legislative competence is also transferring;
- by textual amendment where there is no transfer of legislative competence; and
- where the consequential power in clause 68 is used to transfer a function to the Scottish Ministers.

163. Without an amendment to section 66, the power in that section could not be used following a transfer of functions in the last three class of cases. The first category would be within the scope of the existing power as section 53 is glossed by clause 30 and 48.

164. The power is required to, for example, transfer land to the Scottish Ministers that is used by a government department or a Minister of the Crown for a function that has transferred to the Scottish Ministers. Other examples include contracts between government departments and private contractors. The power in section 60 has been used once (SI 1999/1104) to effect a general transfer and deal with issues such as property with mixed use. There may be a need for a different approach when the power is used in relation to the transfers of functions by virtue of the Bill, as those functions will transfer on different dates. For example, the exceptions for devolved benefits may come into force on different dates, and any transfer of contracts will need to take place at the point the function transfers.

165. The choice of parliamentary procedure is the same as the existing procedure applicable to orders under section 60. It can be by way of negative resolution in the UK Parliament or affirmative resolution procedure. It must take the affirmative resolution procedure if the legislation contains provision which add to, replace or omit any part of the text of an Act (Schedule 7 to the Scotland Act). The parliamentary procedure is considered appropriate as the order will contain matters of detail which it is appropriate to include in subordinate legislation. Further, Parliament will have approved the transfer of functions from a Minister of the Crown to the Scottish Ministers in the Bill and the power to make subordinate legislation to transfer property, rights or interests in relation to such property and liabilities, is consequential on the transfer of those functions to the Scottish Ministers.

**Clause 67: Power to make consequential, transitional and savings provision**

*Powers conferred on: the Secretary of State*

*Powers exercised by: regulations (Statutory Instrument)*

*Parliamentary procedure: affirmative or negative procedure*

166. Subsection (1)(a) of this clause gives the Secretary of State the power to make consequential provision in connection with any provision in Parts 1, 3, 4, 5 or 6 of the Bill.

167. Subsection (1)(b) gives the Secretary of State the power to make transitional and saving provision in connection with the coming into force of any provision in Parts 1, 3, 4, 5 or 6.

168. Subsection (2) provides that provision under the clause may amend, repeal, revoke or otherwise modify an enactment, prerogative instrument or any other instrument or document, whenever passed or made. Subsection (7) defines the term “enactment” to include those made by the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. This is because there may be social security interactions in devolved legislation which require amendment. Section 105 of the Scotland Act 1998 extends to amending Scottish and NI legislation (see the definition of “enactment” in section 126(1)).

169. Subsections (5) and (6) provide that the affirmative Parliamentary procedure will apply to all regulations under this clause that include provision amending or repealing any provision of primary legislation (as defined in subsection (7)). Where regulations do not include provision amending or repealing any provision of primary legislation, they will be subject to the negative Parliamentary procedure. It is considered useful to be able to combine provision which would otherwise be subject to negative procedure in an affirmative instrument in these circumstances so that all amendments on an issue may be contained on one instrument. Also, any modifications of primary legislation, which would otherwise be subject to negative procedure, but which are akin to an amendment may in this way be included in an affirmative instrument, so as to permit Parliament the more ready opportunity of debating the provision.

170. Subsection (8) amends Schedule 4 to the Scotland Act 1998 to insert a reference to this clause into paragraph 14. This provides that where regulations under this clause modify an enactment then a function under that modified enactment or instrument is not transferred to Scottish Ministers by virtue of section 53 of the 1998 Act if the regulations provide that it is not to be transferred.

171. Powers to make consequential provision are commonly found in primary legislation. Sections 105 (read with 113) of the Scotland Act 1998 provide similar powers. The Bill contains consequential amendments identified as necessary during the course of its preparation. However, the nature of the Bill means that it affects both Westminster and Scottish Parliament legislation, and it is possible that officials in either administration may in future identify additional necessary amendments to either primary or secondary legislation.

172. In addition, provision made by Part 3 of the Bill affects a significant amount of social security legislation, which can be of an extremely complicated nature. Although extensive checks have been carried out as to the effect of the provisions of this Bill and the interaction with social security legislation, it is possible that, in implementing the provisions of the Bill, consequential amendments are found to be necessary to fulfil Parliamentary intention. Furthermore, Social security has, until now, broadly remained reserved across Great Britain and delivered on a GB-wide basis by the UK Government. In operating a system where responsibility for the different social security benefits paid in Scotland is split between the UK and Scottish Parliament there may be some areas where the respective Governments may wish to make mutually beneficial agreements relating to delivery which may require consequential amendments to existing legislation – for example to facilitate fraud investigations, debt recovery and compliance issues arising out of overpayments in respect of both reserved and devolved benefits. The feasibility of such arrangements will be dependent to some degree on the provision that the Scottish Parliament puts in place and any agreements would need to be considered and agreed between both the UK and Scottish Governments. It is therefore not possible to anticipate all possible amendments through the Bill.

173. It is recognised that the power to amend, modify or repeal future enactments is more extensive than many Henry VIII powers. Clause 27 amends section 53 of the 1998 Act (which provides for executive functions to transfer to Scottish Ministers) so that it operates on legislation passed or made before the “relevant date”. That date depends on when the provisions of Part 3 and clause 43 of the Bill come into force for a particular purpose. It is expected that commencement of Part 3 will take place over a period of time. In addition, some the provisions in Part 3 will be commenced for different purposes at different times, as and when administrative arrangements are in place to enable the transfer of functions. Accordingly, section 53 will operate to transfer executive functions under legislation which has not yet been passed or made. Although it is intended as far as possible to take account of the prospective effect of section 53 (as glossed) in that future legislation it may nevertheless, again due to the complexity of the subject matter, also need consequential amendment, repeal, revocation or modification.

#### **Clause 69 - Commencement**

174. Clause 69 provides for a power to bring into force by regulations. The other provisions of the Act are brought into force by provisions set out in Clause 63.
175. The provision allows the specified clauses to be brought into force on whatever day or days the Secretary of State appoints by regulations.
176. Commencement in this way has common precedent. It enables the Secretary of State to bring into force specified provisions of the Act through secondary legislation.
177. As usual with commencement regulations, they are not subject to any parliamentary procedure. Parliament has approved the principle of the provisions to be commenced by enacting them; commencement by regulations enables the provisions to be brought into force at a convenient time.

**Scotland Office**

**10 November 2015**