

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

SCOTLAND ACT 1998

EXPLANATORY NOTES

SCHEDULES

SCHEDULE 1: Constituencies, Regions and Regional Members

Purpose and Effect

This Schedule is given effect by section 1. It sets out the constituencies and regions for the purposes of elections to the Parliament, provides for the involvement of the Parliamentary Boundary Commission for Scotland in altering the regions and number of members to be returned from each region according to set rules, and provides for local inquiries to be held as a result of objections raised in relation to any proposed changes.

General

The section is linked to the set of sections on elections (sections 1-12) and to section 86 which removes the guaranteed minimum level of Scottish representation in the UK Parliament and prevents the amalgamation of Orkney and Shetland with another UK Parliamentary constituency.

The Parliamentary Boundary Commission for Scotland is established under section 2 of the Parliamentary Constituencies Act 1986. Its function is to keep under review the distribution of seats at elections to the UK Parliament. The Commission reports to the Secretary of State under section 3(1) and (3) of the 1986 Act and its recommendations may be given effect to by Order in Council.

These functions of the Boundary Commission were transferred to the Electoral Commission established under section 1 of the [Political Parties, Elections and Referendums Act 2000 \(c. 41\)](#) by virtue of section 16 and the amendments made by Schedule 3 to that Act. As a consequence the function of carrying out reviews of the seats in Scotland will be carried out by the Boundary Committee for Scotland established by the Electoral Commission under section 14 of that Act. In consequence, the provisions of paragraphs 3 to 8 of this Schedule were amended by paragraphs 17 to 24 of Schedule 3 to that Act. These notes therefore describe the position as it exists as at September 2001 under Schedule 1 to the Scotland Act, as originally enacted prior to the amendments to it come into force.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	28-Jan-98	412
CC	28-Jan-98	451
CC	28-Jan-98	452
Stage	Date	Column
CR	12-May-98	215

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<i>Stage</i>	<i>Date</i>	<i>Column</i>
CR	12-May-98	216
LC	8-Jul-98	1323
LC	8-Jul-98	1331
LC	8-Jul-98	1340
LR	22-Oct-98	1590
LR	22-Oct-98	1591
LR	22-Oct-98	1593
LR	22-Oct-98	1599
LR	22-Oct-98	1600
LR	22-Oct-98	1608
LR	22-Oct-98	1612
LR	22-Oct-98	1613
L3	9-Nov-98	602
L3	9-Nov-98	603
LCCLA	17-Nov-98	1180
LCCLA	17-Nov-98	1198
LCCLA	17-Nov-98	1199

Details of Provisions

Paragraph 1 provides that the constituencies of the Scottish Parliament are to be the same as the UK Parliamentary constituencies in Scotland, except that Orkney and Shetland will each have their own constituency. Thus, at the first election to the Scottish Parliament, the constituencies were Orkney, Shetland and the remaining 71 UK Parliamentary constituencies in Scotland. Each constituency returned a single member in accordance with section 1(2) and there were therefore 73 constituency members. However, any reduction in the number of UK Parliamentary constituencies as a result of the amendments made by section 86 will, by virtue of this provision, lead to a corresponding reduction in the number of constituencies for the Scottish Parliament.

Paragraph 2 provides what are the regions for the purpose of the return of regional members and what are the number of regional members to be returned. There are eight regions and seven members returned for each region (sub-paragraphs (1) and (3)). The eight regions are the same as the eight European Parliamentary constituencies which were provided for by sub-paragraph (2) of the European Parliamentary Constituencies (Scotland) Order 1996 ([S.I. 1996/1926](#)) even although those European parliamentary constituencies were superseded by the [European Parliamentary Elections Act 1999 \(c.1\)](#). The regions and number of members for each region may be altered by an Order in Council under the Parliamentary Constituencies Act 1986, as extended by paragraph 2(4) of this Schedule 1.

Reports of the Boundary Commission

Paragraph 3 applies where the Boundary Commission for Scotland submits a report to the Secretary of State under section 3(1) or (3) of the Parliamentary Constituencies Act 1986 making recommendations for the alteration of UK Parliamentary constituencies (sub-paragraph (1)). It effectively provides that, in such a case, the Commission must also consider whether or not changes are also required to be made to the boundaries of

regions and the number of seats for those regions in order to give effect to the rules in paragraph 7 (sub-paragraph (2)).

Sub-paragraph (4) requires any report by the Boundary Commission recommending alterations to any region to state the name by which the region should be known and the number of regional members to be returned for it. Sub-paragraph (5) requires the Boundary Commission to lay before the Parliament any report recommending changes in parliamentary constituencies. This is in addition to the existing requirement of the Boundary Commission to lay its reports before the UK Parliament.

Paragraph 4(1) provides that an Order in Council under section 4 of the 1986 Act which alters any constituency or region may come into force for the purposes of elections to the Scottish Parliament on a different date from that on which it comes into force for the purposes of elections to the UK Parliament.

Paragraph 4(2) provides that the coming into force of such an Order in Council will have no effect on the return of any member, or on the constitution, of the Parliament until the Parliament is dissolved.

Notices

Paragraph 5(1)(a) and (b) requires the Boundary Commission to publish in at least one newspaper circulating in the region a notice stating the effect of any recommendations it proposes to make affecting that region, and that a copy of the proposed recommendations is open to inspection in a specified place or places within the region and that any representations concerning the proposed recommendations may be made to the Boundary Commission within one month after the notice is published. The Boundary Commission is required to take account of any such representations.

Paragraph 5(2) requires the Boundary Commission to re-publish a notice in the same way as in paragraph 5(1) where its original proposals have been revised in the light of representations received.

Local Inquiries

Paragraph 6(1) provides for the Boundary Commission to hold a local inquiry in respect of any region whenever they think fit. This inquiry can be combined with an inquiry in respect of any UK Parliamentary constituency in the region.

Paragraph 6(2) provides that the Boundary Commission must hold a local inquiry before deciding on a recommendation if, in response to a notice published under paragraph 5(1) proposing an alteration to a region or its members, objections to that proposal are received from an interested authority or from 500 electors or more.

Paragraph 6(3) relates to local inquiries held under paragraph 6(1) before the publication of a notice under paragraph 5(1). In such circumstances the Boundary Commission can decide to disregard paragraph 6(2) if, in its opinion, the matters raised at the local inquiry, the nature of the representations received in response to the published notice and other relevant factors, would not justify holding another local inquiry.

Paragraph 6(4) provides, for the purposes of paragraph 6, that an “interested authority” means the council for an area which is wholly or partly included in the region affected by the recommendations; and that an “elector” means a person who, may vote in any constituency in the region.

Paragraph 6(5) applies the provisions regarding the attendance of witnesses at inquiries in sections 210(4) and (5) of the Local Government (Scotland) Act 1973 to any local inquiry held under paragraph 6.

The Rules

Paragraph 7 sets out the rules which the Commission are required by paragraph 3(2)(b) to give effect to when considering whether or not to recommend any alteration in any region or in the number of seats for a region. These rules are intended to ensure that:

no constituency falls within more than one region;

the regional electorate of a region is more or less the same as that in each of the other regions (allowing for differences in geography);

so far as reasonably practicable, the ratio of regional seats to constituency seats remains constant at 56 to 73, which was the ratio at the first election to the Parliament. Thus, if there was a reduction in the number of constituency seats in the Parliament (as a result of a reduction in the number of UK Parliamentary constituencies in Scotland), this should lead to a reduction in the number of regional seats so as to ensure, so far as reasonably practicable, that the same balance is maintained between constituency and regional members;

a region will have approximately the same number of regional seats as each of the other regions. If the number of regional seats cannot be divided exactly by eight, paragraphs 7 and 8 provide for the distribution of the residual seats among the regions with the larger regional electorates.

Paragraph 8 defines “the regional electorate” for the purposes of any report prepared by the Boundary Commission in relation to an electoral region. It is the number of persons whose names appear, on the enumeration date, on the registers of local government electors and who are registered for that purpose at an address within any Parliament constituency within a region. The enumeration date is the date on which the Boundary Commission published a notice of intention to make a report under section 5(1) of the Parliamentary Constituencies Act 1986.

SCHEDULE 2: Scottish Parliamentary Corporate Body

Purpose and Effect

This Schedule makes further detailed provision relating to the Scottish Parliamentary Corporate Body (SPCB), which is established by section 21. This Schedule covers the membership, property, staff, powers, proceedings and Crown status of the SPCB. The SPCB will carry out the functions conferred on it by the Scotland Act and may have additional functions conferred on it by other enactments. It will carry out its functions under directions issued by the Parliament.

There were various transitional provisions made relating to the administration of the Parliament by the Scotland Act 1998 (Transitory and Transitional Provisions) (Administration of the Parliament) Order 1999 ([S.I. 1999/1098](#)). In particular, in the period from 1 June 1999 to 1 April 2002 (or such earlier date as the SPCB may notify), the Secretary of State or, after 1 July 1999, the Scottish Ministers, were required to provide the SPCB with such staff and services as the SPCB may request. Most of the staff and all of the services are now provided directly by the SPCB.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	14-Jul-98	240
LC	14-Jul-98	242
LR	22-Oct-98	1676

Details of Provisions

Paragraph 1 provides that a member of the SPCB appointed under section 21(2)(b) will continue to hold that office until another member of the Parliament is appointed in his place unless he previously resigns, or ceases to be an MSP otherwise than by virtue of a dissolution of the Parliament, or is removed from office by resolution of the Parliament. A member of the SPCB will not therefore cease to be a member of the SPCB merely because he ceases to be an MSP because the Parliament has been dissolved. This ensures that the SPCB can continue to function during a dissolution.

Paragraph 2 gives power to the SPCB to hold property and this includes, by implication, the acquisition and disposal of property. Property is defined in section 126(1) as including rights and interests of any description. Sub-paragraph (2) confers a power to provide, by subordinate legislation for the transfer of any property belonging to a Minister of the Crown or government department to the SPCB, or for the SPCB to have rights or interests in relation to such property. Sub-paragraph (3) provides that the subordinate legislation under sub-paragraph (2) may also provide for the transfer to the SPCB of any liabilities relating to the property to which a Minister of the Crown or government department is subject, immediately prior to the Order coming into force. Sub-paragraph (4) provides that the power in sub-paragraph (2) may only be used if the person making the subordinate legislation considers it appropriate to do so to enable the SPCB to exercise its functions or to facilitate their exercise or in connection with their exercise or proposed exercise.

Further provision about the making of subordinate legislation under this power is to be found in sections 112 to 115 and Schedule 7. In particular, it is subject to Type G procedure specified in paragraph 2 of Schedule 7 which means that it is subject to either draft affirmative procedure or negative procedure in the Westminster Parliament.

This power was exercised in making the Transfer of Property (Scottish Parliamentary Corporate Body) Order 1999 ([S.I. 1999/1106](#)).

In addition, where there is Parliamentary copyright in any work, the SPCB is the first owner of any copyright in the work by virtue of the amendments made to section 165 of the Copyright, Designs and Patents Act 1988 by the Parliamentary Copyright (Scottish Parliament) Order 1999 ([S.I. 1999/676](#)).

Paragraph 3 makes provision for the appointment of the staff of the Parliament. The appointment of assistant Clerks and other staff of the Parliament is a matter for the SPCB (sub-paragraph (1)) and they, together with the Clerk, are referred to in the Act as the staff of the Parliament (sub-paragraph (2)). Under sub-paragraph (3) it is for the SPCB to determine the terms and conditions of appointment of the staff of the Parliament and this will include the payment of salaries. The SPCB will also be able to make arrangements for the payment of pensions, gratuities or allowances to, or in respect of, any person who has ceased to be a member of the staff of the Parliament. The SPCB can, in particular, make contributions or payments towards provision for such pensions, gratuities or allowances and can establish and administer one or more pension schemes (sub-paragraph (4)).

See also the Superannuation (Application of the Superannuation Act 1972, Section 1) (No.2) Order 1999 ([S.I. 1999/2092](#)) which adds employment by the SPCB to those listed in Schedule 1 to the Superannuation Act 1972. This enables the staff of the Parliament to be covered by the Principal Civil Service Scheme.

Paragraph 4 makes provision as to the powers of the SPCB. The SPCB has power to do anything which appears to it to be necessary or expedient for the purpose of or in connection with the discharge of its functions (sub-paragraph (1)). In particular, under sub-paragraph (2), this includes power to enter into contracts; to charge for goods and services, to invest sums not immediately required by the SPCB in relation to the discharge of its functions and to accept gifts. Sub-paragraph (3) provides that the

corporation may sell goods or provide services and may make arrangements for the sale of goods or provision of services to the public. Sub-paragraphs (4) and (5) allow the SPCB to borrow money but only in sterling by way of an overdraft or otherwise to meet a temporary excess of expenditure over income. Such money can only be borrowed in accordance with the special or general approval of the Parliament.

Paragraph 5 allows the SPCB to delegate any of its functions to the Presiding Officer or the Clerk.

Paragraph 6 makes provision as to the proceedings and business of the SPCB. The membership of the SPCB stands at five (including the Presiding Officer), however, the validity of any proceedings of the SPCB will not be affected by any vacancy among its members or, by any defect in the appointment or qualification for membership of any member (sub-paragraph (1)). Sub-paragraph (2) gives power to the SPCB to determine its own procedure and it is for the Presiding Officer to preside over the meetings of the SPCB (sub-paragraph (3)). If the Presiding Officer's office is vacant or the Presiding Officer is unable to act, then the SPCB can appoint another of its members to preside over the meeting.

Paragraph 7 deals with Crown status. The SPCB is not a Crown body as it is exercising functions on behalf of the Parliament rather than the Scottish Executive. Sub-paragraph (1) however provides that Her Majesty may, by Order in Council, provide for the SPCB to be treated as a Crown body for the purpose of any enactment. In particular the Order in Council may provide for employment under the SPCB to be treated as Crown employment or for land held, used or managed by the SPCB or operations carried out by them to be treated as Crown land or operations. This mirrors provision made in relation to the Parliamentary corporate bodies of the House of Commons and the House of Lords. Paragraph 7(3) provides that "Crown body" means a servant or agent of the Crown and includes a government department.

This power was exercised in making the Scottish Parliamentary Corporate Body (Crown Status) Order 1999 ([S.I. 1999/677](#)), which provides for the SPCB to be treated as a Crown body for the purposes of various enactments relating to planning, building legislation, fire precautions, VAT and data protection.

SCHEDULE 3: Standing orders: further provisions

Purpose and Effect

This Schedule requires the Parliament in its standing orders to make provision for certain matters.

General

See the note on section 22, which introduces this Schedule.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	29-Jan-98	543
CC	29-Jan-98	554
CR	12-May-98	243
CR	12-May-98	244
LC	14-Jul-98	242
LC	16-Jul-98	439
LC	16-Jul-98	443

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<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	16-Jul-98	458
LC	16-Jul-98	465
LC	16-Jul-98	470
LR	22-Oct-98	1680
LR	22-Oct-98	1681
L3	9-Nov-98	513
L3	9-Nov-98	603

Details of Provisions

Paragraph 1 - Preservation of order. Standing orders must make provision for preserving order in the proceedings of the Parliament. Provision must be made for (a) preventing conduct which could constitute a criminal offence or contempt of court and (b) a *sub judice* rule. These provisions may provide for the exclusion of a member.

Paragraph 2 - Withdrawal of rights and privileges. Standing orders may include provision for withdrawing from a member of the Parliament his rights and privileges as a member.

Paragraph 3 - Proceedings to be in public. Standing orders must make provision for the proceedings of the Parliament normally to be in public, but may provide for circumstances where proceedings may be in private. Standing orders may set out conditions with which members of the public who are attending the proceedings must comply and may provide for the exclusion of a member of the public.

Paragraph 4 - Reporting and publishing. Standing orders must make provision for the proceedings of the Parliament to be reported and for reports to be published.

Paragraph 5 - The Presiding Officer and deputies. Standing orders must make provision to ensure that the Presiding Officer and deputies do not all represent the same political party.

Paragraph 6 - Committees. The Parliament has power to establish committees. The standing orders about the appointment of committees may allow committees to appoint sub-committees. Standing orders must make provision to ensure that in appointing members to committees and subcommittees regard is had to the balance of political parties in the Parliament. The standing orders may also provide for the exclusion of any member who is not a member of the committee concerned.

Paragraph 7 - Crown interests. This paragraph places Bills of the Scottish Parliament in the same position as Bills of the UK Parliament by requiring standing orders to include provision for obtaining the consent of Her Majesty or HRH The Prince of Wales, where a provision of a Bill impacts on Crown interests, before the Bill may be passed.

SCHEDULE 4: Enactments protected from modification

Purpose and Effect

Schedule 4 forms part of the definition of the legislative competence of the Scottish Parliament. Section 29(2)(c) provides that a provision of an Act of the Scottish Parliament is outside the legislative competence of the Parliament if it is in breach of the restrictions in Schedule 4. The restrictions are upon the extent to which certain enactments - including provisions of the Scotland Act 1998 itself - and other aspects of the law may be modified by an Act of the Scottish Parliament. The schedule also sets out some modifications of sections 53 and 54 (which provide for the general transfer of functions exercisable within devolved competence to the Scottish Ministers).

General

This is one of a set of provisions defining the legislative competence of the Scottish Parliament. Section 28 provides for the Parliament to make laws known as Acts of the Scottish Parliament (ASPs). Section 29 defines the legislative competence of the Parliament. Section 30 introduces the list of reserved matters (which are set out in Schedule 5) and provides for the modification of Schedules 4 and 5 by subordinate legislation, subject to the approval of both the Scottish Parliament and the UK Parliament.

Section 53 provides for the transfer to the Scottish Ministers of most types of Ministerial function which are exercisable within devolved competence. “Devolved competence” is defined in section 54. Essentially, a function is exercisable within devolved competence if it could have been conferred by an Act of the Scottish Parliament. Part III of the present Schedule modifies sections 53 and 54 in relation to those enactments and other aspects of the law which are protected from modification by Parts I and II. Its effect is that, in general, Ministerial functions under such enactments or law are not transferred. However, there are certain exceptions to this.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CR	12-May-98	254
Stage	Date	Column
LC	21-Jul-98	830
LR	2-Nov-98	126
LR	2-Nov-98	127
L3	9-Nov-98	545
L3	9-Nov-98	603
L3	9-Nov-98	605
L3	9-Nov-98	606

Details of Provisions

Part I: The protected provisions

Paragraph 1 provides that an ASP cannot modify, or confer power by subordinate legislation to modify, certain enactments. Those enactments are:

- (a) *Articles 4 and 6 of the Union with Scotland Act 1706 and the Union with England Act 1707* so far as they relate to freedom of trade. The Union of the Kingdoms of Scotland and England is a reserved matter by virtue of paragraph 1 of Schedule 5. However, the Acts of Union also contain provisions relating to freedom of trade;
- (b) *the Private Legislation Procedure (Scotland) Act 1936*. By virtue of amendments made to the 1936 Act by paragraph 5 of Schedule 8, private legislation may continue to be made under the 1936 Act procedure at Westminster about matters which are wholly or partly outside the legislative competence of the Scottish Parliament. Entrenchment of the Act by the present paragraph has the effect that Ministerial functions under the Act in relation to such legislation do not transfer to the Scottish Ministers;
- (c) Sections 1, 2 (other than subsection (2), the words following “such Community obligation” in subsection (3), and the words “subject to Schedule 2 to this Act” in sub-section (4)), 3(1) and (2) and 11(2), and Schedule 1 of the European Communities Act 1972). These are the key provisions of the 1972 Act which give effect to EC law in the law of the UK;

- (d) *Paragraphs 5(3)(b) and 15(4)(b) of Schedule 32 to the Local Government, Planning and Land Act 1980.* These provisions are concerned with a requirement for Treasury consent to the designation of enterprise zones. Their entrenchment by the present paragraph ensures that the Scottish Parliament cannot modify the requirement and that the function of giving consent does not transfer to the Scottish Ministers. Under section 55, this consent requirement is an exception to the general disapplication of requirements for UK Ministerial consent in relation to the exercise by the Scottish Ministers of functions within devolved competence. The exception is maintained because of the tax privileges conferred by enterprise zone status;
- (e) *Sections 140A to 140G of the Social Security Administration Act 1992.* This will ensure that, despite the general devolution of the funding of Scottish public authorities with mixed (reserved and otherwise) functions (see Part III of Schedule 5), functions of funding council tax benefit and housing benefit remain with the UK Government; and
- (f) *the Human Rights Act 1998.* Entrenchment of this Act ensures that the Scottish Parliament cannot modify the way in which the European Convention on Human Rights is given effect in UK law. Under section 29, the Scottish Parliament must legislate consistently with the Convention rights as given effect by the 1998 Act, and under section 57(2) a member of the Scottish Executive has no power to make any subordinate legislation, or to do any other act, so far as the legislation or Act is incompatible with any of such rights.

Paragraph 2 provides that an ASP cannot modify, or confer power to modify, “the law on reserved matters”. “The law on reserved matters” means the law which is about reserved matters rather than, for example, planning law which, although it relates to a matter which is not reserved, may apply to a reserved matter such as coal mining. Sub-paragraph (2) defines the law on reserved matters as enactments (other than the Scotland Act itself, as there are specific provisions about the degree to which that may be modified in paragraph 4) and rules of law whose subject-matter is reserved by Schedule 5. Sub-paragraph (3) provides that the restriction on modification applies to a rule of Scots private or criminal law only to the extent that the rule in question is special to a reserved matter - a rule which results in a distinct and separate treatment of a reserved matter - and to certain other specified aspects of private law. However, under section 29(4) it is within legislative competence for the Scottish Parliament to modify Scots private or criminal law as it applies to reserved matters only if the purpose of the provision is to make the law in question apply consistently to reserved and non-reserved areas.

This paragraph has been modified by the Scotland Act 1998 (Modifications of Schedule 4) Order 2000 ([S.I. 2000/1831](#)) to prevent the Parliament from modifying certain rules of Scots private law about pension earmarking and sharing.

Paragraph 3 provides that paragraph 2 does not apply to modifications which are incidental to, or consequential on, provision which does not relate to reserved matters and which do not have a greater effect on reserved matters than is necessary to give effect to the purpose of the provision. It includes provision to ensure that this test of necessity is judged by reference to the legislative powers of the Scottish Parliament. Thus, the fact that a consequential provision might be given effect by an Act of the UK Parliament or by an order made by a UK Minister will not affect what is considered to be necessary for the purposes of the test.

Under section 29, it is outside legislative competence to make provision which “relates to” a reserved matter, and the question of whether a provision relates to a reserved matter is to be determined, subject to some certain exceptions, by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances. The Court can determine that a provision is for a permitted purpose, even if, as an ancillary matter, it affects reserved matters. However, paragraphs 2 and 3 of the present Schedule set out a test on necessity, under which modifications of the law on reserved matters may be made only where there are incidental to, or consequential on, provision which

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does not relate to reserved matters, and they do not have a greater effect on reserved matters than is necessary to give effect to the purpose of the provision.

Paragraph 4 provides that an ASP cannot modify, or confer power by subordinate legislation to modify, the Scotland Act itself. It also provides for certain exceptions to that rule, for example to allow the Parliament to legislate about its protections from judicial proceedings and to add to or limit the powers of the Scottish Parliamentary Corporate Body.

Sub-paragraph (2) provides that the paragraph does not apply to modifying:

Section 1(4), which provides that the validity of any proceedings of the Parliament is not affected by any vacancy in its membership;

Section 17(5), which provides that the validity of any proceedings of the Parliament is not affected by the disqualification of any person from being a member;

Section 19(7), which provides that the validity of any act of the Presiding Officer or a deputy is not affected by any defect in his election;

Section 21(5), which provides that property and liabilities to which the Parliament would be entitled/subject to be treated as property or liabilities of the Scottish Parliamentary Corporate Body;

Section 24(2), which makes provision about the notice to be given to witnesses summoned to give evidence to the Parliament;

Section 28(5), which provides that the validity of an ASP is not affected by any invalidity in the proceedings of the Parliament leading to its enactment;

Section 39(7), which makes provision about the maximum level of fine to which a member of the Parliament would be liable in connection with offences relating to the registration and declaration of interests;

Sections 40-43, which make provision about legal proceedings by or against the Parliament etc., defamatory statements, contempt of court and corrupt practices;

Section 50, which provides that the validity of any act of a member of the Scottish Executive or junior Scottish Minister is not affected by any defect in their nomination by the Parliament (or the Parliament's agreement to their appointment);

Section 69(3), which provides that the validity of any act of the Auditor General for Scotland is not affected by any defect in his nomination by the Parliament;

Section 85, which makes provision about exemption from jury service of MSPs, members of the Scottish Executive and junior Scottish Ministers;

Section 93, which permits Ministers of the Crown and the Scottish Ministers to exercise functions on each others' behalf on an agency basis;

Section 97 which make provision for assistance to Opposition parties. This was added by [S.I. 1999/1749](#); and

Paragraphs 4(1) to (3) and 6(1) of Schedule 2, which make provision about the powers, proceedings and business of the Scottish Parliamentary Corporate Body.

Sub-paragraph (3) provides that this paragraph does not apply to the modification of any provision of the Scotland Act which charges any sum on the Scottish Consolidated Fund, requires any sum to be paid out of that Fund without further approval, or requires or authorises any sum to be paid into the Fund. This list was amended by the Scotland Act 1998 (Modifications of Schedule 4) Order 2000 ([S.I. 2000/1831](#)) to include any provision which requires any sum to be payable out of that Fund. However, certain provisions are excepted. Those are:

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Section 64(7), which provides that certain receipts to be paid over to the Secretary of State shall be a charge on the Fund;

Sections 66(2) and 71(7), which provide for the sums required by the Scottish Ministers for the re-payment of borrowing or deemed borrowing from the Secretary of State (with interest) to be a charge on the Fund;

Sections 77 and 78, which provide for payments into and out of the Scottish Consolidated Fund in consequence of the operation of the tax-varying powers; and

Section 119, which translates statutory references to the Consolidated Fund to references to the Scottish Consolidated Fund.

Sub-paragraph (4) provides for a further exception to allow the Scottish Parliament to set up a fund, in addition to the Scottish Consolidated Fund, out of which loans may be made by the Scottish Ministers, and to amend Part III of the Act (which sets out the financial provisions) so far as necessary or expedient for that purpose on in consequence of the establishment of such a fund.

Sub-paragraph (5) provides that this paragraph does not prevent modification of enactments which are modified by this Act and that it does not prevent the Scottish Parliament from repealing provisions of the Scotland Act which amend other enactments if the provisions ceases to have effect in consequence of an ASP.

Paragraph 5 lists certain modifications made by the Act which the Parliament cannot modify, or confer power by subordinate legislation to modify. These are:

- (a) *the effect of [section 119\(3\)](#) (which translates statutory references to the Consolidated Fund to references to the Scottish Consolidated Fund) in relation to any provision of an Act of Parliament relating to judicial salaries.* This ensures that judicial salaries will remain a direct charge upon the Scottish Consolidated Fund;
- (b) *the amendments made by [Schedule 8 to the Crown Suits \(Scotland\) Act 1857](#), [the Crown Proceedings Act 1947](#) and [the Criminal Procedure \(Scotland\) Act 1995](#), so far as they relate to the Advocate General for Scotland.* These amendments take account of the transfer of the office of Lord Advocate to become a member of the Scottish Executive and the establishment of the new office of Advocate General for Scotland as the Scottish law officer to the UK Government; and
- (c) *the amendments made to [the Lands Tribunal Act 1949](#) by [paragraph 9 of Schedule 8](#) (to provide that the remuneration of members of the Lands Tribunal for Scotland shall be charged on the Scottish Consolidated Fund) and to [the Scottish Land Court Act 1993](#) by [paragraph 29 of Schedule 8](#) (to provide that the First Minister will recommend the appointment of a person as chairman of the Court and that he shall consult the Lord President of the Court of Session before doing so).*

Paragraph 6 provides that an ASP cannot modify, or confer power by subordinate legislation to modify, enactments which relate to the powers which a Minister of the Crown shares by virtue of section 56. This ensures that where a Minister of the Crown has retained a concurrent power in a devolved area, the Scottish Parliament cannot remove that power.

Part II: General exceptions

Paragraph 7 provides that the restrictions in Part I do not prevent ASPs from restating the law (e.g. in a consolidation Act) or repealing spent enactments, or conferring power by subordinate legislation to do so. It also provides that the “law on reserved matters” (which is protected by paragraph 2) includes any such restatement of the law on reserved matters if the subject-matter of the restatement is a reserved matter. This is necessary to ensure that the Parliament is able to consolidate or codify the law.

Paragraph 8 provides that Part I does not prevent the operation of any provision of the Interpretation Act 1978. This is necessary, in particular, to ensure that section 17(2)

(a) of the 1978 Act applies. That section provides where an Act repeals and re-enacts a previous enactment and unless the contrary intention appears any reference in any other enactment to the repealed enactment shall be construed as one to the re-enacted provision, and that subordinate legislation, or other things done under the repealed enactment, are to have effect as if made or done under the re-enacted provision.

Paragraph 9 provides that Part I does not prevent the consequential amendment of various titles (of registers, courts, tribunals, judges, chairman or offices of courts or tribunals, or holders of offices in the Scottish Administration which are not Ministerial offices or members of the staff of the Scottish Administration), or consequential amendments to any reference to a declarator.

Paragraph 10 provides that Part I does not prevent the modification of enactments for or in connection with the purposes of section 70 (financial control, accounts and audit) or 91 (maladministration). In particular, this ensures that the necessity test in paragraphs 2 and 3 does not unduly limit the competence of the Parliament to fulfil the requirements of those sections.

Paragraph 11 contains provision to ensure that the restrictions in Part I do not unduly limit the competence of the Parliament to legislate about its own subordinate legislation procedure. This is necessary, in particular, to ensure that the “necessity test” in paragraphs 2 and 3 does not prevent such legislation in relation to powers transferred to the Scottish Ministers under section 63 to make subordinate legislation in relation to reserved matters.

Part III: Consequential modification of [sections 53 and 54](#)

Paragraphs 12 to 14 clarify the effect of Part I upon the transfer of Ministerial functions. In general, functions under enactments which are protected from modification by Part I cannot transfer to the Scottish Ministers under section 53.

Paragraph 12 ensures that this is the case by providing that a function does not transfer to the Scottish Ministers if the Schedule would prevent an ASP from transferring the function to someone else.

Paragraph 13(1) provides for some exceptions to this. An exception is made for any function conferred by the European Communities Act 1972. That Act has been protected from modification because it is not intended that the Scottish Parliament should be able to alter the mechanisms under which EC law is given effect. The present paragraph ensures that that does not prevent the Ministerial powers and duties under the 1972 Act from transferring where they would otherwise be exercisable within devolved competence.

For similar reasons, exceptions are made for most functions conferred by the Human Rights Act and the law on reserved matters so far as contained in an enactment. For example, section 12(1) of the Official Secrets Act 1989 empowers a Minister to prescribe the persons who are to be Crown servants for the purposes of that Act. The 1989 Act is part of the law on reserved matters¹, but the Scottish Ministers are able to exercise the function for a devolved purpose¹, for instance to change the name of a person who may already have been prescribed as a Crown servant. Paragraph 13(3) ensures that an ASP or subordinate legislation made under an ASP may provide for the transfer of such functions to somebody else.

Paragraph 14 provides that subordinate legislation under section 105 (the power to make consequential amendments) may provide that functions under enactments or prerogative instruments modified by such subordinate legislation are not transferred by virtue of section 53.

[Schedule 5](#)

¹ The function has also been executively devolved to the Scottish Ministers by [SI 1999/1750](#).

Derivations

The table below shows the legislative history of each of the provisions in Schedule 5 to the Act, providing the paragraph or Section number in each print of the Bill. For example in the “Comm C” print (which is the Bill as introduced and as used at Commons Committee stage), what was paragraph 9 of Part I eventually became paragraph 10 of Part I of the Schedule. In earlier prints of the Bill, Part II of Schedule 5 was divided into numbered Heads and Sections (shown below as “H” and “S”). These were changed in the final print of the Act so that the Heads were instead lettered, so that each section could be given a unique letter and number reference. For example Section C9 (Weights and measures) appeared in the introductory print as Head 3 Section 8.

<i>Act</i>	<i>Lords 3R HL Bill 155</i>	<i>Lords R HL Bill 155</i>	<i>Lords C HL Bill 119</i>	<i>Comm R Bill 166</i>	<i>Comm C Bill 104</i>
Part I					
§1	§1	§1	§1	§1	§1
<i>Act</i>	<i>Lords 3R HL Bill 155</i>	<i>Lords R HL Bill 155</i>	<i>Lords C HL Bill 119</i>	<i>Comm R Bill 166</i>	<i>Comm C Bill 104</i>
§2	§2	§2	§2	§2	§2
§3	§3	§3	§3	§3	§3
§4	§4	§4	§4	§4	§4
§5	§5	§5	§5	§5	§5
§6	§6	§6	§6	§6	---
§7	§7	§7	§7	§7	§6
§8	§8	§8	§8	§8	§7
§9	§9	§9	§9	§9	§8
§10	§10	§10	§10	§10	§9
Part II					
A1	H1 S1	H1 S1	H1 S1	H1 S1	H1 S1
A2	H1 S2	H1 S2	H1 S2	H1 S2	H1 S2
A3	H1 S3	H1 S3	H1 S3	H1 S3	H1 S3
A4	H1 S4	H1 S4	H1 S4	H1 S4	H1 S4
A5	H1 S5	H1 S5	H1 S5	H1 S5	H1 S5
B1	H2 S1	H2 S1	H2 S1	H2 S1	H2 S1
B2	H2 S2	H2 S2	H2 S2	H2 S2	H2 S2
B3	H2 S3	H2 S3	H2 S3	H2 S3	H2 S3
B4	H2 S4	H2 S4	H2 S4	H2 S4	H2 S4
B5	H2 S5	H2 S5	H2 S5	H2 S5	H2 S5
B6	H2 S6	H2 S6	H2 S6	H2 S6	H2 S6
B7	H2 S7	H2 S7	H2 S7	H2 S7	H2 S7
B8	H2 S8	H2 S8	H2 S8	H2 S8	H2 S8
B9	H2 S9	H2 S9	H2 S9	H2 S9	H2 S9

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

<i>Act</i>	Lords 3R HL Bill 155	Lords R HL Bill 155	Lords C HL Bill 119	Comm R Bill 166	Comm C Bill 104
B10	H2 S10	H2 S10	H2 S10	H2 S10	H2 S10
B11	H2 S11	H2 S11	H2 S11	H2 S11	H2 S11
B12	H2 S12	H2 S12	H2 S12	H2 S12	H2 S12
C1	H3 S1	H3 S1	H3 S1	H3 S1	H3 S1
C2	H3 S2	H3 S2	H3 S2	H3 S2	H3 S2
C3	H3 S3	H3 S3	H3 S3	H3 S3	H3 S3
C4	H3 S4	H3 S4	H3 S4	H3 S4	H3 S4
C5	H3 S5	H3 S5	H3 S5	H3 S5	H3 S5
C6	H3 S6	H3 S6	---	---	---
C7	H3 S7	H3 S7	H3 S6	H3 S6	H3 S6
C8	H3 S8	H3 S8	H3 S7	H3 S7	H3 S7
C9	H3 S9	H3 S9	H3 S8	H3 S8	H3 S8
C10	H3 S10	H3 S10	H3 S9	H3 S9	H3 S9
C11	H3 S11	H3 S11	H3 S10	H3 S10	H3 S10
C12	H3 S12	H3 S12	H3 S11	H3 S11	H3 S11
C13	H3 S13	H3 S13	H3 S12	H3 S12	H3 S12
C14	H3 S14	H3 S14	H3 S13	H3 S13	---
C15	H3 S15	H3 S15	H3 S14	H3 S14	H3 S13
D1	H4 S1	H4 S1	H4 S1	H4 S1	H4 S1
D2	H4 S2	H4 S2	H4 S2	H4 S2	H4 S2
<i>Act</i>	Lords 3R HL Bill 155	Lords R HL Bill 155	Lords C HL Bill 119	Comm R Bill 166	Comm C Bill 104
D3	H4 S3	H4 S3	H4 S3	H4 S3	H4 S3
D4	H4 S4	H4 S4	H4 S4	H4 S4	H4 S4
D5	H4 S5	H4 S5	H4 S5	H4 S5	H4 S5
E1	H5 S1	H5 S1	H5 S1	H5 S1	H5 S1
E2	H5 S2	H5 S2	H5 S2	H5 S2	H5 S2
E3	H5 S3	H5 S3	H5 S3	H5 S3	H5 S3
E4	H5 S4	H5 S4	H5 S4	H5 S4	H5 S4
E5	H5 S5	H5 S5	H5 S5	H5 S5	H5 S5
F1	H6 S1	H6 S1	H6 S1	H6 S1	H6 S1
F2	H6 S2	H6 S2	H6 S2	H6 S2	H6 S2
F3	H6 S3	H6 S3	H6 S3	H6 S3	H6 S3
F4	H6 S4	H6 S4	H6 S4	H6 S4	H6 S4
G1	H7 S1	H7 S1	H7 S1	H7 S1	H7 S1
G2	H7 S2	H7 S2	H7 S2	H7 S2	H7 S2

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

Act	Lords 3R HL Bill 155	Lords R HL Bill 155	Lords C HL Bill 119	Comm R Bill 166	Comm C Bill 104
G3	H7 S3	H7 S3	H7 S3	H7 S3	H7 S3
H1	H8 S1	H8 S1	H8 S1	H8 S1	H8 S1
H2	H8 S2	H8 S2	H8 S2	H8 S2	H8 S2
H3	H8 S3	H8 S3	H8 S3	H8 S3	H8 S3
J1	H9 S1	H9 S1	H9 S1	H9 S1	H9 S1
J2	H9 S2	H9 S2	H9 S2	H9 S2	H9 S2
J3	H9 S3	H9 S3	H9 S3	H9 S3	H9 S3
J4	H9 S4	H9 S4	H9 S4	H9 S4	H9 S4
J5	H9 S5	H9 S5	H9 S5	H9 S5	H9 S5
K1	H10 S1	H10 S1	H10 S1	H10 S1	H10 S1
K2	H10 S2	H10 S2	H10 S2	H10 S2	H10 S2
K3	H10 S3	H10 S3	H10 S3	H10 S3	H10 S3
K4	H10 S4	H10 S4	H10 S4	H10 S4	H10 S4
L1	H11 S1	H11 S1	H11 S1	H11 S1	H11 S1
Part II (contd.)					
L2	H11 S2	H11 S2	H11 S2	H11 S2	H11 S2
L3	H11 S3	H11 S3	H11 S3	H11 S3	H11 S3
L4	H11 S4	H11 S4	H11 S4	H11 S4	H11 S4
L5	H11 S5	H11 S5	H11 S5	H11 S5	H11 S5
L6	H11 S6	H11 S6	H11 S6	H11 S6	H11 S6
Part III					
Paras 1-2 Scottish public Authorities	Paras 1-2	Paras 1-2	Paras 1-2	---	---
Para 3 Reserved bodies	Para 3	Para 3	---	---	---
Para 4 Financial assistance to industry	Para 4	---	---	---	---
Para 5 Interpretation	Para 5	Para 4	Para 3	Pt III	Pt III

Executive Devolution and Advice to The Queen

These notes also describe, under the heading “Executive Devolution”, the provision in the various orders which have been made up to September 2001 under section 63 of the Scotland Act for transferring Ministerial functions which relate to reserved matters to the Scottish Ministers, or for modifying them so that they are exercisable by the Scottish ministers, e.g. after consultation with the Scottish Ministers or with the agreement of the

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

Scottish Ministers These orders are the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)), the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 1999 ([S.I. 1999/3321](#)), the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2000 ([S.I. 2000/1563](#)), the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) (No.2) Order 2000 ([S.I. 2000/3253](#), the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2001 ([S.I. 2001/954](#)).

Where the descriptions of the functions in these entries show an asterisk beside a reference to “the Secretary of State”, the function in question is one which was originally conferred on the Lord Advocate and which was transferred to the Secretary of State by the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999 ([S.I. 1999/678](#)).

In some cases, special arrangements for giving advice to The Queen have been made. Such functions are exercised by the First Minister rather than the Scottish Ministers, and were described in a written answer by the Prime Minister on 30 June 1999 (WA col 215) and an associated paper deposited in the House of Commons Library. Where these functions relate to reserved matters, they are noted in the relevant section.

Agency Arrangements

Functions of a Minister of the Crown, which are specified in any order made under section 93 (agency arrangements) of the Scotland Act 1998 as at September 2001 are identified under the heading “Agency Arrangements”. The only Order under that section which has in fact done so is the Scotland Act 1998 (Agency Arrangements) (Specification) Order 1999 ([S.I. 1999/1512](#)).

The other orders which have been made under that section prior to that date have specified functions which are exercisable by the Scottish Ministers, namely the Scotland Act 1998 (Agency Arrangements)(Specification) (No. 2) Order 1999 ([S.I. 1999/3320](#)), the Scotland Act 1998 (Agency Arrangements)(Specification) Order 2000 ([S.I. 2000/745](#)), the Scotland Act 1998 (Agency Arrangements) (Specification) (No.2) Order 2000 ([S.I. 2000/3250](#)). As these functions are not necessarily related to a reserved matter, they are not identified in these notes.

Residual Functions

In some cases the effect of reserving a particular area was to leave a function in the hands of the Secretary of State for Scotland, which it was no longer appropriate for him to exercise. Such functions were transferred to other UK Ministers by means of Transfer of Functions Orders under the Ministers of the Crown Act 1975 (where the particular Secretary of State for Scotland was specified in the statute) or by means of a Prime Ministerial announcement (where the function was exercisable by the Secretary of State for Scotland as a matter of convention). Entries under the heading “Residual Functions” note any relevant Transfer of Functions Orders, eg in relation to Medicines and Poisons (Section J4).

Reserved Matters

Section 30(1) provides for Schedule 5 to define the matters which are “reserved” for the purposes of the Act.

The main purposes in the Act for which the definition of reserved matters is relevant are section 29 which deals with the legislative competence of the Scottish Parliament and section 53 which deals with the transfer of Ministerial functions which are exercisable within devolved competence to the Scottish Ministers. It is also used, however, in various other contexts, such as section 88 which deals with cross-border public authorities.

General

Section 30 introduces Schedule 5 which defines the reserved matters. Schedule 5 has been amended by the following Orders in Council which have been made under section 30(2) of the Scotland Act up to September 2001, namely [S.I. 1999/1749](#), [2000/1831](#), [2000/3252](#) and [2001/1456](#).

Schedule 5 is in three Parts. Part I defines general reservations. Part II sets out specific reservations arranged by Head and Section. Part III consisted of general provisions and contains general explanatory and interpretative provisions.

The Schedule must be read as a whole. Even though a matter is excepted from a reservation in one Section, it could be reserved at least in part by others.

Interpretative provisions

Part III and the “Preliminary” paragraphs at the beginning of Part II contain general explanatory and interpretative provisions. In particular:

- (a) paragraphs 1 to 3 in Part II explain how the entries in Part II are to be construed;
- (b) paragraphs 1 to 4 of Part II contain general provisions about Scottish public authorities, “reserved bodies” and financial assistance to industry; and
- (c) paragraph 5 of Part III contains a general provision as to how references in the Schedule to the subject matter of an enactment are to be construed. It provides that they are to be read as references to that enactment as it had effect on 1 July 1999. Accordingly, for the purposes of this Schedule, it does not matter if that enactment is amended or even repealed after that date: the reservation will remain the same.

TABLE OF RESERVED MATTERS

The table below shows where various reserved matters are to be found in Schedule 5 to the Act. Entries in upper case correspond to Section titles.

<i>SUBJECT</i>	<i>PART</i>	<i>PARAGRAPH/ SECTION</i>
ABORTION	II	J1
Agricultural Wages	II	H1
AIR TRANSPORT	II	E4
ARCHITECTS	II	G1
ASSISTED AREAS, DESIGNATION OF	II	C13
AUDITORS	II	G3
Bank Holidays	II	A3, L5
Banks	II	A3
BETTING	II	B9
BROADCASTING	II	K1
Building societies	II	A3
BUSINESS ASSOCIATIONS	II	C1
Carriage of dangerous goods	II	E5
CHARITIES	II	C1
CHILD SUPPORT	II	F2

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

SUBJECT	PART	PARAGRAPH/ SECTION
Cinemas	II	B5
Civil Defence	I	9
Civil Service, The	I	8
Classification of films	II	B5
COAL	II	D3
COMPETITION	II	C3
CONSTITUTION, THE	I	1 to 5
CONSUMER PROTECTION	II	C7
CONTROL OF WEAPONS	II	L3
Copyright	II	C4
Crown, The	I	1
Crown Estate Commissioners	I	2
CURRENCY, THE	II	A2
DATA PROTECTION	II	B2
DEFENCE	I	9
DRUGS, MISUSE OF	II	B1
ELECTIONS	II	B3
ELECTRICITY	II	D1
EMBRYOLOGY	II	J3
EMERGENCY POWERS	II	B10
EMPLOYMENT	II	H1
ENERGY CONSERVATION	II	D5
ENTERTAINMENT	II	B5
EQUAL OPPORTUNITIES	II	L2
EU	I	7
Estate agency business, The conduct of	II	C7
EXTRADITION	II	B11
FINANCIAL MARKETS	II	A4
FINANCIAL SERVICES	II	A3
FIREARMS	II	B4
FISCAL, ECONOMIC AND MONETARY POLICY	II	A1
Fishing	II	C6
Food safety	II	C7
FOREIGN AFFAIRS	I	7
GAMING	II	B9
GENETICS	II	J3

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

SUBJECT	PART	PARAGRAPH/ SECTION
GOVERNMENT INDEMNITY SCHEME	II	K3
HEALTH AND SAFETY	II	H2
HEALTH PROFESSIONS	II	G2
Honours and Dignities	I	2
IMMIGRATION	II	B6
IMPORT AND EXPORT CONTROL	II	C5
INDUSTRIAL DEVELOPMENT ADVISORY BOARD	II	C14
INDUSTRIAL RELATIONS	II	H1
Insider dealing	II	A4
INSOLVENCY	II	C2
Insolvency Practitioners	II	C2
Insurance	II	A3
INTELLECTUAL PROPERTY	II	C4
INTERCEPTION OF COMMUNICATIONS	II	B8
		C10
		C11
International Trade (see also import & export control)	I	7
JOB SEARCH AND SUPPORT	II	H3
JUDICIAL REMUNERATION	II	L1
Legal profession, The	II	C3
LIEUTENANCIES	II	B12
Local taxes	II	A1
Lord Lyon King of Arms	I	2
LOTTERIES	II	B9
MARINE TRANSPORT	II	E3
MEDICINES AND POISONS	II	J4
MISUSE OF DRUGS	II	B1
MONEY LAUNDERING	II	A5
NATIONAL SECURITY	II	B8
NATIONALITY	II	B6
NUCLEAR ENERGY	II	D4
OCCUPATIONAL AND PERSONAL PENSIONS	II	F3
OFFICIAL SECRETS	II	B8
OIL & GAS	II	D2
ORDNANCE SURVEY	II	L4

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

SUBJECT	PART	PARAGRAPH/ SECTION
OUTER SPACE	II	L6
Patents	II	C4
POLITICAL PARTIES	I	6
POST OFFICE, POSTS AND POSTAL SERVICES	II	C11
PRODUCT STANDARDS, SAFETY AND LIABILITY	II	C8
PROPERTY ACCEPTED IN SATISFACTION OF TAX	II	K4
PROTECTION OF TRADING AND ECONOMIC INTERESTS	II	C15
PUBLIC LENDING RIGHT	II	K2
Public passenger transport for disabled persons	II	E5
PUBLIC SERVICE	I	8
RAIL TRANSPORT	II	E2
RESEARCH COUNCILS	II	C12
ROAD TRANSPORT	II	E1
SCIENTIFIC PROCEDURES ON LIVE ANIMALS	II	B7
SEA FISHING	II	C6
SOCIAL SECURITY SCHEMES	II	F1
SURROGACY	II	J3
Taxes	II	A1
TELECOMMUNICATIONS AND WIRELESS TELEGRAPHY	II	C10
TERRORISM	II	B8
TIME	II	L5
Trading with the enemy and enemy property	I	9
Transport of radioactive material	II	E5
Travel documents, Issue of	II	A6
TREASON	I	10
Vaccine Damage Payments Scheme, The	II	F1
Veterinary surgeons	II	G2
Veterinary medicines	II	J4
Video Recordings	II	B5
WAR PENSIONS	II	F4
WEIGHTS AND MEASURES	II	C9
WELFARE FOODS	II	J5
XENOTRANSPLANTATION	II	J2

Part I: General Reservations

Paragraphs 1 to 5: The Constitution

Purpose and Effect

These paragraphs reserve aspects of the Constitution, subject to certain exceptions.

Detail of Provisions

Paragraph 1: Constitution

Paragraph 1 provides that certain aspects of the Constitution are reserved matters. These aspects are:

- (a) the Crown, including the succession to the Crown and a regency;
- (b) the Union of the Kingdoms of Scotland and England;
- (c) the Parliament of the United Kingdom;
- (d) the continued existence of the High Court of Justiciary as a criminal court of first instance and of appeal; and
- (e) the continued existence of the Court of Session as a civil court of first instance and of appeal.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CR	19-May-98	787

Paragraphs 2-5 provide for exceptions to be made from this basic reservation and clarify the scope of what is excepted and what is reserved.

Paragraph 2: Functions etc.

Paragraph 2(1) provides that paragraph 1 does not have the effect of reserving Her Majesty's prerogative and other executive functions, or functions exercisable by any person acting on behalf of the Crown. This enables the Scottish Parliament to legislate about those functions where they do not relate to other reserved matters and enables such functions which are exercised by a Minister of the Crown in or as regards Scotland to transfer to the Scottish Ministers under section 53. (See also the note at the end of this Section on the giving of advice to Her Majesty.)

Paragraph 2(1)(c) also makes it clear that the offices in the Scottish Administration are not reserved matters so that the Scottish Parliament has the competence to amend or abolish such offices, such as the Keeper of the Registers of Scotland. The Scottish Parliament could not, however, amend or abolish the Ministerial offices in the Scottish Administration (i.e. the members of the Scottish Executive as provided for by section 44) by virtue of paragraph 4 of Schedule 4.

Paragraph 2(2) qualifies paragraph 2(1) by providing that it does not affect the reservation by paragraph 1 of honours and dignities or the functions of the Lord Lyon King of Arms with regard to the granting of arms i.e. the right to bear and use a coat of arms in Scotland (although this does not apply to the Lord Lyon King of Arms in his judicial capacity). This is required because otherwise, by virtue of paragraph 2(1), all the functions relating to honours and dignities (e.g. peerages, knighthoods, and decorations), such as the making of recommendations to the Queen regarding the grant of honours etc., and the functions of the Lord Lyon relating to the granting of arms would not be reserved. However, the functions of the Lord Lyon in his judicial capacity

are not reserved. (See also the note at the end of this Section on the giving of advice to Her Majesty.)

Paragraph 2(3) qualifies paragraph 2(1) by providing that it does not affect the reservation by paragraph 1 of the management (in accordance with any enactment regulating the use of land) of the Crown Estate. This has the effect of ensuring that the Scottish Parliament cannot legislate about the Crown Estate Commissioners or their functions of managing the Crown property, rights and interests known as the Crown Estate under the Crown Estate Act 1961. The Scottish Parliament will, however, be able to legislate to affect the Crown Estate by virtue of paragraph 3(1).

Paragraph 2(4) qualifies paragraph 2(1) by providing that it does not affect the reservation by paragraph 1 of the functions of the Security Service, the Secret Intelligence Service and the Government Communications Headquarters. This supplements the reservation of national security and interception of communications in Section B8.

Paragraph 2(5)² qualifies paragraph 2(1) by providing that it does not affect the reservation by paragraph 1 of the functions exercisable through the Export Credit Guarantee Department. The ECGD provides underwriting services and technical advice and assistance to exporters.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	30-Mar-98	903
CC	30-Mar-98	906
CC	30-Mar-98	907
CR	19-May-98	806
LR	3-Nov-98	142
LR	3-Nov-98	143

Paragraph 3: Crown Property

Paragraph 3(1) provides that paragraph 1 does not have the effect of reserving Crown property. Crown property is:

- (a) property belonging to Her Majesty in right of the Crown. This includes property which the Crown can sell and alienate, such as the foreshore, and rights and obligations over such property which are vested in the Crown as trustee for certain public rights and which cannot be alienated, such as the right to recreational use of the foreshore or the right of public navigation in the waters over the seabed. This property forms part of the Crown Estate which is managed by the Crown Estate Commissioners; and
- (b) property belonging to any person acting on behalf of the Crown or held in trust for Her Majesty for the purposes of any person acting on behalf of the Crown.

This will enable the Scottish Parliament, for example, to apply its planning legislation to Crown property, subject of course to any provisions in other reservations. It will also enable the Scottish Parliament, when legislating to create a new harbour or port, to extinguish any public rights over the foreshore or seabed which might be affected.

Paragraph 3(2) provides that paragraph 1 does not reserve the position of the Crown as ultimate superior of all feudal land in Scotland or the superiorities owned by the Prince

² This paragraph was inserted by article 3 of the Scotland Act 1998 (Modifications of Schedules 4 and 5) Order 1999 (S.I. 1999/1749).

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

and Steward of Scotland. This provision is required because it is not clear whether such property can be said to belong to the Crown “in right of the Crown”. It enables the Scottish Parliament to abolish the feudal system of land tenure, as in the Abolition of Feudal Tenure etc. (Scotland) Act 2000.

Paragraph 3(3) qualifies paragraph 3(1) by providing that it does not affect the reservation by paragraph 1 of:

- (a) the hereditary revenues of the Crown, other than revenues from *bona vacantia*, *ultimus haeres* and treasure trove. Hereditary revenues are derived from property vested in the Crown in right of the Crown and various other prerogative rights and privileges which are customarily surrendered by the Crown to the nation in exchange for a fixed annual income, known as the Civil List. *Bona vacantia*, *ultimus haeres* and treasure trove, are however devolved;
- (b) the royal arms and standard. This is required because otherwise it could be regarded as part of the property belonging to Her Majesty in right of the Crown; and
- (c) the compulsory acquisition of property held or used by a Minister of the Crown or government department.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	30-Mar-98	904
CR	19-May-98	806
LC	14-Jul-98	242

Paragraph: 4 Crown’s private property

Paragraph 4(1) provides that paragraph 1 does not have the effect of reserving property which the Queen holds in Her private capacity, such as Balmoral.

Paragraph 4(2) qualifies paragraph 4(1) by providing that it does not affect the reservation by paragraph 1 of the subject-matter of the Crown Private Estates Acts 1800 to 1873. These Acts regulate matters relating to such private estates, such as how they may be held or disposed of.

This provision enables the Scottish Parliament to legislate to affect the Queen’s private estates in Scotland. Any such provision in an Act of the Scottish Parliament will, however, require the Queen’s consent under standing orders made in accordance with paragraph 5 of Schedule 3.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	30-Mar-98	904

Paragraph 5: Scottish Seal

Paragraph 5 provides that paragraph 1 does not reserve the use of the Scottish Seal. “Scottish Seal” is defined in section 2(6). It is the Seal which is currently used in connection with certain matters, such as appointments made under Royal Warrants (e.g. of judges and QCs) and grants of lands. The Act provides that the First Minister is to be the Keeper of the Scottish Seal (section 45(7)) and that it is to be used in connection with proclamations by the Queen regarding certain elections (sections 2(5) and 3(2))

and the Royal Assent to Scottish Bills (section 28(3)). The Scottish Parliament will be able to provide that it should have other uses.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	30-Mar-98	904
CR	19-May-98	787
LR	3-Nov-98	144

Advice to The Queen

Special arrangements for giving advice to The Queen were described in a Prime Ministerial answer on 30 June 1999 (WA col 215) and an associated paper deposited in the House of Commons Library.

In cases where Her Majesty exercises a function which is exercisable within devolved competence for the purposes of the Scotland Act 1998 and She was, by convention, advised by a Minister of the Crown about the exercise of that function, then from 1 July 1999 She will be advised by the First Minister instead of by a Minister of the Crown. Examples of circumstances in which Her Majesty will in future be advised by the First Minister instead of by the Secretary of State in relation to the exercise of Her functions which relate in whole or in part to a devolved matter are shown below where they are relevant to paragraphs 1 to 5 of Schedule 5.

Her Majesty will be advised by the First Minister on:

the appointment of the Lord Lyon and Lyon Clerk.

use of the Royal Prerogative³ including the use of Royal Names⁴ and Royal Patronage⁵;

Receipt of and response to the submission of Loyal Addresses to Her Majesty from Churches and individuals in Scotland;

Response to a Petition submitted to Her Majesty;

Appointment to offices in the Royal Household in Scotland, including HM Sculptor in Ordinary in Scotland; HM Painter and Limner in Scotland; the Royal Astronomer for Scotland; the Historiographer Royal in Scotland; the Keeper of Dumbarton Castle.

There are some matters in respect of which the Prime Minister gives advice to Her Majesty on the exercise of Her functions and on which it is appropriate for the Prime Minister to consult or to take advice from the First Minister. These matters include recommendations of Scottish candidates for honours and dignities, which are a reserved matter, and advice on the appointment of Lord Lieutenants in Scotland, the Lord High Commissioner to the General Assembly of the Church of Scotland and members of the Royal Commission on Environmental Pollution and the Forestry Commission.

³ In respect of the use of the Royal Prerogative, where the advice concerns a devolved matter the First Minister will advise Her Majesty.

⁴ An organisation may only call itself "Royal" if it has the authority of Her Majesty. Requests to name a street or other place after a member of the Royal Family also require approval by Her Majesty. Where the application is for something that is in Scotland, the First Minister will advise Her Majesty.

⁵ This refers to patronage of an organisation by a member of the Royal Family. Where the organisation is Scottish-based and operates in devolved areas the First Minister will advise Her Majesty.

Part I, Paragraph 6: Political Parties

Purpose and Effect

This paragraph reserves the registration and funding of political parties, except for making payments to assist MSPs in performing their Parliamentary duties.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	21-Jul-98	858

Details of Provisions

This paragraph ensures that the registration and funding of political parties is a reserved matter, except for the making of payments to any political party for the purpose of assisting members of the Scottish Parliament who are connected with the party to perform their Parliamentary duties. This exception was added by article 2 of the Scotland Act 1998 (Modifications of Schedules 4 and 5) Order 1999 (S.I. 1999/1749).

The registration and funding of political parties is dealt with in the Political Parties, Elections and Referendums Act 2000 which consolidated the Registration of Political Parties Act 1998 which used to deal with the registration of political parties.

Section 97 provides a power for Her Majesty, by Order in Council to provide for the Scottish Parliamentary Corporate Body to make payments to registered political parties for the purpose of assisting members of the Parliament who are connected with such parties to perform their Parliamentary duties. This power has been exercised in making the Scottish Parliament (Assistance for Registered Political Parties) Order 1999 (S.I. 1999/1745).

Part I, Paragraph 7: Foreign affairs, etc.

Purpose and Effect

This paragraph reserves foreign affairs, subject to certain exceptions.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	30-Mar-98	914
LC	21-Jul-98	862

Details of Provisions

Reservation

Paragraph 7(1) provides that international relations, including:

- (a) relations with territories outside the UK, the European Communities (and their institutions) and other international organisations;
 - (b) regulation of international trade; and
 - (c) international development assistance and co-operation,
- are reserved matters.

Subject to the exceptions in paragraph 7(2), this means that the conduct of international relations, including conduct of relations with the European Communities, is therefore a matter reserved to the UK Parliament and UK Government.

The reservation of international relations does not have the effect of precluding the Scottish Ministers and officials from communicating with other countries, regions, or international or European institutions, so long as the representatives of the Scottish Parliament or the Scottish Ministers do not purport to speak for the United Kingdom or to reach agreements which commit the UK.

Exceptions

Paragraph 7(2) makes certain exceptions to this reservation:

- (a) *Observing and implementing international obligations etc.* Firstly, paragraph 7(2)(a) provides that observing and implementing international obligations, obligations under the ECHR and obligations under Community law are not reserved. Community law and international obligations are defined in section 126(9) and (10).

So far as the legislative competence of the Scottish Parliament is concerned, this has the result that the Scottish Parliament will be able and required to legislate for the purpose of observing and giving effect to those obligations so far as they relate to devolved matters. Section 29(2)(d) provides that a provision of an Act of the Scottish Parliament would be beyond the legislative competence (i.e. *ultra vires*) of the Scottish Parliament if it was incompatible with any of the "Convention rights" (see section 126(1)) or with Community law. In the case of other international obligations, (i.e. not Convention obligations or EC law), which are not justiciable in our courts, section 35 enables the Secretary of State to make an order prohibiting the Presiding Officer from submitting a Bill for Royal Assent where he has reasonable grounds to believe that it would be incompatible with such obligations.

So far as executive competence is concerned, this exception also achieves the result that any obligations upon Ministers of the Crown to observe and implement international obligations in relation to devolved matters are transferred to the Scottish Ministers under section 53. In particular, this will mean that, in the case of EC obligations, the Scottish Ministers are liable under EC law for the same penalties as Ministers of the Crown if they fail to do so. Section 57(1) ensures, however, that Ministers of the Crown continue to share this responsibility and will have concurrent functions for the purpose of implementing EC obligations. In addition, section 57(2) makes a similar provision to section 29(2)(d) by providing that it would be *ultra vires* for a member of the Scottish Executive to make any subordinate legislation or to do any act which would be incompatible with any of the Convention rights or with EC law. There is also a similar provision to section 35 in section 58 enabling the Secretary of State to make an order revoking any subordinate legislation made by a member of the Scottish Executive or requiring him to make any such instrument if he considers that the instrument (or failure to make the instrument) would be incompatible with any international obligation (i.e. not Convention obligations or EC obligations).

- (b) *Assisting Ministers of the Crown.* Paragraph 7(2)(b) provides that assisting Ministers of the Crown in relation to any matter to which the reservation in paragraph 7(1) applies is not reserved.

This enables the Scottish Ministers to assist the UK Government in the conduct of international relations so far as relating to devolved matters and enables the Scottish Parliament to legislate about this. The Scottish Ministers will thus be able to assist Ministers of the Crown in the formulation, negotiation and implementation of policy relating to international relations. This allows the Scottish Ministers to be involved in the discussions within the UK Government about the formulation of the UK's policy position on all issues which touch on devolved matters; and allows participation where appropriate by the Scottish Ministers and officials in relevant European Council meetings and other negotiations with the UK's EU partners.

Executive devolution

The following function has been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

The Multilateral Investment Guarantee Agency Act 1988 (c.8) , section 6.	The function of the Secretary of State of making, by order, provision for the attendance of witnesses, taking of evidence and production of documents in relation to certain arbitration proceedings.
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Part I, Paragraph 8: Public Service

Purpose and Effect

This paragraph reserves matters relating to the Civil Service, subject to certain exceptions.

General

Section 51 provides for the staff of the Scottish Administration to be members of the Home Civil Service, as are the statutory office-holders in the Scottish Administration (see section 126(6)). It also makes provision for their salaries, allowances and pensions.

Details of Provisions

Reservation

Paragraph 8(1) states that the Civil Service of the State is a reserved matter. The Civil Service includes the Home Civil Service and the Diplomatic Service. The effect is that the Scottish Parliament is not able to legislate about matters relating to Civil Servants in Scotland, including their recruitment, selection, management, conduct, discipline, numbers, grading and terms and conditions of service. Matters relating to Civil Service pensions are reserved by Section F3 in Part II of the Schedule.

The Home Civil Service is ultimately regulated by the Royal Prerogative, and its management has been delegated to the Minister for the Civil Service. The Civil Service Management Code is issued under the authority of the Civil Service Order in Council 1995. Under the Civil Service (Management Functions) Act 1992, the Minister for the Civil Service has further delegated management functions to Ministers and office holders in charge of Departments. These include the authority to prescribe qualifications for appointment as Civil Servants, to determine the number and grading of posts (outside the Senior Civil Service) in such Departments and a wide range of other management functions. Those functions, which were delegated to the Secretary of State for Scotland in respect of Civil Servants who become staff of the Scottish Executive, have been delegated to the Scottish Ministers. This is provided for in section 51(4) and (6).

Exceptions

The subject-matter of the following enactments is excepted from the reservation:

- (a) *Part I of the Sheriff Courts and Legal Officers (Scotland) Act 1927*. This deals with the appointment of sheriff clerks, procurators fiscal and their deputies; and
- (b) *Part III of the Administration of Justice (Scotland) Act 1933*. This deals with the appointment and terms and conditions of service of officers of the High Court of Justiciary and the Court of Session, including the Principal Clerk of Justiciary, the Accountant of Court and Auditor of the Court of Session, staff in the Justiciary Office and the Court of Session, and Macers.

The officers concerned are already civil servants and by virtue of the Act continue to be members of the Home Civil Service. However, there are certain specialities of appointment and terms and conditions of service of such court staff which distinguish them from other civil servants and which are peculiarly Scottish, making it appropriate that legislative competence over these aspects should be not be reserved. See also the amendments to the 1927 and 1933 Acts in paragraphs 3 and 4 of Schedule 8. [Schedule 5](#), Part I, [Paragraph 9](#): Defence

Purpose and Effect

This paragraph reserves all matters relating to defence and the armed forces; but it does not reserve responsibility for civil defence or the right to confer enforcement powers on the armed forces in relation to sea fisheries matters.

General

Defence includes matters relating to the armed forces (including for example, their equipment, resources and deployment), defence policy, strategy, planning and intelligence and plans for the maintenance of essential supplies and services in case of war.

The reservation will not however prevent the Scottish Parliament from legislating about civil defence or conferring powers on the armed forces, notably the Navy or the Air Force, in relation to sea fishing, in particular to enforce offences created under Scottish sea fisheries legislation.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	30-Mar-98	939
LC	21-Jul-98	868

Details of Provisions

Reservation

The reserved matters set out in paragraph 9(1) are as follows:

paragraph 9(1)(a): *The Defence of the Realm*. This provision is intended to ensure that any matters related to the defence of the realm are reserved. It is a supplementary concept to that of the armed forces (which are identified separately, see below) designed to cover all the matters for which the Ministry of Defence are responsible, for defence purposes. These matters include the various defence establishments and contractors carrying out work for defence purposes; the Ministry of Defence Police and the services cadet forces (which do not form part of the armed forces but serve defence purposes); and special provisions for the acquisition, use or disposal of land and property for defence purposes.

paragraph 9(1)(b): *The Naval, Military or Air Forces of the Crown, including reserve forces*. This is the second main leg of the reservation. It makes clear that all matters concerned with the armed forces themselves are reserved. This includes their command, establishment, maintenance, organisation, staffing and funding and all matters connected with the enlistment, management, disciplining and pay and allowances of both the military and civilian components of the armed forces. This reservation also covers the creation of offences relating particularly to the armed forces (for example, the unauthorised wearing of military uniforms), matters concerned with the territorial, auxiliary and volunteer reserve associations, special provisions relating to the status of members of the armed forces and the disclosure of information on military activities. The reservation also covers benefits to members and former members of the armed forces and their dependants and the matter

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

of war graves. Equipment and explosives research for the purposes of the armed forces are also covered.

paragraph 9(1)(c): *Visiting Forces*. A separate reservation is required in order to ensure that all matters relating to visiting forces are covered. These are the armed forces of other countries visiting or based in the UK, including both their military and civilian components.

paragraph 9(1)(d): *International Headquarters and Defence Organisations*. This is simply to make clear that matters concerned with headquarters or organisations designated for the purposes of the International Headquarters and Defence Organisations Act 1964 are reserved.

paragraph 9(1)(e): *Trading with the Enemy and Enemy Property*. This reservation covers matters relating to the control of trade with the enemy and the confiscation, control or administration of enemy property. These matters are all aspects of the conduct of war and the conclusion of peace. This provision is not intended in any way to restrict the competence of the Scottish Parliament to legislate generally about the law of property in Scotland.

Paragraph 9(2) provides that paragraph 9(1) does not reserve the following:

paragraph 9(2)(a): *Civil Defence*, in particular planning, organisation and preparation by civilian authorities. The provision of non-combative defence against hostile attack is not reserved. The exercise of civil defence functions by a member of the armed forces, visiting forces or other defence force or organisation is, however, reserved.

paragraph 9(2)(b): *The Conferral of Enforcement Powers in relation to Sea Fishing*. It is necessary also to make clear that the Scottish Parliament has competence to confer powers to enforce obligations in relation to sea fishing (in particular powers usually exercisable by British Sea Fisheries Officers) on members of the armed forces. This is because the Royal Navy in particular carries out certain enforcement duties on behalf of the Fisheries Departments.

Executive Devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

The Reserve Forces Act 1996 (c.14) , Schedule 5, paragraphs 10 and 12.	The functions of the Secretary of State to give directions relative to the charitable property of a disbanded unit and to apply by petition to the Court of Session concerning such property.
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The following functions have been made exercisable by a Minister of the Crown subject to a requirement for agreement of or consultation with the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

The Reserve Forces Act 1996 (c.14) , sections 90(1) and (3) and 91(1) and (3).	Section 90(1) and (3) - The function of the Secretary of State and the Lord Chancellor to appoint a panel of chairmen of reserve forces appeal tribunals and determine their term of appointment.
	Section 91(1) and (3) - The function of the Secretary of State and the Lord Chancellor to appoint a panel of ordinary members of reserve forces appeal tribunals and determine their term of appointment.

Schedule 5, Part I, Paragraph 10: Treason

Purpose and Effect

This paragraph reserves treason.

General

The law of treason covers the circumstances which can give rise to the crime of treason, treason felony, misprision of treason (i.e. the concealment of treason) and who can commit those crimes. There is no separate Scottish law of treason.

The crime of treason is based on the Treason Act 1351. It declares what offences are to be treason e.g. levying war against the sovereign in Her Realm. Certain of these forms of treason - compassing the death of or levying war against the sovereign - have been extended by judicial interpretation. These extended forms are known as constructive treason. The reservation also covers treason felony. This includes acts to depose the sovereign, or prompt any foreigner to invade the UK or any other part of Her Majesty's dominions or countries. Treason can be committed by any person who owes allegiance to the Crown (i.e. in particular British citizens, or temporary UK residents.)

Details of Provisions

Treason (including constructive treason), treason felony, and misprision of treason (including the question of who can commit those crimes) is reserved.

Part II: Specific Reservations

This Part contains a number of specific reservations under various Heads and Sections. The titles of the Heads, Sections etc are merely signposts - they do not form part of the definition of reserved matters.

Part II: Preliminary paragraphs

Paragraphs 1 to 3 explain how the entries in Part II are to be construed. Reference should also be made to paragraph 5 of Part III as to how references to the subject matter of an enactment are to be construed.

Paragraph 1 provides that the matters to which any of the Sections in Part II “apply” are reserved matters.

Paragraph 2 defines what paragraph 1 means by “apply” by providing that a Section “applies” to any matter described or referred to in it when read with any illustrations, exceptions or interpretation provisions in that Section.

Paragraph 3 provides that any illustrations, exceptions or interpretation provisions in a Section relate only to that particular Section. It provides specifically, as an example, that an entry under the heading “Exceptions” applies only to the matters listed in that Section and does not affect any other Section. The effect is that, even though a matter is excepted from one Section, it could be reserved at least in part by another.

Head A: Financial and Economic Matters

Section A1: Fiscal, Economic and Monetary Policy

Purpose and Effect

This Section reserves fiscal, economic and monetary policy, with the exception of local taxes.

Details of Provisions

Reservation

The reserved matters include the issue and circulation of money, taxes and excise duties (and the bodies which administer them), government borrowing and lending (including the issue of Government Securities), the exchange rate, the Bank of England and control over United Kingdom public expenditure. This last reservation does not affect the Scottish Parliament's ability to allocate resources, whether part of its assigned budget or raised through its tax-varying powers.

Exception

Local taxes to fund local authority expenditure are excepted from the reservation. Current examples of such taxes are the council tax and non-domestic rates.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	30-Mar-98	939
CC	30-Mar-98	951
CR	19-May-98	812
LC	23-Jul-98	1040
LR	3-Nov-98	185

Executive Devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

<p>The Taxes Management Act 1970 (c.9): (a) sections 2(3), 2(6) and 3(4); and</p>	<p>Section 2(3) - The function of the Secretary of State to appoint the General Commissioners for the divisions in Scotland and for determining their period of office. Section 2(6) - The function of the Secretary of State to create new divisions, abolish existing divisions or alter any divisions or their boundaries Section 3(4) - The function of the Secretary of State to dismiss clerks or assistant clerks of the General Commissioners</p>
<p>(b) sections 4(1) and (4), 4A(1), 46A(1) and 56B(1).</p>	<p>Section 4(1) and (4) - The function of the Secretary of State of being consulted by the Lord Chancellor on appointment of Commissioners for the special purposes of the Income Tax Acts and on removal of such persons. Section 4A(1) - The function of the Secretary of State of being consulted by the Lord Chancellor on appointment of a person to be a deputy Special Commissioner. Section 46A - The function of the Secretary of State of consenting to</p>

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

	regulations made by the Lord Chancellor concerning jurisdiction in tax appeals. Section 56B - The function of the Secretary of State of consenting to regulations made by the Lord Chancellor concerning practice and procedure in tax appeals.
The Income and Corporation Taxes Act 1988 (c.1) , sections 79(4) and 79(8).	Section 79(4) - The function of the Secretary of State to approve a body as an “approved local enterprise agency” for the purposes of section 79.
The Income and Corporation Taxes Act 1988 (c.1) , sections 79(4) and 79(8) (cont.).	Section 79(8) - The function of the Secretary of State to make his approval of a body conditional upon compliance with certain requirements. The function of the Secretary of State, if it appears to him that certain circumstances apply, by notice to withdraw his approval from the body concerned with effect from such date as he may specify in the notice.
The Finance (No.2) Act 1992 (c.48) , section 75(1).	The function of the Secretary of State of consenting to regulations by the Lord Chancellor providing for Commissioners to hold office by a different name.
The Value Added Tax Act 1994 (c.23) :	
(a) Schedule 12, paragraphs 2, 3(2), (4) and (5) and 9; and	Schedule 12, paragraph 2 - The function of the Secretary of State of being consulted by the Lord Chancellor on appointment of the President of VAT tribunals and also the terms and conditions of the appointment. Schedule 12, paragraph 3 - The function of the Secretary of State of being consulted by the Lord Chancellor on the retention of the President beyond normal retirement age, removal of the President from office and discharge of the President’s functions by a nominated person. Schedule 12, paragraph 9 - The function of the Secretary of State of being consulted by the Lord Chancellor on procedural rules for VAT tribunals.
(b) Schedule 12, paragraph 7(8).	Schedule 12, paragraph 7(8) - The function of the Lord Chancellor to pay salary and fees to a chairman or other member of a VAT tribunal.
The Social Security Contributions (Transfer of Functions etc.) Act 1999 (c.2) , section 13(1).	The function of the Secretary of State of concurring in regulations by the Board concerning appeals to the tax appeal Commissioners.

Section A2: The Currency

Purpose and Effect

This Section reserves matters relating to the currency.

General

In addition to the general macroeconomic reservation in Section A1, which reserves the issue and circulation of money, this Section explicitly reserves coinage, legal tender and bank notes.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	30-Mar-98	954
LC	23-Jul-98	1056

Details of Provisions

Reservation

The matters reserved are coinage, legal tender and bank notes. This includes the denominations of money in the currency and the coins or notes which constitute legal tender and what coins and bank notes may be issued.

Section A3: Financial Services

Purpose and Effect

This Section reserves financial services.

General

This reservation contributes to the preservation of common markets for financial services, and depositor, investor and policyholder protection, across the UK. Fixing the dates of bank holidays is excepted from the reservation.

Details of Provisions

Reservation

What is reserved are financial services, including investment business, banking and deposit-taking, collective investment schemes and insurance.

All matters relating to financial services are reserved, not just those dealt with in the Financial Services Act 1986. The reservation expressly includes:

- (a) investment business, e.g. managing investments or providing investment advice and the authorisation and regulation of those who undertake such activities, as in the 1986 Act;
- (b) banking and deposit-taking e.g. the authorisation and regulation of those carrying on banking or deposit-taking business, as in the Banking Act 1987;
- (c) collective investment schemes e.g. unit trusts and open-ended investment companies and their regulation and authorisation, as in the 1986 Act; and
- (d) insurance.

The expression “financial services” also includes financial services, other than those expressly mentioned, such as the services provided by building societies or friendly societies.

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

Exception

The subject-matter of section 1 of the Banking and Financial Dealings Act 1971 is excepted from the reservation.

Section 1 of the 1971 Act deals with the fixing of bank holidays. The Scottish Parliament is able to legislate to fix what are bank holidays in Scotland. A further exception in this regard is made from section 1.5.

Executive Devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

The Insurance Brokers (Registration) Act 1977 (c.46) , section 20.	The function of the Secretary of State to make rules as to the functions of assessors appointed under section 20.
The Building Societies Act 1986 (c.53) , section 47(2)(a).	The function of the Secretary of State of appointing a chairman of a tribunal to determine an appeal by a building society under section 46.
The Financial Services Act 1986 (c.60) , section 96(2)(a).	The function of the Secretary of State of being consulted by the Lord Chancellor on the appointment of legally qualified members to the Financial Services Tribunal.
The Banking Act 1987 (c.22) :	
(a) section 28(2)(a); and	Section 28(2)(a) - The function of the Secretary of State of being consulted by the Lord Chancellor as to the appointment of a chairman of a tribunal to consider an appeal under section 27.
(b) section 30(4).	Section 30(4) - The function of the Secretary of State to make regulations in respect of the conduct of appeals under Part 1 of the Act where the appeal concerns a Scottish institution.
The Friendly Societies Act 1992 (c.40) :	
(a) section 59(2)(a); and	Section 59(2)(a) - The function of the Secretary of State of being consulted by the Lord Chancellor on appointment of a chairman of a tribunal to hear an appeal brought by a Scottish society.
(b) section 60(4).	Section 60(4) - The function of the Secretary of State to make regulations in respect of conduct of appeals under the Act brought by any society with a registered office in Scotland.

Advice to The Queen

Special arrangements for giving advice to The Queen were described in a Prime Ministerial answer on 30 June 1999 (WA col 215) and an associated paper deposited in the House of Commons Library. The Secretary of State for Scotland's role in providing

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

advice to the Privy Council on Proclamations by Her Majesty in Council under section 1 of the Banking and Financial Dealings Act 1971 altering statutory bank holidays in Scotland etc. has passed to the First Minister.

Section A4: Financial Markets

Purpose and Effect

This Section reserves financial markets.

General

The reservation of financial markets ensures a common market across the UK in securities and other financial instruments, for investors and traders, including markets which operate for the purpose of raising capital and for dealing with financial instruments and currency, including foreign exchange.

Details of Provisions

Reservation

What is reserved are financial markets, such as investment exchanges or money markets.

The reserved matters are expressly stated to include:

- (a) the listing and public offers of securities and investments, such as the matters which have to be disclosed in the application for official or unofficial listing of securities by the Stock Exchange;
- (b) the transfer of securities e.g. on paper in the case of certificated securities or electronically in the case of uncertificated securities as in the CREST system; and
- (c) insider dealing. This reserves all matters relating to what constitutes insider dealing and its consequences.

Section A5: Money Laundering

Purpose and Effect

This Section reserves the regulation of financial and other businesses so as to require systems to be in place to prevent money laundering. It does not, however, reserve the criminal law as it relates to money laundering, competence in respect of which is, with certain exceptions, devolved as part of the general devolution of the criminal law.

Details of Provisions

The subject-matter of the Money Laundering Regulations 1993 ([S.I. 1993/1933](#)) is reserved. Those Regulations provide a scheme of rules to regulate certain financial businesses so as to prevent money laundering. The reservation is not however limited to financial businesses.

The Scottish Parliament is able to legislate on the criminal law generally, including the criminal law relating to money laundering. The only exception to this concerns statutory offences involving money laundering the proceeds of drug trafficking which is reserved by Section B1 (Misuse of Drugs).

Head B - Home Affairs

Section B1: Misuse of Drugs

Purpose and Effect

This Section reserves the criminal law in respect of the misuse of drugs and the proceeds of drug trafficking.

General

The reservation covers matters relating to the possession, cultivation, production, supply, import and export of drugs. In addition it covers matters relating to drug trafficking, including the acquisition, possession or use of the proceeds of drug trafficking. It includes the statutory offences involving money laundering of the proceeds of drug trafficking, confiscation of the proceeds of drug trafficking, and forfeiture of things used in the commission of drug trafficking offences.

The Scottish Parliament, however, has competence in relation to other key matters which are relevant to the misuse of drugs, including education, health, social work, police and the criminal prosecution system.

The criminal law relating to the laundering of money obtained through other types of criminal activity is not reserved. However, Section A5 effectively reserves the regulation of financial and other businesses so as to require systems to be in place to prevent money laundering.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	30-Mar-98	958
LC	23-Jul-98	1060

Details of Provisions

Legislative competence is reserved in relation to the subject-matter of the following enactments:

- (a) *the Misuse of Drugs Act 1971*, which makes provision with respect to dangerous or otherwise harmful drugs and related matters. In particular, it makes provision in relation to criminal offences in respect of the cultivation, possession, production, supply, import and export of “controlled drugs” (those controlled by the Act), the authorisation of certain activities in relation to such drugs, and confers certain special powers on the police in relation to such drugs. It also provides for the establishment of an Advisory Council on the Misuse of Drugs;
- (b) *Sections 12 to 14 of the Criminal Justice (International Co-operation) Act 1990*, which make it an offence to manufacture or supply certain substances knowing or suspecting that the substance is to be used in or for the unlawful production of a controlled drug; enable the Secretary of State to make regulations about Scheduled substances; and make it an offence to conceal, disguise, transfer, convert or remove from the jurisdiction the proceeds of drug trafficking for the purpose of avoiding, or assisting someone to avoid, prosecution for a drug trafficking offence or the making or enforcement of a confiscation order;
- (c) *Part V of the Criminal Law (Consolidation) (Scotland) Act 1995*, which confer powers of search and investigation and create offences in respect of drug trafficking, in particular making it an offence for a person to acquire, use or possess property knowing that it represents the proceeds of drug trafficking; and

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

- (d) *the Proceeds of Crime (Scotland) Act 1995*, so far as relating to drug trafficking. This Act makes general provision for the forfeiture of things used in the commission of crime and special provision for the confiscation of the proceeds of crime.

Executive devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

<p>The Misuse of Drugs Act 1971 (c38), Schedule 3, paragraphs 1(1)(b), 4, 13(1)(b) and 17.</p>	<p>Schedule 3, paragraph 1(1)(b) - The function of the Secretary of State to appoint members of a tribunal in Scotland.</p> <p>Schedule 3, paragraph 4 - The function of the Secretary of State to make procedural rules and evidential rules for proceedings before tribunals in Scotland.</p> <p>Schedule 3, paragraph 13(1)(b) - The function of the Secretary of State to appoint a person to an advisory body in Scotland.</p> <p>Schedule 3, paragraph 17, - The function of the Secretary of State to appoint chairman and 2 other persons to a professional panel in Scotland.</p>
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Section B2: Data Protection

Purpose and Effect

This Section reserves matters covered by certain United Kingdom and Community legislation concerning the protection of personal data.

General

Data protection concerns obtaining, holding, processing and disclosure of personal data (i.e. information about individuals) and the free movement of such data. Provision for this is currently made in the Data Protection Act 1998. The 1998 Act, which received Royal Assent on 16 July 1998, consolidated and repealed the Data Protection Act 1984. The 1998 Act is broader than the 1984 Act in two main respects. As required by Council Directive [95/46/EC](#), it extends data protection legislation to cover manually-held records as well as records held on computer. It also covers “accessible records” which are certain records in the social work, housing, health and education fields. Some parts of the 1998 Act did not come into force until 1 March 2000, but all of those matters are nevertheless reserved matters.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	30-Mar-98	958
LC	23-Jul-98	1070
L3	9-Nov-98	607

Details of Provisions

The reservation of data protection is by reference to the subject-matter of the Data Protection Act 1998 and Council Directive [95/46/EC](#):

- (a) *The Data Protection Act 1998*. This regulates certain activities involving the obtaining, holding, processing and disclosure of personal data (i.e. data relating to an individual who can be identified from that information). It is in particular concerned with “data users” (i.e. persons who hold data which have been, or which are intended to be, processed by him or on his behalf) and “computer bureaux” (i.e. persons who process data on behalf of another person or allow that other person to use their equipment). It also covers manually held records and “accessible records” mentioned above.

The 1998 Act also deals with the office of the Data Protection Registrar. He or she is obliged to compile and maintain a register of data users and computer bureaux. This register is available for public inspection. Essentially, the entry for each data user on that register must describe, amongst other things, the personal data which he intends to hold, the purpose for which he intends to hold that data and a description of any persons to whom he intends or may wish to disclose the data. A data user may not, amongst other things, hold personal data of any description other than that specified in the entry, hold that data for any purpose other than the purpose so specified or disclose such data to any person who is not described in the entry. Similar provisions apply in respect of registered computer bureaux.

The 1998 Act also requires the Data Protection Registrar to promote the observance of the data protection principles by data users and computer bureaux. Those principles are set out in Part 1 of Schedule 1 to that Act. The purpose of the principles is to guide the use of data by data users and computer bureaux.

The interpretation part in the Section provides that where any provision of the 1998 Act is not in force on the principal appointed day (1 July 1999) it should be treated as if it were in force for the purpose of the reservation. This is necessary because some parts of the 1998 Act did not come into force until 1 March 2000.

- (b) *Council Directive 95/46/EC*. This is concerned with protection of individuals with regard to the processing of personal data and with the free movement of such data. It requires provision to be made which will:
- i. extend to certain types of manually processed data;
 - ii. set specific conditions of processing personal data;
 - iii. set tighter conditions for processing sensitive data (for example about health, political opinions or religious beliefs);
 - iv. provide certain exemptions for journalism;
 - v. allow individuals to object to processing in some circumstances; and
 - vi. restrict some fully automated decision-making.

Most of these provisions have been implemented in the 1998 Act. However, the Directive contains some discretionary provisions which the UK has chosen to interpret in a certain way in the 1998 Act and it also sets out provisions establishing a Committee composed of representatives of the Member States. The reference to the Directive is therefore included to ensure that all of those matters are reserved matters.

Executive Devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

The Data Protection Act 1984 (c.35), section 3(3)(a) and (b).	The function of the Secretary of State of being consulted by the Lord Chancellor on the appointment of chairman and deputy chairmen of the Data Protection Tribunal.
The Data Protection Act 1998 (c.29), section 6(4)(a) and (b).	The function of the Secretary of State of being consulted by the Lord Chancellor on appointments of the chairman and deputy chairmen of the Data Protection Tribunal.

Section B3: Elections

Purpose and Effect

This Section reserves matters regarding Parliamentary and European Parliamentary elections. It also reserves the franchise at local government elections but other matters concerning local government elections are not caught by the reservation.

General

The reservation covers all matters concerning elections for membership of the House of Commons, the European Parliament, and the Scottish Parliament. The law concerning elections covers, in particular, who may stand or vote in any elections, procedures under which votes are counted and candidates returned, and what the constituencies and timing of elections should be.

Provision is made under sections 1-14 and Schedule 1 of the Act for elections to the Scottish Parliament. These provisions will also be outwith the legislative competence of the Scottish Parliament by virtue of section 29(2)(c) and Schedule 4.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	23-Jul-98	1075
LC	23-Jul-98	1077

Details of Provisions

Elections for membership of the House of Commons, the European Parliament and the Scottish Parliament are reserved, including the subject-matter of:

- (a) *the European Parliamentary Elections Act 1978*. This Act provides for the election of representatives to the European Parliament including the determination of the United Kingdom's European Parliamentary constituencies;
- (b) *the Representation of the People Act 1983 and the Representation of the People Act 1985*. These Acts contain the current provisions concerning Parliamentary elections in the United Kingdom including, in particular, provision as to who may vote how they may vote, the conduct of elections and the return of members; and
- (c) *the Parliamentary Constituencies Act 1986*. This Act effectively provides for the distribution of seats in the House of Commons amongst constituencies. In particular, it provides for Boundary Commissions for the constituent parts of the United Kingdom to review the distribution of seats and determines the rules under which the Commission must conduct these reviews,

so far as they apply, or may be applied, in respect of such membership.

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

The franchise at local government elections is also a reserved matter but other matters concerning local government elections are not caught by the reservation. The Scottish Parliament is thus able to legislate on:

- the frequency of elections;
- the terms of office of councillors;
- the division of local government areas into electoral wards and the number of councillors elected for each ward;
- the procedures under which votes cast in such an election should count e.g. proportional representation or first past the post;
- the separate election of specific persons to specific council offices e.g. the direct election of convenors or leaders of local authorities;
- the qualifications and disqualifications for holding office as a member of such a council; and
- what should happen on any vacation of office of a member of a council.

Agency Arrangements

The Scotland Act 1998 (Agency Arrangements) Order 1999 ([S.I 1999/1512](#)) specified certain functions of a Minister of the Crown in relation to UK Parliamentary, Scottish Parliamentary and European Parliamentary elections for the purpose of section 93 of the Scotland Act.

Section B4: Firearms

Purpose and Effect

This Section reserves firearms.

General

The reserved matter covers regulation of the manufacture, possession, handling, purchase or acquisition, sale, distribution and transfer of firearms.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	30-Mar-98	958

Details of Provisions

Reservation

The reservation is expressed by reference to the subject-matter of the Firearms Acts 1968 to 1997. These Acts are the Firearms Act 1968, the Firearms Act 1982, the Firearms (Amendment) Act 1988, the Firearms (Amendment) Act 1992 and the Firearms (Amendment) Act 1997. These Acts, *inter alia*:

- make it criminal in certain circumstances and without authority to possess handle, purchase, acquire, sell, distribute or transfer certain firearms and imitation firearms;
- provide for the need for, and issue of, firearms certificates in relation to certain firearms and ammunition;
- make provision for the regulation of firearms dealers; and
- and provide for the licensing and regulation of pistol clubs.

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

The Acts distinguish between different types of firearms in certain respects and make different provision for different types.

The reservation also covers subordinate legislation made under the Firearms Acts, in particular the Firearms (Scotland) Rules 1989 (S.I. 1989/889) which prescribe the forms to be used in connection with the grant of certificates under the Firearms Acts and the registration of firearms dealers, and also the form of the register of transactions to be kept by dealers.

Executive Devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

The Firearms Act 1968 (c.27) , sections 5 and 12(2).	The function of the Secretary of State to grant an authority to allow persons to possess prohibited weapons and ammunition, impose conditions under that authority and revoke an authority.
The Firearms (Amendment) Act 1988 (c.45) , sections 15 and 19 and the Schedule (other than paragraph 3(1)(a)).	The functions of the Secretary of State under section 15 in relation to approving certain rifle and pistol clubs. All the functions conferred on the Secretary of State by the schedule to the Act (granting of Museums Firearms Licences which allow museums to hold firearms and ammunition without a certificate) except the function of determining a lesser amount of the fee for granting or renewing a licence.
The Firearms (Amendment) Act 1997 (c.5) , section 7(3).	The function of making designations for the purposes of section 7(3) of the 1997 Act of a place at which a firearm is to be kept and used by virtue of a condition in a firearms certificate requiring it to be kept and used in such a place.

Section B5: Entertainment

Purpose and Effect

This Section reserves certain matters which relate to entertainment.

General

The reservation covers licensing of premises for film exhibition and the classification of video recordings.

The classification of films for public exhibition, which is carried out by the British Board of Film Classification, is also to be reserved. The Board is a non-statutory body established by the film industry in 1912 which certifies films as suitable for different categories of audience (or refuses a certificate).

Legislative competence in respect of the classification and supply of video recordings is also reserved. The matter of broadcasting is reserved separately by Section K1.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	30-Mar-98	958
CC	30-Mar-98	982
LC	23-Jul-98	1077
LR	3-Nov-98	186

Details of Provisions

The subject-matter of the following are reserved:

- (a) *the Video Recordings Act 1984*. This Act makes provision for regulating the distribution of video recordings. In particular it makes provision for the classification and labelling of recordings and the supply and possession of videos that are not classified; and
- (b) *sections 1 to 3 and 5 to 16 of the Cinemas Act 1985*. This Act makes provisions relating to the licensing of premises for use for film exhibition (including provision for certain exemptions from the requirements to hold a licence).

In addition, legislative competence in respect of the *classification of films for public exhibition* as carried out at present by the British Board of Film Classification, is reserved.

Executive Devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

<p>The Cinemas Act 1985 (c.13), section 6(6) and (7).</p>	<p>The function of the Secretary of State to give a certificate on payment of such reasonable fee as he may determine to such an organisation which is not conducted or established for profit (section 6(6)); and the function of the Secretary of State to revoke a certificate given under section 6(6) (section 6(7)).</p>
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Section B6: Immigration and Nationality

Purpose and Effect

This Section reserves immigration and nationality.

General

Immigration and nationality covers a range of matters, including: entry to the UK; the granting of political or other forms of asylum; the status and capacity in the UK of non-British citizens, the grant of work permits and their regulation; free movement of persons within the European Economic Area; and the issue of passports and other travel documents.

Immigration control is now largely a matter of statute, the principal controlling statute being the Immigration Act 1971 (which has been amended by a number of subsequent Immigration Acts) together with the British Nationality Act 1981 and the Immigration (Carriers' Liability) Act 1987. Passports and other travel documents are not subject to statutory provision, but are issued under the Royal Prerogative.

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	23-Jul-98	1070

Details of Provisions

The reservation includes the exercise of functions under the legislation described above; asylum and the status and capacity of persons in the United Kingdom who are not British citizens; free movement of persons within the European Economic Area; and the issue of travel documents.

Executive Devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

The Immigration Act 1971 (c.77):	
(a) Schedule 2, paragraph 1(2); and	The function conferred on the Secretary of State to appoint medical inspectors for the purposes of that Act.
(b) Schedule 2, paragraph 1(3).	The function of the Secretary of State to give instructions to medical inspectors in relation to their functions under the Act.

Section B7: Scientific Procedures on Live Animals

Purpose and Effect

This Section reserves the use of live animals for experimental or other scientific purposes.

General

Regulation of the use of live animals for experimental or other scientific purposes is covered by the Animals (Scientific Procedures) Act 1986. The law regulating the use of viable tissues or organs of animals for transplantation into humans is dealt with elsewhere and is also reserved - see Section J2 (Xenotransplantation).

Matters relating to animal health and welfare generally are the subject of separate legislation, such as, the Animal Health Act 1981. These matters are not reserved.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	30-Mar-98	958
LC	23-Jul-98	1080

Details of Provisions

The subject-matter of the 1986 Act is reserved. This Act makes it an offence for a person to carry out a procedure on an animal which may cause the animal pain, suffering, distress or lasting harm, unless the procedure is conducted by a person who is licensed to carry out that procedure and it is carried out as part of a programme of work for which there is a project licence. In addition the Act regulates the premises where such work can

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

be carried out and makes provision for the breeding of animals for experimental or other scientific purposes. The Act also makes provision for the appointment of Inspectors and for a Committee, known as the Animal Procedures Committee.

Section B8: National Security, Interception of Communications, Official Secrets and Terrorism

Purpose and Effect

This Section reserves national security, official secrets and special provisions for dealing with terrorism. The functions of the Security Service, the Secret Intelligence Service and the GCHQ are reserved by paragraph 2(4) of Part I of Schedule 5. It also reserves the interception of communications, but not intrusive investigative techniques or the interception of certain communications made to or by a person detained at a place of detention such as a prison or hospital.

This section was amended by article 4 of the Scotland Act 1998 (Modifications of Schedules 4 and 5) Order 1999 (S.I. 1999/1749).

General

The matters covered by the reservation are:

- (a) national security (including safeguarding the economic well-being of the United Kingdom) and in particular its protection;
- (b) the circumstances under which communications may be intercepted, but not the use by the police of intrusive investigative techniques, such as certain kinds of surveillance or;
- (c) official secrets, in particular the protection of the national interest from activities which involve, or could involve, the unauthorised disclosure of information which might damage that interest; and
- (d) special powers and provisions for dealing with terrorism.

The police and (with certain exceptions) the criminal law generally are not reserved.

The tribunal established by the Interception of Communications Act 1985 is a cross-border public authority and has been dealt with under sections 88 to 90.

Section B10 reserves emergency powers. Aviation and maritime security are reserved by Sections E3 and E4. Paragraph 2(4) in Part I of Schedule 5 reserves functions of the Security Service, the Secret Intelligence Service and the Government Communications Headquarters.

Amendments to the Official Secrets Act 1989 are made by paragraph 26 of Schedule 8.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LR	3-Nov-98	186

Details of Provisions

The reserved matters are:

- (a) national security;
- (b) the interception of communications. This is now mainly covered by the Interception of Communications Act 1985. The 1985 Act sets out the circumstances in which communications (by post or by means of a public telecommunications system) may be

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

intercepted and provides for the issue of warrants for such purposes. It also provides for the establishment of a tribunal to investigate whether interceptions have been conducted lawfully, and for the functions and appointment by the Prime Minister of a Commissioner to keep interception activity under review and to assist the tribunal. There is, however, excepted from this reservation:

- (i) the subject-matter of Part III of the Police Act 1997 (authorisation to interfere with property etc.);
 - (ii) surveillance by the police not involving interference with property; and
 - (iii) the interception of certain communications made to or by a person detained at a place of detention such as a prison or hospital⁶. The types of communication which are not caught by the reservation are written communications intercepted at the place of detention or certain telephone calls from the place of detention. “Place of detention” is defined in the interpretation Section, as is “private telecommunications system” used in the reference to telephone calls. Place of detention includes prison, young offenders institution, remand centre, legalised police cell and hospitals in which persons can be detained.
- (c) the subject-matter of:
- i. the Official Secrets Act 1911 which makes provisions directed against spying and includes a definition of “prohibited place” such as military establishments, which may not be entered, and the Official Secrets Act 1920, which makes further provision for the protection of prohibited places; and
 - ii. the Official Secrets Act 1989, which makes provision in relation to the disclosure of official information and in particular about the circumstances in which disclosure can be made and the circumstances in which disclosure amounts to an offence. Section 4(2) protects from disclosure information, the disclosure of which results in the commission of a crime, facilitates an escape or otherwise prejudices the safekeeping of persons in legal custody, or impedes the prevention or detection of offences or the apprehension or prosecution of suspected offenders. In line with the general devolution of the criminal law, the protection of information for such criminal law purposes by that subsection is excepted from the reservation.
 - iii. special powers and other special provisions for dealing with terrorism. This will reserve competence to make special provision about terrorism such as is made in the Suppression of Terrorism Act 1978, the Prevention of Terrorism (Temporary Provisions) Act 1989 and the Prevention of Terrorism (Additional Powers) Act 1996. The reservation does not catch general provisions of the criminal law or public order statutes which, although not directed against terrorists as such, can be used to deal with terrorists.

Executive Devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750), as amended by Article 4(3) of S.I. 2000/3253.

The Wireless Telegraphy Act 1949 (c.54), section 5(1)(b).	The function of the Secretary of State of authorising persons to use wireless telegraphy apparatus in order to obtain information as to the contents, sender or addressee of any message (whether sent by means of wireless telegraphy or
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⁶ As amended by S.I. 1999/1749

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

	not) and to disclose information about the same: but only so far as the function is exercisable for the purpose of preventing or detecting crime (within the meaning of the Regulation of Investigatory Powers Act 2000) or of preventing disorder.
The Interception of Communications Act 1985 (c.56) ⁷ .	
(a) section 2; and	The function of the Secretary of State of issuing a warrant requiring the addressee to intercept in the course of their transmission by post or by means of a public telecommunications system, such communications as are described in the warrant and to require disclosure of any intercepted material: but only for the purpose of preventing or detecting serious crime.
(b) sections 4(3) and (4), 5(1)(a) and (2) and 6(1).	The function of the Secretary of State of renewing, modifying or cancelling warrants under section 2 for the purpose of preventing or detecting serious crime; and the function of the Secretary of State of making arrangements for the purpose of securing various safeguards in relation to material intercepted as a result of such warrants.
The Official Secrets Act 1989 (c.6) , sections 7(5), 8(9) and 12.	The function of the Secretary of State of prescribing certain bodies which may give “official authorisation” and who may make an “official restriction”. The function of the Secretary of State of prescribing bodies which may give an “official direction”. The function of the Secretary of State of making orders prescribing bodies, office-holders and others who fall within the definition of “Crown servant”.
The Intelligence Services Act 1994 (c.13) : (a) section 5; and	The function of issuing warrants on the application of the Security Service, the Secret Intelligence Service or GCHQ provided that is for the purpose of supporting the prevention or detection of serious crime. The function is transferred for the purpose of authorising the agencies to interfere with wireless telegraphy and, in the case of the Security Service only, also for interfering with property in Scotland.
(b) section 6(3) and (4).	The function of the Secretary of State of renewing and cancelling warrants issued

⁷ The entry relating to the 1985 Act was omitted with effect from 14 December 2000 by Article 4(3) of [SI 2000/3253](#)

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

	under section 5 so far as the function under section 5 is transferred.
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The following functions have been made concurrently exercisable by a Minister of the Crown and the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

The Police (Scotland) Act 1967 (c.77) , section 32A.	The function of the Secretary of State in making grants in respect of expenses incurred (or to be incurred) by a police authority or joint police board in connection with safeguarding national security.
The Sewerage (Scotland) Act 1968 (c.47) , sections 37B and 55(4).	Section 37B - The function of the Secretary of State to give directions specifying information to be excluded, on the grounds of national security, from a register maintained by a sewerage authority. Section 55(4) - The function of the Secretary of State to certify that, in the interests of national security, any power of entry under the Act should not apply to specified Crown premises.
The Control of Pollution Act 1974 (c.40) , sections 36(2B), 42A(1), 42A(2), 42A(4) and 105(3C).	Section 36(2B) - The function of the Secretary of State to certify that, in the interests of national security, details of a discharge consent application should not be advertised. Section 42A - The function of the Secretary of State to issue directions and make determinations concerning the exclusion, in the interests of national security, of information from registers maintained by SEPA. Section 105(3C) - The function of the Secretary of State to certify that, in the interests of national security, any power of entry in the Act should not apply to specified Crown premises.
The Water (Scotland) Act 1980 (c.45) , section 110A(4).	The function of the Secretary of State to certify that, in the interests of national security, any power of entry in the Act should not apply to specified Crown premises.
The Environmental Protection Act 1990 (c.43) , sections 21(1), 21(2), 21(4), 65(1), 65(2), 65(4) and 159(4).	Sections 21 and 65 - The functions of the Secretary of State to issue directions and make determinations concerning the exclusion, in the interests of national security, of information from registers maintained by SEPA. Section 159(4) - The function of the Secretary of State to certify that, in the

7 The entry relating to the 1985 Act was omitted with effect from 14 December 2000 by Article 4(3) of [SI 2000/3253](#)

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

	interests of national security, any power of entry under the Act should not apply to specified Crown premises.
The Radioactive Substances Act 1993 (c.12) , sections 25(1), 25(2) and 39(1).	The function of the Secretary of State to give directions to SEPA that, on the grounds of national security, knowledge of a particular application, registration or authorisation should be restricted
The Local Government etc. (Scotland) Act 1994 (c.39) , section 117(1), (2) and (5)	Section 117(1) and (2) - The function of the Secretary of State to give to a water and sewerage authority directions of a general or specific nature in the interests of national security or to mitigate a civil emergency Section 117(5) - The function of the Secretary of State to notify a person that, in the interests of national security, anything done under the section should not be revealed
The Environment Act 1995 (c.25) , sections 113(2), 113(3) and 115(5).	Section 113(2) and (3) - The function of the Secretary of State to express an opinion that disclosure, or further disclosure, of information under section 113 would be contrary to the interests of national security. Section 115(5) - The function of the Secretary of State to certify that, in the interests of national security, any power of entry under the Act should not apply to specified Crown premises.

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2000 ([S.I. 2000/3253](#)).

The Regulation of Investigatory Powers Act 2000 (c.23) : (a) section 5;	The function of the Secretary of State to issue a warrant authorising interception but only so far as the function are exercisable for the purpose of preventing or detecting serious crime
(b) sections 9(1)(b) and (3), 10(1)(a) and (2) and 15(1);	The functions of the Secretary to State to vary cancel or renew an interception warrant and to ensure the proper use of intercepted material but only so far as the functions are exercisable in relation to a warrant issued under section 5 by the Scottish Ministers by virtue of the Order
(c) sections 32 and 42;	The functions of the Secretary of State to grant authorisations for intrusive surveillance or an intelligence service authorisations but only so far as the function is exercisable in relation to an application made by a member of the Security Service and where the granting of the authorisation for the carrying out of

	intrusive surveillance is necessary for the purpose of preventing or detecting serious crime
(d) sections 44 (1) and (2)(b) and 45(1).	The functions of the Secretary of State to sign or cancel authorisations for intrusive surveillance but only so far as the functions are exercisable in relation to the grant of an authorisation for the carrying out of intrusive surveillance under section 32 that is made by a warrant issued under section 42 by the Scottish Ministers by virtue of the Order

Section B9: Betting, Gaming and Lotteries

Purpose and Effect

This Section reserves betting, gaming and lotteries (including the National Lottery).

General

Betting is at present regulated by various statutes in particular the Betting, Gaming and Lotteries Act 1963. This deals with, amongst other things, the granting of betting office licences and betting agency permits. The 1963 Act also makes provision in relation to betting at horse racecourses and dog racecourses. It provides for the constitution of the Horserace Totalisator Board (the "Tote") and prohibits pool betting from being carried out on a horse track other than by or with the authority of the Tote. It also makes provision for pool betting on licensed dog tracks and for a Levy Board which assesses and collects money from bookmakers and the Tote for the purposes of improving breeds of horses, advancing or encouraging veterinary science or education, and improving horse racing.

Gaming is regulated by the Gaming Act 1986. It is defined as the playing of a game of chance for winnings in money or moneys worth, whether any person playing the game is at risk of losing any money or money's worth or not. It establishes the Gaming Board for Great Britain and imposes on it the duty of keeping under review the extent and character of gaming in Great Britain.

A lottery is an arrangement in which prizes are distributed by chance to persons who have paid to participate.

Lotteries are regulated by the Lotteries and Amusements Act 1976 and the National Lottery etc. Act 1993. The National Lottery is run by a body licensed by the Director General of the National Lottery. Under the 1993 Act the Secretary of State can give the Director General directions as to the exercise of his functions. The 1993 Act also makes provision for the net proceeds of the National Lottery to be paid into a distribution fund maintained by the Secretary of State and for these to be distributed equally to the good causes of the arts, sport, charity, the national heritage and projects to mark the year 2000 and the beginning of the third millennium. Funds in Scotland are distributed for the arts and sport by the Scottish Arts Council and the Scottish Sports Council respectively, through a fixed formula allocating 8.9 per cent of the relevant UK expenditure to Scotland. Funds for the other three good causes are distributed on a UK basis by the National Lottery Charities Board (operating in Scotland through a statutory Scottish Committee), Trustees of the National Heritage Memorial Fund and the Millennium Commission respectively. The National Lottery Act 1998 proposes the establishment with Lottery funding of a New Opportunities Fund for projects connected with health, education or the environment, and the National Endowment for Science, Technology and the Arts, which is not a distributing body but which will receive an endowment from lottery derived funds.

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	30-Mar-98	958
LC	23-Jul-98	1081

Details of Provisions

Legislative competence for all matters relating to betting, gaming and lotteries is reserved, including the circumstances in which such activities can be carried out, taxation of the proceeds of such activities, and the National Lottery.

Executive Devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

<p>The Betting, Gaming and Lotteries Act 1963 (c.2), section 29(2)(b) and (4) and Schedule 1, paragraph 20(1A).</p>	<p>The function of the Secretary of State to appoint members of the Horserace Betting Levy Appeal Tribunal for Scotland.</p> <p>The functions of the Secretary of State to amend sub-paragraph (1) of that paragraph so as to vary anything specified in that sub-paragraph.</p>
<p>The Local Government (Scotland) Act 1966 (c.51), section 42(2).</p>	<p>The function of the Secretary of State by Order to amend the fees or maximum fees in the following enactments mentioned in paragraph 26 of the first column of Part II of schedule 4 to the 1966 Act, namely fees specified in paragraph 11 of schedule 2 to the Betting, Gaming and Lotteries Act 1963, being the maximum fee for registration of a pool promoter or continuation of the registration of a registered pool promoter; and the fees specified in paragraph 12 of schedule 3 to the 1963 Act, being the maximum fee for a track betting licence.</p>
<p>The Gaming Act 1968 (c.65):</p>	
<p>(a) sections 22(3) and (4); and</p>	<p>The function of the Secretary of State to make regulations prescribing the circumstances in which licensing authorities (in Scotland the local authority) may refuse to grant or renew licences under the Act or impose restrictions under paragraph 25 of Schedule 2 to the Act.</p> <p>The function of the Secretary of State by regulations to impose restrictions with respect to the hours during which gaming can take place on premises in respect of which a licence under the Act is in force.</p>

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

(b) section 48(5)(b).	The function of the Secretary of State by order to direct that a sum specified in the specified subsections (fees for licences, registrations certificates and permits) should be substituted with such other sum as may be specified in the order.
The Lotteries and Amusements Act 1976 (c.32): sections 7(4), 18(1)(d) and (f).	Section 7(4) - The function of the Secretary of State to consent, on application from a local authority, to use money accruing from a local lottery for a purpose suggested by the local authority other than the object of the lottery subject to the criteria specified in section 7(4). Section 18(1)(d) - The function of the Secretary of State by Order to vary the fee payable under paragraph 3 or 9 of Schedule 1 to that Act. Section 18(1)(f) - The function conferred on the Secretary of State by order to vary the fee payable under paragraph 18 of Schedule 3 to that Act ,or provide that it shall cease to be payable.
The National Lottery etc. Act 1993 (c.39):	
(a) section 25C(1), 26(1) and (2) as read with section 26A(2)(b), section 26(3), (3A) and (4) as read with section 26A(1)(a), section 29(1), (3), (4) and (5) as read with section 29(6)(c) and (d), sections 35(3) and 43B(1) and section 43C(1) as read with section 43CC(2)(b);	Section 25C(1) - The function of the Secretary of State to instruct a distributing body to prepare, review or replace a strategic plan, but only so far as relating to Scottish bodies.
	Section 26(1) and (2) as read with section 26A(2)(b) - The function of the Secretary of State to give directions to the National Lotteries Charities Board or the New Opportunities Fund or to the Trustees of the National Heritage Memorial Fund, but only so far as applying only to Scotland and providing for certain matters in relation to any distribution of lottery money made for a purpose which does not concern reserved matters. Section 26(3), (3A) and (4) as read with section 26A(1)(a) - The functions of the Secretary of State to give financial directions to a distributing body or directions relating to delegation of its powers of distribution, but only so far as relating to Scottish bodies. Section 29(1), (4)(a) and (5) as read with section 29(6)(c) and (d) - The function of the Secretary of State by order to amend section 23(1), (2), (3) or (4) so

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

	<p>as to substitute, add or omit bodies or substitute different percentages, but only so far as relating to Scottish bodies specified in section 23(1) or (2) and subject to the limitation that the order may substitute different percentages only where more than one Scottish body is so specified in either of those subsections and then only in relation to the particular percentage held in the Distribution Fund for distribution by that body.</p> <p>Section 29(3) and (4)(b) as read with section 29(6)(c) and (d) - The function of the Secretary of State by order to provide that section 23(1), (2), (3) or (4) shall, pending the making of an order amending that subsection under section 29(1), cease to have effect or have effect as if a body specified in it were omitted, but only so far as relating to Scottish bodies specified in section 23(1) or (2)</p> <p>Section 35(3) - The function of the Secretary of State to give directions to a distributing body about the preparation of annual accounts, but only so far as relating to Scottish bodies.</p> <p>Section 43B(1) - The Function of the Secretary of State to specify initiatives for the New Opportunities Fund, but only so far as relating to initiatives applying in Scotland only.</p> <p>Section 43C(1) as read with section 43CC(2)(b) - The function of the Secretary of State to give directions to the New Opportunities Fund but only so far as applying to Scotland only and providing for certain matters regarding any initiative relating to a purpose which does not concern reserved matters.</p>
<p>(b) section 25C(1) and section 26(1) as read with section 26A(1)(a);</p>	<p>Section 25C(1) and section 26(1) as read with section 26A(1)(a) - The function of the Secretary of State to give directions to a distributing body as to the matters to be taken into account in determining the persons to whom, the purposes for which and the conditions subject to which the body distributes any money under section 25(1), but only so far as relating to Scottish bodies.</p>
<p>(c) sections 26(5), 27(1) and (8), 43C(2), (4) and (5); and</p>	<p>Section 26(5) - The function of the Secretary of State to consult a distributing body before giving it directions, but only so far as the function of giving directions has been transferred to the Scottish Ministers.</p>

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

	<p>Section 27(1) and (8) - The functions of the Secretary of State to prohibit a body from distributing money or to require information, but only so far as relating to Scottish bodies.</p> <p>Section 43C(2), (4) and (5) - The functions of the Secretary of State to consult the New Opportunities Fund before giving them directions, or making or revoking an order under section 43B.</p>
(d) Schedule 3A, paragraph 2(1) and (2) as read with paragraph 2(6)(a).	Schedule 3A, paragraph 2(1) and (2) as read with paragraph 2(6)(a) - The function of the Secretary of State to authorise or approve a joint scheme, but only in relation to joint schemes applying only in Scotland.

The following functions have been made concurrently exercisable by a Minister of the Crown and the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

The National Lottery etc. Act 1993 (c.39):	
(a) section 14;	Section 14 - The function of the Secretary of State of receiving the annual report of the National Lottery Commission and of laying a copy of the report before Parliament.
(b) section 25C(5)(c) and (d) and (6);	Section 25C(5)(c) and (d) and (6) - the functions of the Secretary of State of receiving and being consulted on a draft strategic plan of a lottery body and of receiving a copy of the strategic plan as adopted, and of laying a copy before each House of Parliament, but only as regards Scottish or GB bodies.
(c) sections 34, 35(4) and 39(3); and	<p>Section 34 - the functions of the Secretary of State of receiving annual reports of distributing bodies, other than the Millennium Commission, and of laying copies of each such report before Parliament.</p> <p>Section 35(4) - the function of the Secretary of State of receiving a copy of the annual statement of accounts from distributing bodies, other than the National Lottery Charities Board and the Millennium Commission.</p> <p>Section 39(3) - the function of the Secretary of State of receiving copies of the annual statement of accounts of the National Lottery Charities Board.</p>
(d) section 43D(3).	Section 43D(3) - the function of the Secretary of State of receiving copies of

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

	the annual statement of accounts of the New Opportunities Fund.
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The following functions have been made exercisable by a Minister of the Crown subject to a requirement for agreement of or consultation with the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

<p>The National Lottery Act etc. Act 1993 (c.39):</p>	
<p>(a) section 26(1) and (2) as read with section 26A(2)(a), section 26(3A) as read with section 26A(1)(b), section 28, section 43C(1) as read with section 43CC(2)(a), and Schedule 3A, paragraph 2(1) and (2) as read with paragraph 2(6)(b);</p>	<p>Section 26(1) and (2) as read with section 26A(2)(a) - the function of the Secretary of State to give directions to the National Lottery Charities Board or the New Opportunities Fund or to the Trustees of the National Heritage Memorial Fund, but only so far as applying to the whole of the UK and providing for matters other than those to be provided specifically for Scotland in accordance with section 26A(3). Section 26(3A) as read with section 26A(1)(b) - the function of the Secretary of State to give directions to a distributing body as regards delegation of its powers of distribution, but only so far as relating to GB bodies. Section 28 - the function of the Secretary of State of amending section 22(3) to substitute different percentages. Section 43C(1) as read with section 43CC(2)(a) - the function of the Secretary of State to give directions to the New Opportunities Fund, but only so far as relating to directions applying to the whole of the UK and providing for matters other than those to be provided specifically for Scotland in accordance with section 43CC(3). Schedule 3A, paragraph 2(1) and (2) as read with paragraph 2(6)(b) - the function of the Secretary of State of authorising or approving a joint scheme applying in one or more parts of the UK, including Scotland.</p>
<p>(b) section 29(1), (3), (4) and (5) as read with section 29(6)(a) and (b); and</p>	<p>Section 29(1), (4)(a) and (5) - The function of the Secretary of State by order to amend section 23(1), (2), (3) or (4) so as to substitute, add or omit bodies or substitute different percentages, but only so far as relating to GB bodies or substitution of the total aggregate percentage specified as held in the Distribution Fund for Scottish bodies specified in section 23(1) or (2). Section 29(3) and (4)(b) - The function of the Secretary of State, by order, to provide that section 23(1), (2), (3) or (4) shall, pending the making of an order amending that subsection under section 29(1), cease</p>

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

	to have effect or have effect as if a body specified in it were omitted, but only so far as relating to GB bodies.
(c) Schedule 6A, paragraph 1(1) and (2).	Schedule 6A, paragraph 1(1) and (2) - the function of the Secretary of State to appoint members of the New Opportunities Fund, but only so far as relating to the appointment of a member suited to make the interests of Scotland his special care.

Section B10: Emergency Powers

Purpose and Effect

This Section reserves emergency powers.

General

This reservation is concerned with the circumstances in which unusual powers can be exercised for enabling effective rule in the event of a crisis. In practice this has often involved the deployment of the armed forces for example to provide essential services.

The main statutory provisions are set out in the Emergency Powers Act 1920. This gives power for Her Majesty to declare a state of emergency and to make regulations by Order in Council for securing the essentials of life to the community e.g. for the preservation of peace, and for securing and regulating the distribution of food, water, fuel etc.

In addition servicemen may be employed under the royal prerogative in extraordinary circumstances to deal with particular crises.

Planning by the civil authorities for emergencies is not, however, caught by the reservation.

Details of Provisions

Legislative competence on all matters relating to emergency powers is reserved. In particular this covers the circumstances in which such powers can be exercised, what the powers should be and any ancillary provision such as compensation for loss arising from the exercise of these powers.

Executive Devolution

The following functions have been made concurrently exercisable by a Minister of the Crown and the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

The Local Government etc. (Scotland) Act 1994 (c.39) , section 117(1), (2) and (5).	Section 117(1) and (2) - The function of the Secretary of State to give to a water and sewerage authority directions of a general or specific nature in the interests of national security or to mitigate a civil emergency Section 117(5) - The function of the Secretary of State to notify a person that, in the interests of national security, anything done under the section should not be revealed
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Section B11: Extradition

Purpose and Effect

This Section reserves extradition.

General

Extradition is the process under which a person may be surrendered by one state to another so as to face trial in that other state for an alleged crime.

There are restrictions upon who can be extradited, for example, covering political offences or speciality (under which the person can only be tried for the offence for which the extradition was ordered).

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	30-Mar-98	958

Details of Provisions

Legislative provision covering matters relating to extradition are reserved. In particular this covers the Extradition Act 1989 which consolidated and amended the Extradition Acts 1870 to 1935 and which provides the procedures for extraditing persons to states other than the Republic of Ireland. It also covers extradition to the Republic of Ireland which is carried out under a procedure known as the backing of warrants, under the Backing of Warrants Act 1965. It also covers extradition to the United Kingdom although there is in practice scope for only very limited provision under UK law since obligations on states to extradite persons to the UK are very largely a matter for international law and the law of the state in question.

Executive Competence

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

<p>The Extradition Act 1989 (c.33): (a) section 6(1) to (4) and (6) and (7);</p>	<p>Section 6(1) to (4) and (6) - The function of the Secretary of State of determining whether a person should be returned to another country and of giving consent to a person being dealt with for another offence being an extradition crime. Section 6(7) - The function of the Secretary of State of issuing a certificate confirming the existence of an arrangement with a Commonwealth country or a colony and stating its terms.</p>
<p>(b) section 7(1);</p>	<p>Section 7(1) and (4) - The functions of the Secretary of State of issuing an order for the surrender of a person under the Act (referred to as ‘an authority to proceed’).</p>
<p>(c) sections 7(4), 8(4), 9(5), 11(1), 12, 13(1) and (4), 16(5) and 20(2).</p>	<p>Section 8(4) - The function of the Secretary of State of receiving a notice that a provisional warrant has been issued and the function of cancelling that warrant and of discharging the person from custody.</p>

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

	<p>Section 9(5) - The function of the Secretary of State of receiving notice of the period after which a person will fall to be discharged from custody.</p> <p>Section 11(1) - The function of the Secretary of State of receiving notice of committal.</p> <p>Section 12 - The function of the Secretary of State of making an order by warrant for return.</p> <p>Section 13 - The function of the Secretary of State of giving notice under subsection (1) that he is contemplating making an order under section 12(1) and considering representations under subsection (4).</p> <p>Section 16(5) - The function of the Secretary of State of receiving notice of an application for discharge.</p> <p>Section 20(2) - The function of the Secretary of State of arranging for a person to be sent back to a foreign state, Commonwealth country or colony.</p>
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Section B12: Lieutenancies

Purpose and Effect

This Section reserves the subject-matter of the Lieutenancies Act 1997.

General

The Office of the King's Lieutenant now known as Lord-Lieutenant stems back to the middle ages. Until comparatively recent times the office holders were principally concerned with the operation of the Militia Acts. The functions of Lord-Lieutenants are now largely ceremonial and include representing the Crown in various capacities e.g. attending visits, attending upon visiting Heads of State, presenting medals and colours. It is usual for the Lord-Lieutenant to chair and advise on the membership of the local advisory committee on justices of the peace, which makes recommendations about who should be appointed JPs.

Details of Provisions

The subject-matter of the Lieutenancies Act 1997 is reserved. That Act makes provision for the division of Scotland into areas for lieutenancy purposes, for the appointment and removal of Lord-Lieutenants, Lieutenants, deputy Lieutenants, vice Lord-Lieutenants and clerks of lieutenancies and about the functions and privileges of each office.

Executive Devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

The Lieutenancies Act 1997 (c.23) , section 2(4).	The function of the Secretary of State of informing a Lord Lieutenant that Her Majesty does not approve of the granting of a commission of a Deputy Lieutenant
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	to the person whom he proposed for appointment.
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Advice to The Queen

Special arrangements for giving advice to The Queen were described in a Prime Ministerial answer on 30 June 1999 (WA col 215) and an associated paper deposited in the House of Commons Library. Part of that answer was as follows:

“There are some matters in respect of which the Prime Minister gives advice to Her Majesty on the exercise of Her functions and on which it is appropriate for the Prime Minister to consult or to take advice from the First Minister. These matters include recommendations of Scottish candidates for honours and dignities, which are a reserved matter, and advice on the appointment of Lord Lieutenants in Scotland, the Lord High Commissioner to the General Assembly of the Church of Scotland and members of the Royal Commission on Environmental Pollution and the Forestry Commission.

Section B13: Access to information

Purpose and Effect

This Section reserves public access to information held by public bodies subject to certain exceptions. By so doing, it clarifies the extent to which the Scottish Parliament can legislate about public access to information held by public bodies (what is commonly referred to as “freedom of information”). It was added by Article 5 of the Scotland Act 1998 (Modifications of Schedules 4 and 5) Order 1999 ([S.I. 1999/1749](#)).

Details of Provisions

This Section reserves public access to information held by public bodies or holders of public offices (including government departments and persons acting on behalf of the Crown).

There is excepted from that reservation information held by the Parliament, any part of the Scottish Administration, the Scottish Parliamentary Corporate Body and any Scottish public authority with mixed functions or no reserved functions. However, information which has been supplied by a Minister of the Crown or government department and which is held by any of those bodies in confidence continues to be reserved. Subject to that qualification, however, the Scottish Parliament can legislate about information held by any of those bodies.

Head C: Trade and Industry

Section C1: Business Associations

Purpose and Effect

This Section reserves business associations, subject to certain exceptions.

General

This reservation is designed to ensure the reservation of a common United Kingdom system for the regulation of companies and other business organisations in order to preserve a level playing field for business within the United Kingdom.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	30-Mar-98	982

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	23-Jul-98	1089

Details of Provisions

Reservation

This Section reserves the creation, operation, regulation and dissolution of types of business association.

Business association is defined in the interpretation part as any person (other than an individual) established for the purpose of carrying on any kind of business, whether or not for profit; and “business” is defined as including the provision of benefits to the members of an association. Accordingly, types of business associations will therefore include companies, whether or not registered under the companies legislation, partnerships, building societies, friendly societies, industrial and provident societies, European economic interest groupings (in terms of Article 1 of Council Regulation (EEC) No. 2137/85). This is not an exclusive list: any other type of business association which fell within this definition would be covered by the reservation.

The reserved matters are:

- (a) *the creation of types of business associations*, such as the manner in which limited liability companies are incorporated by registration under the Companies Act 1985 and matters relating to their constitution and membership;
- (b) *the operation of types of business associations*. This includes matters relating to the operation of the internal structure and organs of the type of business association, such as the appointment and powers of officers or boards of directors. It also includes matters such as the liability of members and officers of the association to the association and to its creditors;
- (c) *the regulation of types of business association*. This includes matters such as the authorisation, registration, supervision and investigation of business associations and their relationships and disqualification of persons from involvement in business associations and other civil or criminal sanctions; and
- (d) *the dissolution of types of business associations*. This includes the circumstances or procedures giving rise to the dissolution of a business association.

The reservation does not, of course, prevent the Scottish Ministers from establishing any business association, such as a company, for devolved purposes but any such company would require to comply with the relevant Act of the UK Parliament. What is reserved is the legislative competence to provide how companies can be created, operated and regulated.

The reservation also does not prevent the Scottish Parliament from legislating on Scots private law matters which apply to business associations, such as applying some provision about contract or liability for damages to companies, as long as the law concerned affects devolved and reserved matters consistently, as provided in section 29(4) of the Act. If the Secretary of State considered that any such legislation would have an adverse effect on the operation of the law as it applies to reserved matters, such as companies legislation, he could make an order under section 35(1) preventing the Bill from being submitted for Royal Assent.

Exceptions

What is excepted from the reservation is the creation, operation, regulation and dissolution of:

- (a) *particular public bodies or public bodies of a particular type established by or under any enactment*. This is to ensure that the Scottish Parliament is able by or under any enactment

to create and provide for the operation, regulation and dissolution of any public bodies for devolved purposes. These might include a particular statutory body, or types of statutory bodies, such as local authorities or other bodies required to carry on activities within a devolved area such as in the fields of health, education, the environment, legal aid, arts, sport, urban regeneration. This exception therefore permits the Parliament to establish public bodies for devolved purposes only: it would not permit the Parliament to establish bodies for purposes relating to any of the reserved matters; and

- (b) *charities*. This exception is required because business associations are defined in such a way as to catch any association carrying on a business, whether or not for profit. It would therefore catch charities. However, it is intended that the Scottish Parliament should be able to legislate to provide for how charities may be created, operated, regulated and dissolved under Scots law.

Section C2: Insolvency

Purpose and Effect

This Section reserves aspects of insolvency and winding up. It has been amended by [S.I. 2001/1456](#).

General

Most matters relating to the insolvency and winding up of business associations are reserved. However, where there are substantial differences in insolvency law and practice between England and Wales on the one hand and Scotland on the other affecting certain matters (as for example, in the case of matters relating to receiverships or the process of winding up), these matters are excepted from the general reservation.

A limited number of matters relating to the insolvency of all persons (and not only to the insolvency of business associations) are also reserved under this Section. These are the reservations relating to preferred or preferential debts, regulation of insolvency practitioners and co-operation of insolvency courts.

Paragraph 23 of Schedule 8 also provides for certain non-reserved functions of the Registrar of Companies in Scotland and the Assistant Registrar of Friendly Societies for Scotland to be transferred to the Accountant in Bankruptcy who is an office-holder in the Scottish Administration. This means that functions relating to the devolved aspects of insolvency in Scotland are concentrated in a single office-holder appointed by and accountable to the Scottish Ministers. The Registrar of Companies and Assistant Registrar of Friendly Societies will be left with their functions and will be accountable only to the UK Government and Parliament.

Details of Provisions

The reserved matters are:

- (a) *Winding up of business associations*. In general, matters relating to the winding up of business associations are reserved, subject to certain exceptions.

For this purpose “business association” is defined as having the same meaning as in Section C1 (Business associations), subject to the qualification that it does not include any person whose estate may be sequestrated under the Bankruptcy (Scotland) Act 1985, such as a partnership, or any public body established by or under an enactment. Sequestration or winding up of those bodies will not be reserved.

The expression “winding up” is also defined, in relation to business associations, as including the winding up of solvent, as well as insolvent, business associations.

The matters which are reserved, in relation to business associations, are:

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

- i. the modes of, the grounds for and the general legal effect of winding up, and the persons who may initiate winding up;
- ii. liability to contribute to assets on winding up;
- iii. powers of courts in relation to proceedings for winding up, other than the power to sist proceedings;
- iv. arrangements with creditors; and
- v. procedures giving protection from creditors.

These reservations have the effect that all matters leading to the commencement of the winding up of business associations, and matters relating to the commencement itself of the winding up, are reserved. Thus, the circumstances in which a business association may be wound up voluntarily or by the courts; the grounds on which a petition for winding up may be presented; the persons who may initiate a winding up; the powers of the courts on hearing a petition for winding up; the definition of the commencement of the winding up; and the liability of persons (such as shareholders) to contribute to the assets on a winding up, are all reserved. This ensures that, so far as possible, the law relating to the winding up of business associations will be similar in England and Wales and Scotland.

Furthermore, matters relating to arrangements with creditors entered into by business associations (such as company voluntary arrangements) or procedures which give such associations protection from creditors (such as administration orders) are also reserved.

However, there is excepted from these reservations, in relation to business associations:

- i. the process of winding up. In other words, matters relating to the winding up process itself after it has commenced are not reserved. This includes the person having responsibility for the conduct of a winding up or any part of it, and his conduct of it or that part;
- ii. the effect of winding up on diligence. Diligence is the process under Scots law whereby court judgements are enforced against a debtor's assets. Under Scots law, diligences done within a certain time of the commencement of winding up are equalised so that all creditors are treated equally in the ranking of their claims; and
- iii. the avoidance and adjustment of prior transactions on winding up. Thus, it is open to the Scottish Parliament to legislate in respect of transactions concluded before the winding up of a business association, to provide for them to be rendered void, or for some other appropriate remedy. The need for that could arise, for instance, where such a transaction has been concluded for less than full value, or has the effect of giving a preference to a particular creditor, to the prejudice of the general body of creditors. Such matters would be dealt with in the course of a winding up and are excluded from the reservation.

[S.I. 2001/1456](#) also added further exceptions in relation to business associations which are social landlords, namely:

- i. the general legal effect of winding up;
- ii. procedures for the initiation of winding up;
- iii. powers of courts in relation to proceedings for winding up; and
- iv. procedures giving protection from creditors,

but only in so far as they relate to a moratorium on the disposal of property held by a social landlord and the management and disposal of such property. Social landlords are defined as being registered companies or industrial and provident societies which have their registered office in Scotland and which satisfy certain conditions, namely that they do not trade for profit and are established for the purpose of, or have among their objects

and powers, the provision, construction, improvement or management of houses for letting or for occupation by members of the body or hostels. This exception was made for the purpose of enabling the Scottish Parliament to legislate about such matters in Schedule 8 to the [Housing \(Scotland\) Act 2001 \(asp 10\)](#).

- (b) *Preferred or Preferential Debts.* There are also reserved matters relating to preferred or preferential debts for the purpose of the Bankruptcy (Scotland) Act 1985, the Insolvency Act 1986 and any other enactment relating to the sequestration of the estate of any person or to the winding up of business associations, the preference of such debts against other such debts and the extent of their preference over other types of debt.

Certain types of debts, such as taxes which the debtor has collected on behalf of the Crown and sums due to employees, are given a special priority in the bankruptcy or sequestration of individuals and other persons, and in the winding up of business associations, in the sense that they are paid in advance of other debts. What is reserved are matters relating to such debts and the extent of their priority over other debts.

- (c) *Regulation of insolvency practitioners.* Matters relating to the regulation of insolvency practitioners are reserved.

Under Part XIII of the Insolvency Act 1986, which applies to Great Britain, a person who acts, for example, as a liquidator in a winding up or as trustee in the sequestration of a person's estate or as a trustee under a trust deed for an individual's creditors is required to be qualified to act as an insolvency practitioner.

These matters are reserved, even although the Scottish Parliament has legislative competence over the appointment and powers of liquidators or a person having responsibility for the conduct of a winding up.

- (d) *Co-operation of insolvency courts.* Matters relating to the co-operation of insolvency courts are reserved.
- (e) *Floating Charges and Receivers.* Matters relating to floating charges and receivers are not reserved, except in relation to preferential debts, regulation of insolvency practitioners and co-operation of insolvency courts.

The circumstances in which receivers may be appointed and the effect of their appointment, are not reserved. However, matters relating to the qualifications which a receiver must have before he may act as such are reserved under the reservation relating to the regulation of insolvency practitioners.

Section C3: Competition

Purpose and Effect

This Section reserves the regulation of anti-competitive practices and agreements; abuse of dominant position, and monopolies and mergers. It does not, however, prevent the Scottish Parliament from legislating to regulate particular practices in the legal profession for the purpose of regulating the profession or the provision of legal services, although the Scottish legal profession will still be subject to general UK competition law.

General

This reservation is designed to ensure the continuation of a common United Kingdom system for the regulation of competition matters. Responsibility for competition policy rests with the Secretary of State for Trade and Industry.

Competition matters are currently regulated by the Competition Act 1998 which introduced a prohibition approach to anti-competitive agreements and abuse of a dominant position. The Director General of Fair Trading is responsible for enforcement

of the prohibitions with rights of appeal to a new tribunal within a new Competition Commission. The Competition Commission will also take over the existing functions of the Monopolies and Merger Commission. Existing merger and monopoly legislation under the Fair Trading Act 1973 will remain in force.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	23-Jul-98	1070
Stage	Date	Column
LC	23-Jul-98	1091
L3	9-Nov-98	607
L3	9-Nov-98	609

Details of Provisions

Reservation

What is reserved is the regulation of anti-competitive practices and agreements; abuse of dominant position; monopolies and mergers. This includes all matters relating to that regulation, including:

- (a) the powers to investigate any body or person for the purposes of enforcing competition law;
- (b) the administration of competition law through the respective powers of the Secretary of State for Trade and Industry, the Director General of Fair Trading and any other authority exercising competition functions.

Exception

What is excepted from the reservation is the regulation of particular practices in the legal profession for the purpose of regulating that profession or the provision of legal services. What constitutes the legal profession for this purpose is expressly defined.

This is intended to reflect the former position in terms of which the Secretary of State for Scotland had policy responsibility for regulating the legal profession and the provision of legal services in Scotland. This is mainly for the purpose of the protection of the public (or, in other words, consumer protection) but also includes regulating the rules and organisations of the legal profession, where the regulation may affect competition in the provision of legal services. For example, provisions increasing the provision of court services by permitting certain solicitor advocates to have a right of audience in the Court of Session and High Court requires, in order to be effective, to be accompanied by provisions which regulate rules of conduct by advocates which, by being anti-competitive, might thwart that policy objective - see, for example, section 31 of the Law Reform (Miscellaneous Provisions)(Scotland) Act 1990 ("the 1990 Act") which requires the Faculty of Advocates to submit certain rules for the approval of the Secretary of State for Scotland who, in turn, is required to consult the Director General of Fair Trading. One of the effects of this exception is that the functions exercisable by the Secretary of State for Scotland were, upon devolution, transferred to the Scottish Ministers under section 53. However the Scottish Ministers are still required to consult the DGFT before exercising those functions.

The exception does not, however, enable the Scottish Parliament to legislate generally about the regulation of anti-competitive practices concerning the legal profession in Scotland. This remains a matter for the UK Parliament. Nor does the exception limit the ability of the UK competition authorities to investigate anti-competitive practices

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

concerning the Scottish legal profession and apply to the members of that profession the provisions of general competition legislation.

Interpretation

The expression “legal profession” is defined as meaning not only advocates and solicitors but also qualified conveyancers and executry practitioners who are authorised under the 1990 Act to provide conveyancing and executry services respectively.

Executive Devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

The Competition Act 1998 (c.41) , Schedule 7, paragraphs 2(4) and 4(4).	The functions of the Secretary of State of being consulted by the Secretary of State on appointments to the panel of chairmen of the Competition Commission and on appointment of the President of the Competition Commission Appeal Tribunals.
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Section C4: Intellectual Property

Purpose and Effect

This Section reserves intellectual property, subject to an exception for plant breeders’ rights.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CR	19-May-98	815
LC	23-Jul-98	1097

Details of Provisions

Reservation

Intellectual property is reserved.

This reservation covers all matters relating to existing and future intellectual property and ancillary matters, including registration of patent and trademark agents. This includes patents, design right, trade marks and copyright and all other existing and future analogous rights and matters, such as design registration, publication rights, rights in performances and semi-conductor topographies, technical measures for protection of works and rights management information, moral rights, and the law on passing-off, trade secrets and database rights.

Exception

There is excepted from this reservation the subject-matter of Parts I and II of the Plant Varieties Act 1997. These Parts deal with the proprietary rights of plant breeders, the licensing of the use of the plant varieties, and with the establishment of an appeals tribunal and related matters. The Scottish Parliament has legislative competence to legislate about plant breeders’ rights in view of the devolution of agricultural matters generally.

The purpose and scope of the reservation of intellectual property was explained in a Written answer by Henry McLeish on 17 November 1998 (WA Col 466). The same

question was also answered by Lord Sewel on the same day (WA Col 152). The text is as follows:

“Intellectual Property

Mr. David Stewart: To ask the Secretary of State for Scotland what is the purpose and scope of the reservation of intellectual property in the Scotland Bill. [60441]

Mr. McLeish: The purpose of the reservation is to ensure the continuation of uniform intellectual property laws across the UK. This will avoid difficulties for owners of intellectual property rights arising from, for example, difference in what can be protected, the extent of the protection and remedies for breach of rights. Indeed, the benefits of harmonisation in this area are becoming increasingly recognised with the ever wider harmonisation of intellectual property rights and related matters across Europe and the rest of the world.

Patents, designs, registered trade marks and copyright are well known examples of intellectual property rights and are reserved. The reservation also embraces all other existing and future analogous rights and matters, such as rights in performances and semi-conductor topographies, moral rights, the law of passing off and trade secrets, and the new database right. Moreover, rights such as those in utility models and matters such as technical measures for the protection of copyright works and information relating to the management of rights, all of which are included in recent draft EC Directives on intellectual property, fall within the scope of the reservation. Furthermore, all matters relating to the Patent Office are reserved, as are current and future ancillary matters.

The existing major legislation on intellectual property, namely the Copyright, Designs and Patents Act 1988, the Patents Act 1977, the Trade Marks Act 1994 and the Registered Designs Act 1949, exemplifies but does not limit the range of provisions relating to 'intellectual property' which falls or may in the future fall within the reservation.

There is just one exception from the reservation, that is UK plant breeders' rights within the meaning of the Plant Varieties Act 1997. Agricultural Ministers, that is the Minister of Agriculture, Fisheries and Food and the Secretaries of State for Scotland, Wales and Northern Ireland, are jointly responsible for UK plant breeders' rights. Devolution in this one area of intellectual property is therefore consistent with the joint responsibility which already exists for plant breeders' rights.

Executive devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

The Copyright, Designs and Patents Act 1988 (c.48) , sections 145(2) and 150(1).	Section 145(2) - The function of the Secretary of State of being consulted by the Lord Chancellor on appointment of chairman and 2 deputy chairmen of the Copyright Tribunal.
	Section 150(1) - The function of the Secretary of State of being consulted by the Lord Chancellor on procedural rules for the Copyright Tribunal.
The Trade Marks Act 1994 (c.26) , section 77(4).	The function of the Secretary of State of being consulted by the Lord Chancellor on appointing a person to hear appeals under the Act and on removing such a person from office.

Residual Functions

The functions of the Secretary of State for Scotland under the Plant Varieties and Seeds Act 1964 and the Plant Varieties Act 1997 were transferred to the Minister for Agriculture, Fisheries and Food, as appropriate, by the Transfer of Functions (Agriculture and Food) Order 1999 (S.I. 1999/3141).

Section C5: Import and Export Control

Purpose and Effect

This Section reserves the control of import and export of goods and of endangered species of animals or plants to and from any part of the United Kingdom. It has been amended by [S.I. 2000/3252](#).

The control of movement of food, animals, plants and other items into and out of Scotland for the purposes of protecting human, animal or plant health, or to safeguard animal welfare, to protect the environment or to meet EU obligations under the Common Agricultural Policy is not reserved.

General

This reservation is intended to ensure that in all parts of the UK common rules will continue to govern the import and export of goods. It will preserve a level playing field for business within the framework of European law and international trade agreements, which are reserved matters under paragraph 7 of Part I of Schedule 5. It also covers, *inter alia*, the import and export of works of art and the international trade in endangered species under the Convention on International Trade in Endangered Species (CITES).

Reservation in this Section of control of the import and export of goods is supplemented by reservations for product standards, safety & liability (Section C8), protection of trading and economic interests (Section C15), and control of weapons (Section L3).

The work of Scottish Trade International - a joint bureau of the Scottish Executive and Scottish Enterprise - in promoting exports from Scotland is not, however, reserved by this Section.

Details of Provisions

The reserved matters are:

- (a) *the subject-matter of the Import, Export and Customs Powers (Defence) Act 1939*. This Act provides for controlling the import, export and carriage coastwise of goods and for the enforcement of the law relating to these matters. It empowers the Secretary of State to prohibit or regulate the movement of goods to or from the UK, or specified parts of the country; and to make provision to enforce such regulations including penal sanctions and seizure of goods. The Treasury is given power to impose charges in connection with the regulation of trade in goods; and
- (b) the prohibition and regulation of the import and export of endangered species of animals and plants.

Originally enacted in emergency powers legislation in September 1939, the 1939 Act is now part of the body of legislation governing controls over trade. It also includes certain provisions relating to trading with the enemy, also a reserved matter under Defence at paragraph 9(1)(e) of Part I of Schedule 5.

Responsibility for operating import and export controls lies primarily with the Secretary of State for Trade and Industry. The control over imports is comprehensive but most types of goods are released from control by an open general import licence. But, particular controls are applied under the Act on, at present, imports of: certain steel and

textile products from certain countries; certain other non-textile products from China; firearms and ammunition; radioactive materials; goods falling within the scope of the chemical weapons convention; and goods from areas subject to comprehensive UN sanctions.

The prohibition and regulation of the import and export of endangered species is also reserved because animals and plants do not otherwise fall within the controls on “goods”. The basis for current law at a British and EC level is the Convention on International Trade in Endangered Species (CITES), although the Regulations which give effect to CITES at the EC and UK levels in some respects go beyond the Convention’s requirements and involve ancillary controls e.g. over advertising or transport for sale. The great majority of species to which CITES applies are exotic, but some are indigenous to the UK, e.g. the golden eagle.

Exceptions

In line with the general devolution of agriculture, fisheries, food and related matters, the prohibition and regulation of movement into and out of Scotland of the following are excepted from the reservation:

- (a) food, animals, animal products, plants and plant products but only for the purposes of protecting human, animal or plant health, animal welfare or the environment or observing or implementing obligations under the Common Agriculture Policy; and
- (b) animal feeding stuffs, fertilisers and pesticides (including anything treated as if it were a pesticide by virtue of section 16(16) of the Food and Environment Protection Act 1985)⁸ but only for the purposes of protecting human, animal or plant health or the environment.

Section C6: Sea Fishing

Purpose and Effect

This Section reserves the regulation of sea fishing outwith the Scottish zone, except in relation to Scottish fishing boats. By so doing, it clarifies the extent to which the Scottish Parliament can legislate about sea fishing outwith Scotland.

Details of Provisions

This Section reserves the regulation of sea fishing outwith the Scottish zone.

The Scottish zone is defined in section 126(1) as meaning the sea within British fishery limits (that is, the limits set by or under section 1 of the Fishery Limits Act 1976) which is adjacent to Scotland. Section 1(1) of the 1976 Act provides that the British fishery limits extend 200 miles from the baselines from which the territorial sea of the United Kingdom is measured. Section 126(2) enables Her Majesty by Order in Council to make provision for determining (among other things) any boundary between waters which are to be treated as sea within the British fishery limits which are adjacent to Scotland and those which are not. Such provision has been made in the Scottish Adjacent Waters Boundary Order 1999 ([S.I. 1999/1126](#)).

This has the effect of providing that the Scottish Parliament can legislate to regulate sea fishing within the Scottish zone, even although it may be outwith Scotland (including the territorial seas adjacent to Scotland).

Exception

There is an exception from the reservation which would enable the Scottish Parliament to regulate sea fishing by Scottish fishing boats even outwith the Scottish zone.

⁸ The words in brackets were added by Article 4 of [SI 2000/3252](#).

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

The interpretation part defines “Scottish fishing boat” as meaning a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and whose entry in that register specifies a port in Scotland as the port to which the vessel is to be treated as belonging.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	23-Jul-98	1100

Executive Devolution

The following functions have been made exercisable by a Minister of the Crown subject to a requirement for agreement of or consultation with the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

The Merchant Shipping Act 1995 (c.21) , section 10(2)(f).	The function of the Secretary of State, by regulation, to make provision for and in connection with the registration of a fishing vessel as British ships (section 10(2)(f), provide for regulations to be made with respect to (among other matters) the marking of ships registered or to be registered, including marks for identifying the port to which a fishing vessel is to be treated as belonging).
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Agency Arrangements

The Scotland Act 1998 (Agency Arrangements) Order 1999 (S.I. 1999/1512) specified functions under section 4 of the Sea Fish (Conservation) Act 1967 and the Sea Fish Licensing Order 1992 (functions in relation to licensing of fishing boats) for the purpose of section 93 of the Scotland Act.

Section C7: Consumer Protection

Purpose and Effect

This Section reserves various consumer protection and related matters, subject to certain exceptions.

General

This reservation is designed to ensure the reservation of a common United Kingdom system for the regulation of consumer protection and related matters in order to preserve a level playing field for consumers and business.

The DTI is responsible throughout the UK for consumer protection matters such as the sale and supply of goods and services to consumers, and related matters, which may not be restricted to consumers, such as trade descriptions, misleading advertising price indications etc. So that the interests of consumers across the whole UK market can best be protected, the current UK-wide arrangements will be maintained. The Scottish Office was formerly consulted on a non-statutory basis in connection with relevant work programme proposals and various other matters to do with Scottish consumer bodies, which receive funding from, and in some cases are appointed by, the DTI e.g. Scottish Consumer Council and Citizens Advice Scotland. The Scottish Consumer Council,

National Consumer Council and the Scottish Association of Citizens Advice Bureaux have been specified as cross-border public authorities.

The Scottish Parliament has legislative power in this area in respect of food safety, because this is integral to the policy areas of agriculture and food which are not reserved, and in respect of advertising which is specific to tobacco and tobacco products in view of its similar linkage to health.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	30-Mar-98	982
Stage	Date	Column
CR	19-May-98	815
LC	23-Jul-98	1121
L3	9-Nov-98	609

Details of Provisions

Reservation

There are three main groups of reserved matters: the regulation of various matters, the safety of consumer services, and the subject-matter of various enactments.

((i) First Group

The regulation of the following are reserved matters:

- i. *the sale and supply of goods and services to consumers.* This covers the terms on which goods and services are sold and supplied to consumers. There are currently a number of pieces of legislation falling under this heading including the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982, the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999. The scope of most of this legislation goes beyond the reserved matter of protection of consumers. The reservation does not prevent the Scottish Parliament from legislating about these wider matters;
- ii. *guarantees in relation to such goods and services.* Statutory implied terms in relation to the sale and supply of goods and services to consumers are covered by the reservation at (a) above;
- iii. *hire purchase*, including the subject-matter of Part III of the Hire Purchase Act 1964. This currently includes the provisions of the Supply of Goods (Implied Terms) Act 1973. Part III of the Hire Purchase Act 1964 deals with title to motor vehicles which are disposed of while subject to hire purchase agreements;
- iv. *trade descriptions*, except in relation to food. This deals with all matters related to false trade descriptions and is not limited to the protection of consumers. It currently includes the subject-matter of the Trade Descriptions Act 1968. There is an exception made for trade descriptions for food;
- v. *misleading and comparative advertising*, except regulation specifically in relation to food, tobacco and tobacco products. This deals with all matters related to misleading advertising and other regulation of advertising, apart from the specific exemptions. This currently includes the subject-matter of the Control of Misleading Advertisements Regulations 1988 and of the Comparative Advertising Directive 1997;

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

- vi. *price indications*. This deals with all matters related to the regulation of price indications. This currently includes relevant provisions in the Consumer Protection Act 1987 and the EC Directive on Price Indications;
- vii. *trading stamps*. This deals with all matters regulating the issue, use and redemption of trading stamps and similar tokens and the right of holders of such stamps. It currently includes the Trading Stamps Act 1964;
- viii. *auctions and mock auctions of goods and services*. This relates to all matters related to sale of goods and services by auction and the prohibition of mock auctions i.e. sales which purport to be auctions, but in which the right to bid is restricted, goods are sold below the bid price or are given away, and similar trading practices intended to put undue pressure on customers. This currently includes the Auctioneers Act 1845, the Auctions (Bidding Agreements) Act 1969 and the Mock Auctions Act 1961; and
- ix. *hall-marking and gun barrel proofing*. This covers the regulation of hallmarks applied to articles of precious metal. Gun barrel proofing is the process of testing a gun for safety in order to disclose any fault or weakness and is a statutory requirement for all small arms.

(b) Second Group

Matters relating to the safety of, and liability for, services to consumers are reserved. This covers any matters related to the supply of services which reflect similar provisions as those relating to product safety and liability in Section C8.

(c) Third Group

The subject-matter of the following enactments are reserved:

- i. *the Hearing Aid Council Act 1968*. This provides for the establishment of the Hearing Aid Council and its function of ensuring that hearing aid dispensers maintain adequate standards of competence and conduct;
- ii. *the Unsolicited Goods and Services Acts 1971 and 1975*. This provides for protection of people, whether consumers or others who receive unsolicited goods. The Act also provides measures of protection of people who are charged for unsolicited directory entries;
- iii. *Parts I to III and XI of the Fair Trading Act 1973*. Part I of the Fair Trading Act (FTA) deals with the role and functions of the Director General of Fair Trading (DGFT);

Part II of the FTA provides for the establishment of a Consumer Protection Advisory Committee and deals with its functions and the Orders which may be made following its recommendations;

Part III of the FTA sets out the powers of the DGFT to deal with traders who follow a course of conduct which is unfair and detrimental to the interests of consumers;

Part XI of the FTA contains provisions for regulations to be made setting out requirements which the organisers of pyramid selling and similar trading schemes must observe in relation to participants and prospective participants and creates offences related to some pyramid selling activities. While a participant acts in a trading rather than a consumer role, this issue has formed part of the consumer policy area because participants are seen to need protection of a similar nature to that needed by consumers;

- iv. *the Consumer Credit Act 1974*. This regulates the advertising and provision of credit and hire arrangements to individuals (consumers and unincorporated entities) and provides for the licensing of credit providers and hirers;

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

- v. *the Estate Agents Act 1979*. This regulates the activities of estate agents. The 1979 Act does not apply to things done in the course of his profession by a practising solicitor or person employed by him;
- vi. *the Timeshare Act 1992*. This provides for the minimum information which must be given to consumers prior to contract, the minimum contents of contracts and for the cancellation of agreements without penalty within a cooling off period. The Act was amended by the Timeshare Regulations 1997 which implemented the EC Timeshare Directive;
- vii. *the Package Travel, Package Holiday and Package Tours Regulations 1992*. This covers requirements on information given to consumers, in brochures and otherwise, content and form of contracts, provisions which traders must make for the protection of consumers' pre-payments, other obligations of traders and related offences and civil rights of consumers; and
- viii. *the Commercial Agents (Council Directive) Regulations 1993*. This provides for the rights and duties of principals and their agents in relation to each other, the remuneration and commission to which agents are entitled, the right of an agent to a contract and provisions on the termination of contract. While the regulations do not deal with consumers, the issue has been dealt with as part of the consumer policy agenda because of the imbalance of power which often exists between the agent and the principal.

Exceptions

What is excepted from all of these reservations is the subject-matter of section 16 of the Food Safety Act 1990. This is an enabling Act to regulate the safety of food in Great Britain, covering a broad range of commercial activities relating to food. Section 16 provides for regulations to be made which include powers to secure the fitness of food, hygiene conditions and practices in food premises and provision for imposing requirements or prohibitions on the composition, labelling and advertising of food.

There are also specific exceptions mentioned above in relation to:

- (a) the regulation of trade descriptions in relation to food; and
- (b) regulation specific to the advertising of food, tobacco and tobacco products.

Section C8: Product Standards, Safety and Liability

Purpose and Effect

This Section reserves technical standards, safety and labelling of products, and product liability, subject to certain exceptions. It has been amended by [S.I. 2000/3252](#).

General

This reservation covers the regulation and control of the standards of products which are put on the market or into service so as to observe and implement the relevant EC law, notably the European Single Market Harmonisation Directives which have as their purpose the smooth functioning of the single market by removing potential barriers to trade. Also reserved under this heading are product safety and liability and product labelling. These matters too are reserved in order to ensure that a single market is maintained within the UK.

Exceptions from these reservations are made for food, agricultural produce, fish products and certain agricultural products in line with the general devolution of food standards, agriculture and fisheries.

Details of Provisions

Reservation

What is reserved are:

- (a) technical standards and requirements in relation to products in pursuance of an obligation under Community law. This includes the imposition of specified requirements (both minimum and absolute) and technical standards relating to goods. Examples of relevant EC laws include directives concerned with single market harmonisation and with the suitability of packaging for reuse or recycling;
- (b) the national accreditation body and the accreditation of bodies which certify or assess conformity to technical standards in relation to products or environmental management systems⁹;
- (c) product safety and product liability; and
- (d) product labelling.

Exceptions

The following are excepted from the reserved matters:

- (a) food (which includes drink) and, in relation to food safety, materials which come into contact with food (e.g. packaging);
- (b) agricultural and horticultural produce;
- (c) fish and fish products; and
- (d) seeds, animal feeding stuffs, fertilisers and pesticides (including anything treated as if it were a pesticide by virtue of section 16(16) of the Food and Environment Protection Act 1985)¹⁰.

These exceptions are necessary for the devolution of agriculture, fisheries and food.

Agency Arrangements

The Scotland Act 1998 (Agency Arrangements) Order 1999 ([S.I. 1999/1512](#)) specified certain functions of a Minister of the Crown in relation to the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 for the purpose of section 93 of the Scotland Act.

Section C9: Weights and Measures

Purpose and Effect

This Section reserves weights and measures.

General

The law on weights and measures is concerned with establishing units and standards of measurement and with the regulation of trade in respect of the weighing and measuring of goods and, in particular circumstances, the quantities or manner in which they may be sold. Article XVII of the Treaty of Union provided for common weights and measures to be used throughout the United Kingdom.

⁹ This was added by Article 5 of [SI 2000/3252](#).

¹⁰ The words in brackets were added by Article 4 of [SI 2000/3252](#).

Details of Provisions

Legislative competence concerning units and standards of weight and measurement, and the regulation of trade so far as involving weighing, measuring and quantities is reserved.

Section C10: Telecommunications and Wireless Telegraphy

Purpose and Effect

This Section reserves telecommunications and wireless telegraphy. It also reserves internet services and electronic encryption.

General

Telecommunications includes telephone systems and all forms of data transmission conveyed through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy. Operation of telecommunication systems is regulated by licensing powers of the Secretary of State and the Director General of Telecommunications under the Telecommunications Act 1984.

Wireless telegraphy is defined in legislation as emitting or receiving (without wires) electromagnetic energy of a frequency not exceeding 3 million megacycles per second. The Secretary of State has the power to make regulations concerning wireless telegraphy and to licence operators. These powers extend to the use of the radio spectrum. There is an overlap with Broadcasting which is regulated under separate legislation which is also reserved.

The reservation extends also to the subject-matter of a number of EC Directives and Regulations dealing with telecommunications and wireless telegraphy which use definitions which have a similar effect to those cited in UK legislation. This includes the regulations concerned with electromagnetic disturbance which is in part concerned with the establishment and regulation of technical standards. Technical standards of goods are also reserved.

Internet services are provided over computer systems linked by national and international telephone system but the services provided go beyond ordinary telecommunications. The reservation extends to all such services provided by electronic means at a distance.

Electronic encryption covers the general use of encryption of communications or data in electronic form for the purposes of commercial confidentiality and authentication.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	23-Jul-98	1125
LR	3-Nov-98	192
LR	3-Nov-98	194

Details of Provisions

The reservation covers all matters relating to telecommunications and wireless telegraphy as described above. In particular this includes the subject-matter of the following legislation:

- (a) *the Telecommunications Act 1984*. This covers the regulatory and licensing regime for telecommunications systems as described above; and

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

- (b) *the Wireless Telegraphy Act 1949, the Wireless Telegraphy Act 1967 and the Marine etc. Broadcasting (offences) Act 1967*. These cover the regulatory and licensing regime for wireless telegraphy. Part II of the 1949 Act regulates the prevention of interference.

The following are also reserved:

- (a) internet services; and
- (b) electronic encryption.

Exception

The subject-matter of Part III of the Police Act 1997 which sets out the circumstances in which the police may be authorised to interfere with property in order to carry out surveillance and other types of investigative work is excepted from the reservation. This is consistent with the exception of the subject-matter of Part III of the 1997 Act from the reservation of National Security, Interception of Communications, Official Secrets and Terrorism - see Section B8.

Executive Devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)), as amended, with effect from 14 December 2000, by Article 4(3)(a) of [S.I. 2000/3253](#)

<p>The Wireless Telegraphy Act 1949 (c.54), section 5(1) (b).</p>	<p>The function of the Secretary of State of authorising persons to use wireless telegraphy apparatus in order to obtain information as to the contents, sender or addressee of any message (whether sent by means of wireless telegraphy or not) and to disclose information about the same: but only so far as the function is exercisable for the purpose of preventing or detecting crime (within the meaning of the Regulation of Investigatory Powers Act 2000) or of preventing disorder</p>
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[S.I. 1999/1750](#) also transferred non-statutory functions in relation to the management of the radio spectrum, principally in connection with police, fire and local government civil defence activities.

Section C11: Posts

Purpose and Effect

This Section reserves the subject matter of the [Postal Services Act 2000 \(c.26\)](#) but there is excepted financial assistance for the provision of certain services provided from public post offices. This Section was substituted, with effect from 14 December 2000, by [S.I. 2000/3252](#).

General

Previously, this Section reserved “the Post Office, posts (including postage stamps, postal orders and postal packets) and regulation of postal services”. However, the Postal Services Act 2000 abolished the statutory monopoly enjoyed by the Post Office and provided for postal services to be provided by persons holding a licence from the Postal Services Commission.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	4-Mar-98	1095
LR	3-Nov-98	194

Details of Provisions

The reservation extends to the subject matter of the Postal Services Act 2000, subject to the exception mentioned below.

The interpretation part disapplies paragraph 5(1) of Part III of Schedule 5 to the Scotland Act (which provides that references to the subject matter of an enactment are to be construed as at 1 July 1999). It provides that the reference to the subject matter of the Postal Services Act 2000 is to be read as a reference to the subject matter of that Act as at the date when it received the Royal Assent (28 July 2000).

The Postal Services Act 2000 regulates the provision of postal services by means of licences from the Postal Services Commission and creates offences in relation to postal services (e.g. providing postal services without a licence, interfering with mail etc). It reorganises, and provides for the dissolution of, the Post Office and establish public post offices top provide postal services (and other services) to the public. It also establishes a Consumer Council for Postal Services.

There is excepted from the reservation financial assistance for the provision of services (other than postal services and services relating to money or postal orders) to be provided from public post offices. The expressions “postal services” and “public post offices” have the same meaning as in the Postal Services Act 2000.

Section C12: Research Councils

Purpose and Effect

This Section reserves the Research Councils within the meaning of the Science and Technology Act 1965, including the funding of such Councils. UK Research Councils will continue to provide funds for research in Scotland, on the present basis.

General

Research Councils are established by Royal Charter and are regulated under the 1965 Act. The 1965 Act establishes certain Research Councils for purposes connected with scientific research e.g. the Natural Environment Research Council and the Medical Research Council. Apart from the Research Councils already established by Royal Charter and named in the 1965 Act, a body may be declared a Research Council for the purposes of the 1965 Act by means of an Order in Council. The Research Councils covered by the 1965 Act deal with matters related to research and development in any of the sciences (including the social sciences) and technology. The reservation extends to existing Research Councils or any others that may be established in the field of scientific research within the meaning of the 1965 Act.

The Scottish Parliament is able to legislate for the funding of research, including scientific research, generally and to establish bodies in Scotland to carry out, administer or fund such research. The Scottish Parliament has legislative competence over the Scottish Higher Education Funding Council which grants funds for research to higher education institutions. This reservation simply precludes the Scottish Parliament from establishing Research

Councils within the meaning of the 1965 Act or exercising any direct control over such Councils.

Section 5 of the 1965 Act enables the Secretary of State to fund scientific research. This power is used mainly, but not exclusively, to fund research through Research Councils. It is written in terms of a general power to fund scientific research and so relates to more than is covered by this reservation. Section 5 is reserved only as it relates to the Research Councils. In all other respects powers under section 5, so far as they relate to matters that are not reserved, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act. However, since there are circumstances under which a UK Secretary of State or Minister may wish to fund research in Scotland other than through Research Councils, section 56(1)(d) provides that section 5 of the 1965 Act is a shared power.

Details of Provisions

The first reservation is of Research Councils within the meaning of the 1965 Act. The reservation covers the establishment of and appointments to Research Councils, the functions, powers and duties of such bodies, and the provision of expenses and funds for distribution by them.

The subject-matter of section 5 of the Act is reserved so far as it relates to Research Councils. This reservation reserves to United Kingdom Ministers the power to fund scientific research through the Research Councils.

Section C13: Designation of Assisted Areas

Purpose and Effect

This Section reserves the designation of assisted areas. It does not reserve the matter of determining what financial assistance to industry might apply in such areas.

General

Assisted areas are those areas designated as development and intermediate areas under section 1 of the Industrial Development Act 1982. This power to designate assisted areas is exercised by the Secretary of State for Trade and Industry where for economic, social or other reasons of regional policy, additional measures to promote their economic development are considered appropriate. The designation of such areas applies for the purposes of any other Act which refers to development or intermediate areas (e.g. the Derelict Land Act 1982) as well as for the purposes of the 1982 Act.

The Treaty of Rome prohibits state aids that are incompatible with the Common Market. As part of its guidelines on this the European Commission require that particular areas eligible for differing levels of regional state aid should be agreed with the Commission. As a result of the reservation of International and European relations in Part I, paragraph 7 of Schedule 5 negotiations on defining such areas throughout the UK will be a matter for the UK Government, who will, by virtue of this reservation, also be responsible for giving effect to the areas as approved by the Commission.

The 1982 Act also provides for the provision of financial assistance to industry both within assisted areas and more generally. Financial assistance to industry is not reserved, subject to compliance with European Commission guidelines on state aids. Under section 56(1), however, a Minister of the Crown will continue to be able to exercise powers to provide financial assistance to industry under the Industrial Development Act 1982 and other enactments.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	23-Jul-98	1126

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	23-Jul-98	1130

Details of Provisions

This Section reserves the subject-matter of section 1 of the Industrial Development Act 1982. This provides for the Secretary of State to designate areas within Great Britain as assisted areas including the power to prescribe different categories of areas (such as development and intermediate areas) and to provide for preferential treatment of these categories.

Section C14: Industrial Development Advisory Board

Purpose and Effect

This Section reserves the Industrial Development Advisory Board.

General

The Industrial Development Advisory Board (IDAB) is a statutory body appointed under section 10 of the Industrial Development Act 1982 which advises the Secretary of State for Trade and Industry about the exercise of certain powers to provide financial assistance to industry. There is already a separate body, the Scottish Industrial Development Board (SIDAB) which is established under section 20 of the Scottish Development Agency Act 1975 to advise in this field.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	Feb-98	221

Details of Provisions

The Industrial Development Advisory Board is reserved.

Section C15: Protection of Trading and Economic Interests

Purpose and Effect

This Section reserves the protection of trading and economic interests.

General

The purpose of legislation on this subject is to protect individuals and businesses from the laws of other states where they purport to have effect outside the country where the laws are made. Provisions under such legislation may prohibit certain actions in the UK in compliance with objectionable foreign laws. For example, legislation may prevent the enforcement in the UK of foreign judgements or provide remedies in UK courts for persons adversely affected by the application abroad of objectionable foreign laws.

In addition, the protection of the UK's economic interests from the actions of Governments or persons resident outside the UK is reserved.

Court procedure, judicial remedies and the reciprocal enforcement of foreign judgements generally is not reserved.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	10-Feb-98	205
L3	9-Nov-98	609

Details of Provisions

This Section reserves the subject-matter of the following enactments:

- (a) *section 2 of the Emergency Laws (Re-enactments and Repeals) Act 1964*. This section gives the Treasury power to block the transfer of funds, gold or securities where that action is likely to be taken by a person or Government outside the UK to the detriment of the economic position of the UK.
- (b) *part II of the Industry Act 1975*. This deals with powers relating to the transfer of control of important manufacturing undertakings and is intended to cover cases where it is undesirable on wider policy grounds for assets of wider national importance to fall into the hands of non-residents. The Secretary of State for Trade and Industry can prohibit or restrict such change in control of manufacturing operations which appear to be of special importance to the United Kingdom or to any substantial part of the United Kingdom.
- (c) *the Protection of Trading Interests Act 1980*. This Act sets out the main provisions concerning protection of trading or other business interests of persons in the UK from requirements, prohibitions or judgements imposed or made under the laws of other states.

Executive Devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

The Industry Act 1975 (c.68) , Schedule 3, paragraph 24	The function of the Secretary of State in making rules in relation to Scottish proceedings of an Industry Act tribunal.
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Section D1: Electricity

Purpose and Effect

This Section reserves the generation, transmission, distribution and supply of electricity and the regulation of the electricity supply industry. Matters relating to the control of pollution are excepted.

General

This Section reserves the generation, transmission, distribution and supply of electricity in Scotland. The subject-matter of the legislation governing privatisation of the electricity supply industry is also reserved. This is in line with a general reservation of energy matters.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	30-Mar-98	1004

Details of Provisions

Reservation

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

The reservation covers the generation, transmission, distribution and supply of electricity. This would include the regulation of the electricity supply industry under Part I of the Electricity Act 1989. That Part gives the Secretary of State and the Director General of Electricity Supply extensive powers to regulate the industry through a system of licensing of generation, transmission and supply, sets out the duties of public electricity suppliers, and imposes further controls for the protection of the public interest and the protection of consumers.

The reservation also covers the subject-matter of Part II of the 1989 Act, which deals with the re-organisation of the industry by privatisation.

Exception

The subject-matter of Part I of the Environmental Protection Act 1990, which makes provision for the control of pollution is excepted from the reservation.

Executive devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

The Electricity Act 1989 (c.29):	
(a) section 2(2)(b) and (3)(a);	Section 2(2)(b) - The function of the Secretary of State to determine that the area for which a consumers' committee is appointed shall consist of the authorised areas of two or more public electricity suppliers. Section 2(3)(a) - The function of the Secretary of State of being consulted by the Director before appointment of the chairman of a consumers' committee.
(b) section 3;	The duties of the Secretary of State to exercise the functions assigned or transferred to him by Part I of the Act in the manner which he considers is best calculated to achieve certain ends, so far as relating to functions exercisable by the Scottish Ministers under this Order.
(c) sections 32(1) and (9), 33, 34, 35, 36, 37, 39(1)(a) and 58:	Section 32(1) - The function of the Secretary of State after consultation with the Director and the suppliers concerned by order to require each public electricity supplier to make and produce evidence of arrangements for electricity to be available to the supplier from non-fossil fuel sources. Section 32(9) - The function of the Secretary of State by regulations to provide that subsections (5) to (8) shall have effect in relation to certain types of generating station with modifications, and to provide that electricity generated outside the United Kingdom shall be treated as generated by a non-fossil fuel generating station in such circumstances and to such extent as prescribed.

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

	<p>Section 33 (1), (6) and (7) - The function of the Secretary of State by regulations to provide for imposition of a fossil fuel levy on public electricity suppliers and others, for collection of payments in respect of it and prescribe a person to collect them, and to provide for the making to such suppliers of payments out of the payments so collected and to make ancillary provisions; requirements as to the manner of exercise of the functions.</p> <p>Section 34 - The function of the Secretary of State by order to vary the minimum capacity of generating stations to which the section applies; functions of the Secretary of State to give directions to persons operating generating stations as regards fuel stocks etc., and ancillary powers.</p> <p>Section 35 - The functions of the Secretary of State to give a direction requiring a person authorised by licence to transmit electricity to give information or advice for purposes connected with section 34; and to give a direction requiring him to operate his system in a specified manner or to achieve specified objectives; requirement to lay directions before Parliament.</p>
	<p>Section 36 - The function of the Secretary of State to consent to construction, extension or operation of a generating station; functions of the Secretary of State by order to vary the minimum capacity above which the requirement for consent applies and to grant exemptions to the requirement for consent.</p> <p>Section 37 - The function of the Secretary of State to consent to an electric line being installed or kept installed above ground; function to prescribe by regulations cases where the requirement for consent does not apply.</p> <p>Section 39(1)(a) - The functions of the Secretary of State to consent to regulations made by the Director prescribing standards of performance in electricity supply services to tariff customers in individual cases.</p> <p>Section 58 - The function of the Secretary of State to give to persons licensed to transmit electricity directions to secure that neither that person nor any other person obtains unfair commercial advantage from possession of information; requirement upon the</p>

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

	Secretary of State to publish a copy of directions; function of the Secretary of State to enforce compliance with such directions by civil proceedings.
(d) section 60;	The function for regulations made by the Secretary of State to provide for certain matters.
(e) section 61;	The powers to take certain proceedings concurrently, so far as enabling the Secretary of State to exercise his functions in the proceedings concurrently.
(f) Schedule 3, Part I;	Schedule 3, paragraph 1 - The function of the Secretary of State to authorise a licence holder to purchase compulsorily land required for a purpose connected with his activities. Schedule 3, paragraph 2(3) - The function of the Secretary of State by order to amend the period specified in paragraph 2(2)(b) (which relates to the Director's duties in cases where his consent to a compulsory purchase order is required). Schedule 3, paragraph 3(2) - The function of the Secretary of State to authorise a licence holder to purchase land compulsorily for the purpose of exchange of land.
(g) Schedule 3, Part III, paragraphs 15, 16, 17 and 20, including paragraph 11 of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c.42) as applied by those provisions;	The function of the Secretary of State, under paragraph 11 of the First Schedule, Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 as applied by Schedule 3 paragraphs 15, 16, 17 and 20, to certify certain matters, in which case special parliamentary procedure will not apply, and procedural requirements of that paragraph as so applied.
(h) Schedule 4, paragraphs 6, 8, 9 and 10(4)(b);	Schedule 4, para 6(3), (4) & (5) - The function of the Secretary of State to grant necessary wayleaves, and ancillary powers and duties. Schedule 4, para 8(4) & (5) - The functions of the Secretary of State in connection with temporary continuation of wayleaves. Schedule 4, paragraph 9(5) and (6) - The function of the Secretary of State to make orders relating to felling and lopping of trees etc. Schedule 4, paragraph 10(4)(b) - The function of the Secretary of State to consent to works for the purpose of ascertaining the nature of the subsoil.

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

(i) Schedule 5;	All functions of the Secretary of State under Schedule 5 (water rights for hydro-electric generating stations in Scotland), including power by order to authorise persons to abstract and divert and use water, and ancillary powers and duties.
(j) Schedule 8; and	All functions of the Secretary of State under Schedule 8 (consents under sections 36 and 37), including functions by regulations to make provision for determining fees and to provide for various procedural matters, and ancillary powers and duties.
(k) Schedule 9, paragraphs 3 and 5.	Schedule 9, paragraph 3(2) and (3) - All functions of the Secretary of State in considering proposals under sections 36 or 37 to have regard to certain amenity considerations and to avoid, so far as possible, causing injuries to fisheries. Schedule 9, paragraph 5 - The function and duties of the Secretary of State relating to the Fisheries Committee, Scotland.

The following functions have been made concurrently exercisable by a Minister of the Crown and the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

The European Communities Act 1972 (c.68) , section 2(2) and the European Communities (Designation) Order 1988 (S.I. 1988/785).	The function of the Minister of Agriculture, Fisheries and Food, the Treasury and any one or more Secretaries of State to make provision for the purposes specified in section 2(2) in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, so far as relating to the subject matter of Part III (Electricity Applications) of the Environmental Assessment (Scotland) Regulations 1988 (S.I. 1988/1221, amended by S.I. 1990/526, 1994/2012).
The Electricity Act 1989 (c.29) , section 98(1) and (2).	The function of the Secretary of State to serve a notice on a licence holder or exempted person requiring him to supply statistical information.

The following functions have been made exercisable by a Minister of the Crown subject to a requirement for agreement of or consultation with the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

The Electricity Act 1989 (c.29) , sections 5(1) and 6(1) and (2)	Section 5(1) - The functions of the Secretary of State after consultation with the Director by order to grant exemption from
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*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

	<p>paragraph (a) or (c) of section 4(1) (which prohibits unlicensed generation or supply). Section 6(1) - The functions of the Secretary of State after consultation with the Director to grant a licence authorising generation, transmission or supply of electricity, or to consent to the granting of such a licence by the Director, or to give general authority to the Director to grant such a licence. Section 6(2) - The functions of the Secretary of State after consultation with the Director to grant a licence authorising any person to supply electricity to any premises specified or of a description specified in the licence, or to extend such a licence, or to consent to the Director doing these things, or to give general authority to the Director to do these things.</p>
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The following functions are included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2000(S.I. 2000/3253).

<p>Electricity Act 1989 (c. 29) sections 32 and 32A¹¹</p>	<p>Section 32 - The function of the Secretary of State, by order, to impose upon an electricity supplier a renewables obligation. Section 32A - The function of the Secretary of State to include various matters in such an order.</p>
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Section D2: Oil and Gas

Purpose and Effect

This Section reserves oil and gas and the regulation of the UK oil and gas industry, subject to certain exceptions.

General

Legislative competence to make provision regarding the oil and gas industry is reserved. This covers all the UK Government’s current powers and functions in relation to the oil and gas industry, subject to express exceptions. The manufacture of gas and the conveyance and shipping and supply of gas other than through pipes are not reserved. Land based operations in support of off-shore exploration for, and exploitation of, oil and natural gas are also not reserved. This overall reservation is in line with a general reservation of energy matters.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	30-Mar-98	1004
CC	30-Mar-98	1005

¹¹ Section 32 was substituted by section 62 of the Utilities Act 2000 and section 32A was added by section 63 of the [Utilities Act 2000\(c.27\)](#). They will come into effect when section 62 or, as the case may be, section 63 is commenced.
¹¹ Section 32 was substituted by section 62 of the Utilities Act 2000 and section 32A was added by section 63 of the [Utilities Act 2000\(c.27\)](#). They will come into effect when section 62 or, as the case may be, section 63 is commenced.

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	23-Jul-98	1133
LR	3-Nov-98	194
LR	3-Nov-98	195

Details of Provisions

Reservation

Competence to legislate about oil and gas is reserved. The specific list of subjects included in the reservation indicates its scope in more detail. The specific subjects listed are:

- (a) the ownership of, exploration for and exploitation of deposits of oil and natural gas. This covers the subject-matter of the Petroleum (Production) Act 1934 and related legislation, which vests ownership of oil and gas deposits in the Crown and provides for a system of licensing persons to explore for and exploit such deposits;
- (b) *the subject-matter of section 1 of the Mineral Exploration and Investment Grants Act 1972 (contributions in connection with mineral exploration) so far as relating to exploration for oil and gas.* This covers the giving of financial assistance relating to exploration for oil and gas. Financial assistance is generally a devolved matter except for financial assistance specifically in relation to a reserved commercial activity such as oil and gas exploration. Financial assistance in respect of other types of mineral exploration is not reserved. This power is also a “shared power” under section 56 which means that a UK Minister can also exercise this power in or as regards Scotland;
- (c) offshore installations and pipelines. This covers generally the regulation of such installations and pipelines, including the construction or laying and dismantling of them;
- (d) *the subject-matter of the Pipe-lines Act 1962 (including section 5 (deemed planning permission))* so far as relating to pipelines within the meaning of section 65 of that Act. The 1962 Act provides for authorisation of the laying of pipelines on land. In practice it applies mainly to oil and gas pipelines, since section 65 excludes many types of pipe, including water and air pipes and sewers. Section 5 of the Pipelines Act has been mentioned for the avoidance of doubt since deemed planning permission for other types of development is granted under planning legislation and is therefore not reserved;
- (e) the application of Scots law and the jurisdiction of the Scottish courts in relation to offshore activities. Part IV of the Oil and Gas (Enterprise) Act 1982 provides for the application in relation to oil and gas installations on the Continental Shelf of the civil and criminal laws of the different parts of the United Kingdom, and the jurisdiction of their courts;
- (f) *pollution relating to oil and gas exploration and exploitation, but only outside controlled waters (within the meaning of the Control of Pollution Act 1974).* This is the subject-matter of the Prevention of Oil Pollution Act 1971. Pollution from ships, as opposed to installation and pipelines, is now governed by the Merchant Shipping Act 1995, which is also reserved. Pollution in controlled waters - relevant territorial, coastal, inland and ground waters - is not reserved. The marine environment apart from this reservation is generally not reserved;
- (g) *the subject-matter of Part II of the Food and Environment Protection Act 1985* so far as relating to oil and gas exploration and exploitation, but only in relation to activities outside such controlled waters. This is necessary to ensure that the reservation of matters relating to the oil and gas industry covers the regulation under the 1985 Act of activities in the sea, such as the deposit of substances or articles in the sea and incineration and flaring of gas, so far as those activities relate to oil and gas exploration and exploitation. It ensures that the Ministerial powers under the 1985 Act to exempt from the licensing regime under the Food and Environment Protection Act 1985 “operational discharges” from oil and gas

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

installations and, where compatible with international obligations and where safe to do so, to license the deposit in the sea of oil-related articles such as redundant oil installations are reserved to the UK Government. “Marine dumping” not relating to oil and gas exploration and exploitation is not a reserved matter and to that extent the Scottish Ministers exercise the licensing powers under the Food and Environment Protection Act 1985 within Scottish waters and for operations commencing in Scotland;

- (h) restrictions on navigation, fishing and other activities in connection with offshore activities. Sections 3 to 7 of the Offshore Petroleum Development (Scotland) Act 1975 provide for the designation by the Secretary of State of sea areas within territorial waters where certain activities are restricted. Part III of the Petroleum Act 1987 provides for safety zones where navigation is restricted in the immediate vicinity of installations in territorial waters or the Continental Shelf;
- (i) liquefaction of natural gas. This covers the subject-matter of section 9 of the Energy Act 1976, which regulates the liquefaction of natural gas; and
- (j) the conveyance, shipping and supply of gas through pipes. This covers the subject-matter of the Gas Acts 1986 and 1995, which regulate the industry of conveying, shipping and supplying gas through pipes.

Exceptions from Reservation

The following are excepted from the reservation:

- (a) *the subject-matter of sections 10 to 12 of the Industry Act 1972* (credits and grants for construction of ships and offshore installations). This makes it clear that the giving of financial assistance, in the form of credits and grants, for the construction of ships and offshore installations is not a reserved matter. Paragraph 4 of Part III of Schedule 5 provides that the giving of financial assistance to industry for the purposes of promoting or sustaining economic development or employment is not a reserved matter. This means that the Parliament can make provision of a general nature for assistance to industry including those which operate in reserved areas, but it does not have competence to legislate for such assistance specifically in relation to a reserved commercial activity such as oil and gas exploration. Section 56 also provides for certain powers, including this one, relating to the giving of financial assistance to industry which are not reserved to be “shared powers”, so that a UK Minister can continue to exercise those powers in or as regards Scotland. For example, the power to give financial assistance in relation to mineral exploration (other than for oil and gas which is a reserved matter as explained above) is a shared power under section 56(1)(e);
- (b) *the subject-matter of the Offshore Petroleum Development (Scotland) Act 1975*, other than sections 3 to 7. This ensures that the provision of financial assistance under the 1975 Act for onshore activities in support of offshore activities, for instance construction of installations, are not reserved. This is in line with the fact that assistance to industry generally is not reserved;
- (c) *the subject-matter of Part I of the Environmental Protection Act 1990*, which makes provision for the control of pollution.
- (d) the manufacture of gas. The production of combustible gas other than natural gas is thus not reserved; and
- (e) the conveyance, shipping and supply of gas other than through pipes.

Executive devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

The Pipelines Act 1962 (c.58) , sections 1, 4, 5, 9, 9A, 10, 11, 12, 13 (except	Sections 1, 4 & 5 - All functions of the Secretary of State as “the Minister” under
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*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

subsection (7)), 15, 26A, 35, 36, 38, 39(2), 43 and 44 and Schedules 1 and 2 (except paragraph 8).

the sections (control of construction of pipe-lines), so far as relating to pipe-lines beginning and ending in Scotland.

Sections 9, 9A & 10 - All functions of the Secretary of State as “the Minister” under the sections (avoidance of construction of superfluous pipe-lines), so far as relating to pipe-lines beginning and ending in Scotland.

Section 11 - All functions of the Secretary of State as “the Minister” under the section (compulsory acquisition of land for construction of pipe-lines), so far as relating to pipe-lines beginning and ending in Scotland.

Sections 12 & 13 - All functions of the Secretary of State as “the Minister” under the sections (compulsory acquisition of rights over land for construction of pipe-lines), so far as relating to pipe-lines beginning and ending in Scotland.

Section 15 - All functions of the Secretary of State as “the Minister” under the section (power to place pipe-lines in streets), so far as relating to pipe-lines beginning and ending in Scotland.

Section 26A - All functions of the Secretary of State under the section (availability of funds) so far as relating to pipe-lines beginning and ending in Scotland.

Sections 35, 36 & 38 - All functions of the Secretary of State as “the Minister” to receive notices under the sections (information), so far as relating to pipe-lines beginning and ending in Scotland.

Section 39(2) - The function of the Secretary of State to determine certain disputes, so far as relating to pipe-lines beginning and ending in Scotland.

Section 43 - All functions of the Secretary of State as “the Minister” under the section (preservation of amenity), so far as relating to pipe-lines beginning and ending in Scotland.

Section 44 - The duty of the Secretary of State as “the Minister” to have constant regard to the need of protecting certain water against pollution, so far as relating to pipe-lines beginning and ending in Scotland.

Schedule 1 - All functions of the Secretary of State as “the Minister” under the Schedule (applications for grant of pipe-line construction authorisation), so far as relating to pipe-lines beginning and ending in Scotland.

Schedule 2 - All functions of the Secretary of State as “the Minister” under the Schedule (applications for grant of compulsory purchase orders and compulsory rights

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

	orders), so far as relating to pipe-lines beginning and ending in Scotland.
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The following functions have been made exercisable by a Minister of the Crown subject to a requirement for agreement of or consultation with the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

The Offshore Petroleum Development (Scotland) Act 1975 (c.8) , section 3.	The function of the Secretary of State by order to declare a part of the sea surrounding Scotland which is within United Kingdom waters to be designated area.
The Food and Environment Protection Act 1985 (c.48) , sections 5, 6, 7 and 10(1) and Schedule 3.	Section 5 - The functions of the Secretary of State as licensing authority in relation to deposits of substances or articles in the sea or under the sea bed, the scuttling of vessels, loading with a view to such deposit and towing or propelling with a view to scuttling. Section 6 - The functions of the Secretary of State as licensing authority in relation to incineration of substances or articles at sea or loading for that purpose. Section 7 - The function of the Ministers of making orders to exempt operations from the requirement to be licensed. Section 10(1) - The function of carrying out operations to protect the marine environment. Schedule 3 - The functions of the Secretary of State as licensing authority of dealing with representations concerning the refusal to grant, the variation or revocation of, or the provisions contained in, a licence.
The Petroleum Act 1998 (c.17) , sections 32(1), 33(1), 34(7), 35(1), 37(1) and 39(1).	Section 32(1) - The function of the Secretary of State of approving an abandonment programme. Section 33(1) - The function of the Secretary of State of preparing his own abandonment programme. Section 34(7) - The functions of the Secretary of State of determining whether a change to an abandonment programme shall be made and of giving notice of his determination. Section 35(1) - The function of the Secretary of State of withdrawing approval for an abandonment programme. Section 37(1) - The function of the Secretary of State of requiring remedial action to be taken where an abandonment programme has not been carried out or where a condition has not been complied with. Section 39(1) - The function of the Secretary of State of making regulations relating to the abandonment of offshore installations and submarine pipelines.

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2000 (S.I. 2000/3253).

The Gas Act 1986 (c.44), section 9(3)(a) and Schedule 3, Parts I and III	The functions of the Secretary of State in relation to authorising the compulsory purchase of land by a public gas supplier so far as relating to pie-lines beginning and ending in Scotland.
The Public Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999 (S.I. 1999/1672)	The functions of the Secretary of State in connection with the making of an environmental determination in relation to pipe-line works proposed to be carried out by a public gas transporter so far as relating to pie-lines beginning and ending in Scotland.
The Pipe-line Works (Environmental Impact Assessment) Regulations 2000 (S.I. 2000/1928)	The functions of the Secretary of State to consider environmental impact before granting a pipe-line construction authorisation so far as relating to pipe-lines beginning and ending in Scotland.

Section D3: Coal

Purpose and Effect

This Section reserves coal, including the regulation of the UK coal industry. The control of pollution and certain other matters are excepted.

General

General legislative and executive competence is reserved in relation to the UK coal industry, including the ownership of coal reserves, regulation of deep and opencast mining, subsidence, the provision of concessionary coal, and the residual responsibilities of British Coal. This overall reservation is in line with a general reservation of energy matters.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	30-Mar-98	1006

Details of Provisions

Reservation

The reservation covers all legislation relating to coal, including in particular ownership and exploitation, deep and opencast mining and subsidence. Policy towards the UK coal industry continues to be dealt with on a UK basis by DTI Ministers, in consultation with the Scottish Ministers when appropriate. Operational matters in relation to coal reserves and the issue of mining licences are for the Coal Authority, which is a GB body and which receives grant in aid from DTI.

Exceptions from Reservation

The exceptions to the reservation relate to the subject-matter of:

- (a) *Part I of the Environmental Protection Act 1990*, which makes provision for the control of pollution;

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

- (b) *sections 53 and 54 of the Coal Industry Act 1994* which cover environmental duties in relation to planning approval and obligations to restore land affected by coal-mining operations.

Section D4: Nuclear Energy

Purpose and Effect

This Section reserves nuclear energy and nuclear installations, including the regulation of the nuclear energy industry. This does not include certain environmental responsibilities as they affect nuclear installations.

General

This Section reserves all matters relating to the production and use of nuclear energy and related research. Certain administrative functions in relation to civil nuclear site licences and permits, certain functions regarding liability for nuclear incidents and cover for compensation, and inspection of nuclear sites, which were responsibilities of the Secretary of State for Scotland, are the subject of executive devolution to the Scottish Ministers. Planning for emergencies at civil nuclear sites is also the responsibility of the Scottish Ministers, but is not governed by legislation. The reservation is in line with a general reservation of energy matters.

For the avoidance of doubt the current duties of the Scottish Environment Protection Agency in relation to the keeping and use of radioactive material other than at licensed nuclear sites, the disposal of radioactive waste and the regulation of non-nuclear activities at nuclear installations, are not reserved.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>	
CR	19-May-98	815	
LC	23-Jul-98	1138	

Details of Provisions

Reservation

The reservation is of all matters relating to nuclear energy and nuclear installations, including nuclear safety, nuclear security and safeguards, and liability for nuclear occurrences.

The areas covered by the reservation include the development, production and use of nuclear energy, nuclear site licensing, nuclear safety, nuclear security, liability for nuclear occurrences and insurances in respect of such liability, nuclear safeguards required by international treaties, and the United Kingdom Atomic Energy Authority.

Exceptions

The subject-matter of:

- (a) *Part I of the Environmental Protection Act 1990*;
(b) *the Radioactive Substances Act 1993*.

These enactments deal with the duties of the Scottish Environment Protection Agency and (formerly) the Secretary of State for Scotland in relation to the keeping and use of radioactive material other than at licensed nuclear sites, the disposal of radioactive waste and the regulation of non-nuclear activities at nuclear installations.

Executive devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

The Nuclear Installations Act 1965 (c.57):	
(a) section 2;	The function of the Secretary of State as “the Minister” to grant permits, and ancillary powers.
(b) sections 6 and 17(1) and (4);	The function of the Secretary of State as “the Minister” to maintain a list of licensed sites. The functions of the Secretary of State as “the Minister” to certify certain matters relating to jurisdiction, shared liability and foreign judgements.
(c) section 19(1), (3) and (4);	The functions of the Secretary of State as “the Minister” in relation to special cover for the licensee’s liability.
(d) section 20; and	The functions of the Secretary of State as “the Minister” in relation to furnishing of information relating to the licensee’s cover.
(e) section 23.	The function of the Secretary of State as “the Minister” to order registration of particulars of a person.

The following functions have been made exercisable by a Minister of the Crown subject to a requirement for agreement of or consultation with the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

The Nuclear Installations Act 1965 (c.57) , sections 1(1)(b) and (2), 16(1) and (1A), 18(1B), 21(1A) and (3) and 22(1) and (2), and in section 26(1) the definitions of “excepted matter” and “nuclear matter”.	Section 1(1)(b) - The function of the Secretary of State to prescribe a class or description of installation. Section 16(1A) - The function of the Secretary of State with the approval of the Treasury by order to increase or further increase either or both of the amounts specified in section 16(1) (limits on the aggregate amount of compensation).
The Nuclear Installations Act 1965 (c.57) , sections 1(1)(b) and (2), 16(1) and (1A), 18(1B), 21(1A) and (3) and 22(1) and (2), and in section 26(1) the definitions of “excepted matter” and “nuclear matter” (contd.).	Section 18(1B) - The function of the Secretary of State with the approval of the Treasury by order to increase or further increase the sum expressed in special drawing rights in section 18(1A). Section 21(1A) - The function of the Secretary of State with the approval of the Treasury by order to increase or further increase the sum expressed in special drawing rights in section 21(1). Section 22(1) - The function of the Secretary of State to prescribe a class or description of occurrence.

Section 22(2) - The function of the Secretary of State to prescribe persons to whom an occurrence is to be reported. Section 26(1) - The function of the Secretary of State to prescribe exemptions, and to prescribe other fissile material.

Residual Functions

The functions of the Secretary of State for Scotland under the Nuclear Installations Act 1965 were transferred to the Secretary of State by the Transfer of Functions (Nuclear Installations) Order 1999 (S.I. 1999/2786).

Section D5: Energy Conservation

Purpose and Effect

This Section reserves certain matters relating to the use of energy. This does not, however, preclude the Scottish Parliament from legislating about and/or promoting energy efficiency.

General

The Department of the Environment, Transport and the Regions promotes energy efficiency throughout the United Kingdom, and the Scottish Energy Efficiency Office acts on its behalf in Scotland. The Energy Act 1976 allows measures for control and conservation of energy resources. The reservation of this Act is not meant to prevent the Scottish Parliament from legislating for, or the Scottish Ministers promoting, the efficient use of energy by advice, encouragement, grants and loans. The overall reservation of energy conservation is in line with a general reservation of energy matters.

Details of Provisions

Reservation

The reservation covers the subject-matter of the Energy Act 1976, other than section 9.

The 1976 Act enables the Secretary of State to make orders regulating or prohibiting the use of various fuels, or electricity, where that appears to him desirable for the purpose of conserving energy. It also enables him to make orders regulating or prohibiting the production, supply or acquisition of these things while an Order in Council is in force. When an Order in Council is in force the Secretary of State may also give directions to producers, suppliers and users. An Order in Council may be made where the fuller powers it allows are needed to implement an international obligation or to deal with an actual or threatened emergency. The Act also allows for exemptions from certain legal requirements while an Order in Council is in force. The 1976 Act also enables the Secretary of State to give directions for conserving fuel stocks, and provides for other measures for controlling energy sources and promoting economy.

Section 9 of the 1976 Act covers the use and liquefaction of offshore natural gas and is reserved under the reservation of Oil and Gas at Section D2.

Exception

The exception allows the Scottish Parliament to legislate regarding encouragement of energy efficiency other than by prohibition or regulation. This covers encouragement by advice, publicity, grants and loans, or other positive incentives. The Scottish Ministers are, accordingly, responsible for such encouragement.

Section E1: Road Transport

Purpose and Effect

This Section reserves certain matters relating to road traffic and transport.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	31-Mar-98	1052
CC	31-Mar-98	1067
LC	23-Jul-98	1139
LR	3-Nov-98	195
LR	3-Nov-98	196

Details of Provisions

In general, matters relating to road traffic and road transport are reserved where there is a need to ensure consistency of treatment and approach between Scotland and the rest of the United Kingdom.

The Scottish Parliament has competence to legislate about the promotion of road safety and about payments for hospital treatment of road traffic accident casualties. Bus fuel duty rebate is also not a reserved matter, in line with other aspects of bus policy.

Reservation

This Section provides that the subject-matter of the following Acts are reserved matters:

- (a) *the Motor Vehicles (International Circulation) Act 1952*. This Act deals with the issue of international driving permits and the recognition of foreign permits;
- (b) *the Public Passenger Vehicles Act 1981 and the Transport Act 1985*, so far as relating to the system of public service vehicle operator licensing. The licensing system is administered by the Traffic Commissioner for the Scottish Traffic Area constituted under the 1981 Act;
- (c) *sections 17 and 25 and Parts V and VI of the Road Traffic Regulation Act 1984*. These deal respectively with:
 - i. what traffic can use special roads (which are defined in section 151 of the Roads (Scotland) Act 1984 and can include motorways);
 - ii. the design, layout and operation of pedestrian crossings;
 - iii. the regulation of traffic signs; and
 - iv. speed limits.
- (d) *the Road Traffic Act 1988 and the Road Traffic Offenders Act 1988*. The Road Traffic Offenders Act 1988 deals with the prosecution and punishment of offenders for a range of road traffic offences. The Road Traffic Act 1988 covers a range of matters:
 - i. road safety provisions (Part I), such as the main criminal offences relating to road safety. However, as indicated below, the Scottish Parliament has legislative competence in relation to the promotion of road safety;
 - ii. construction and use of vehicles and equipment (Part II);

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

- iii. licensing of drivers of vehicles, including drivers of large goods vehicles and passenger carrying vehicles (Parts III and IV);
 - iv. driving instruction (Part V). As the provision in the 1988 Act is about paid instruction in the driving of a motor car on a road, this reservation is supplemented by a general reservation for the regulation of the instruction of drivers of other types of motor vehicles;
 - v. third party liabilities (Part VI) - the compulsory insurance of motor vehicles.
- (e) *the Vehicle Excise and Registration Act 1994*. This Act deals with the licensing and registration of vehicles;
- (f) *the Road Traffic (New Drivers) Act 1995*. This Act deals with the revocation of driving licences during the licence-holder's probationary period; and
- (g) *the Goods Vehicle (Licensing of Operators) Act 1995*. This Act provides for the system of licensing of operators of goods vehicles. The licensing system is administered by the Traffic Commissioner for the Scottish Traffic Area constituted under the Public Passenger Vehicles Act 1981.

Various other matters are also reserved:

- (a) regulation of proper hours or periods of work by persons engaged in the carriage of passengers or goods by road;
- (b) the conditions under which international road transport services for passengers or goods may be undertaken; and
- (c) regulation of the instruction of drivers of motor vehicles. As indicated above this provision supplements the reservation of the subject-matter of Part V of the Road Traffic Act 1988 which deals with instruction of motor car drivers to ensure that the reservation covers the paid instruction of drivers of all types of motor vehicles.

Exceptions

The subject-matter of:

- (a) *sections 39 and 40 of the Road Traffic Act 1988 (road safety information and training)*. This means that the Scottish Parliament is able to legislate about matters concerned with the promotion of road safety by local authorities or other bodies and to subsidise bodies other than local authorities to give road safety advice and training. Both the Scottish Ministers and UK Government Ministers will have functions exercisable in or as regards Scotland in relation to the promotion of road safety. This is because section 52(1)(h) of the Act gives them concurrent powers; and
- (b) *sections 157 to 159 of the Road Traffic Act 1988 (payment for treatment of traffic casualties)*. The Scottish Parliament is able to legislate about payments for hospital treatment of road traffic accident casualties. This is consistent with the devolution of other health matters. The National Health Service in Scotland, through Health Boards and NHS Trusts, can recover the costs incurred in treating road traffic casualties from insurance companies.

Executive Devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

The Road Traffic Regulation Act 1984 (c.27):	
(a) sections 14(1), (2), (3) and (5), 15(2), (3), (5), (6) and (7); and 16(2) and (2A);	Section 14(1) - The function of the Secretary of State as traffic authority by

order to restrict or prohibit temporarily the use of a road, or any part of it, to such extent and subject to such conditions or exceptions as he may consider necessary.

Section 14(2) - The function of the Secretary of State as traffic authority by notice to restrict or prohibit temporarily the use of a road where it appears to him that the restriction or prohibition should come into force without delay.

Section 14(3) - The function of the Secretary of State as traffic authority, when considering the making of an order under section 14(1) or the issue of a notice under section 14(2), to have regard to the existence of alternative routes suitable for the traffic which will be affected by the order or notice.

Section 14(5) - The function of the Secretary of State as traffic authority to make provision in any order made or issued by him any such provision as is mentioned in subsection (4) as respects any alternative road for which he is the traffic authority or to consent to provisions as respects any alternative road for which he is the traffic authority in an order made by a different traffic authority.

Section 15(2) - The function of the Secretary of State as traffic authority, if he is satisfied, and it is stated in the order that he is satisfied, that the execution of the works in question will take longer than eighteen months, to disapply the time-limit of eighteen months; and in any such case to revoke the order as soon as the works are completed.

Section 15(3) - The function of the Secretary of State, where an order subject to the time-limit of eighteen months has not ceased to be in force, from time to time to direct that the order shall continue in force for a further period not exceeding 6 months from the date on which it would otherwise cease to be in force.

Section 15(5) - The function of the Secretary of State, at the request of an authority that has made an order subject to the time-limit of six months in subsection (1), from time to time to direct that the order shall continue in force for a further period from the date on which it would otherwise cease to be in force.

Section 15(6) - The function of the Secretary of State, where he refuses a request under subsection (5) in respect of an order, to consent to the making of a further order.

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

	<p>Section 15(7) - The function of the Secretary of State by regulations to alter the number of days for the time being specified in this subsection.</p> <p>Section 16(2) - The function of the Secretary of State to make regulations with respect to the procedure to be followed in connection with the making of orders and the issue of notices under section 14 including provision for notifying the public of the exercise, or proposed exercise, of the powers conferred by that section and of the effect of orders and notices made or issued in the exercise of those powers, and all functions conferred on him by the Road Traffic (Temporary Restrictions) Procedure Regulations 1992 SI 1992/1215.</p> <p>Section 16(2A) - The function of the Secretary of State by regulations under subsection (2) to make, in relation to such orders as he thinks appropriate, provision:</p> <ul style="list-style-type: none"> (a) for the making and consideration of objections to a proposed order; and (b) for any of the matters mentioned in paragraph 22(1) of Schedule 9.
(b) section 17(2) and (5);	<p>Section 17(2) - The function of the Secretary of State to make regulations with respect to the use of special roads but only to the extent that such regulations can apply to special roads specified in the regulations and not to special roads generally or to all special roads of a particular class.</p> <p>Section 17(5) - The function of the Secretary of State as traffic authority to declare the date on which a special road or part of that road is open for use as a special road.</p>
(c) section 28(4)(a);	<p>Section 28(4)(a) - The function of the Secretary of State to authorise the use by a school crossing patrol of signs of a description not prescribed by regulations.</p>
(d) section 64(1)(b) and (2);	<p>Section 64(1)(b) and (2) -</p> <ul style="list-style-type: none"> (a) The function of the Secretary of State to authorise any object or device so that it becomes a traffic sign within the meaning of subsection (1); (b) The function of the Secretary of State to authorise the size, colour and type of a traffic sign which is not prescribed.
(e) section 65(1);	<p>Section 65(1) - The function of the Secretary of State as Traffic Authority to</p>

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

	cause or permit traffic signs to be placed on or near a road.
(f) section 65(2) and (3A)(b)(ii);	<p>Section 65(2) - The function of the Secretary of State to give directions (but not general directions) to a local traffic authority as to the placing, replacing or converting of a traffic sign of a prescribed type or authorised character.</p> <p>Section 65(3A)(b)(ii) - The function of the Secretary of State to prescribe a body appearing to him to be representative of the interests of road users or any class of road users in relation to the placing of a temporary traffic sign.</p>
(g) sections 69(1), (2) and (3), 70(1), 71(1), 79(1), 82(1)(b), (2) and (3), 83(1) and 84(1), (1A) and (1B);	<p>Section 69(1) - The function of the Secretary of State as traffic authority to give written notice requiring the removal of an object or device for the guidance or direction of persons using the road.</p> <p>Section 69(2) - The function of the Secretary of State as traffic authority to effect the removal required in terms of subsection (1) in the event of default and to recover expenses incurred.</p> <p>Section 69(3) - The function of the Secretary of State to give directions to a local traffic authority requiring the removal of any traffic sign or any object or device mentioned in subsection (1).</p> <p>Section 70(1) - The function of the Secretary of State to be able to carry out work required to comply with any direction given under section 65(2) or section 69 and to recover the expenses incurred.</p> <p>Section 71(1) - The function of the Secretary of State to be able to enter any land and exercise such powers as may be necessary for the purpose of placing, replacing, converting and removing traffic signs or generally for the purposes of the exercise of powers and duties under section 69.</p> <p>Section 79(1) - The function of the Secretary of State to make advances towards expenses incurred by a council in the discharge of any obligations imposed on them by the relevant provisions of the Act in relation to the erection, maintenance, alteration or removal of traffic signs.</p> <p>Section 82(1)(b) - The function of the Secretary of State to make regulations to specify a classification or type of road so as to make it a restricted road for the purposes of section 81.</p>

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

	<p>Section 82(2) - The function of the Secretary of State as traffic authority to direct that a road which is a restricted road for the purposes of section 81 shall cease to be a restricted road or that a road which is not a restricted road for those purposes shall become a restricted road.</p> <p>Section 82(3) - The function of the Secretary of State as traffic authority to declare the date on which a special road or part of that road is open for use as a special road.</p> <p>Section 83(1) - The function of the Secretary of State to make an order so as to give the direction under section 82(2).</p> <p>Section 84(1) - The function of the Secretary of State to make an order as respects any road (except a special road) for which he is the traffic authority to prohibit the driving of motor vehicles at a speed exceeding that specified in the order either generally or during periods specified in the order or for the time being indicated by traffic signs in accordance with the order.</p>
(h) section 85(1) and (3);	<p>Section 85(1) - The function of the Secretary of State to comply with the duty in relation to a road for which he is the traffic authority to erect and maintain traffic signs to secure that adequate guidance is given to drivers of motor vehicles as to the speed limit to be observed on that road.</p> <p>Section 85(3) - The function of the Secretary of State to execute works in the event of default by the local traffic authority to erect, maintain, alter or remove traffic signs and to recover the expense incurred in doing so.</p>
(i) section 85(2); and	<p>Section 85(2) - The function of the Secretary of State to give directions (but not general directions) for the purpose of securing that adequate guidance is given to drivers of motor vehicles as to whether any, and if so what, limit of speed is to be observed on any road.</p>
(j) Schedule 9, Part I, paragraphs 1, 3(1), 4, 7, 8 and 9, Part II, paragraphs 13, 15, 16(1) and (2) and 17 and Part III, paragraphs 21, 24 and 26(1) and (2).	<p>Schedule 9, para 1 - The function of the Secretary of State to give a local authority a direction in relation to specified provisions of the Act.</p> <p>Schedule 9, para 3(1) - The function of the Secretary of State to exercise the power to make an order under any of the provisions specified in paragraph 1 in addition to those powers still being capable of being exercised by the authorised authority.</p>

Schedule 9, para 4 - The function of the Secretary of State to do anything to make effective any order which he has made under paragraph 3 and to recover from the authorised authority any expenses incurred by him in doing so.

Schedule 9, para 7 - The function of the Secretary of State to hold a public inquiry as necessary and to vary or revoke any order made or having effect as if made under or by virtue of any of the provisions of the Act referred to in paragraph 1.

Schedule 9, para 8 - The function of the Secretary of State before giving any direction under paragraph 2 or making any order under paragraph 7 to be satisfied that the duty under section 122(1) is not being satisfactorily discharged by the authorised authority and that the direction or order is necessary to secure compliance.

Schedule 9, para 9 - The function of the Secretary of State to be satisfied that there are special circumstances which make it expedient that an order under paragraph 7 should be made notwithstanding that he is not satisfied in terms of paragraph 8.

Schedule 9, para 13 - The function of the Secretary of State to consent to the inclusion of certain provisions in an order proposed to be made by a local authority under or by virtue of certain provisions of the Act.

Schedule 9, para 15 - The function of the Secretary of State to make an order adding or removing from the orders for which his consent is required by paragraph 13 certain other specified orders made by local authorities for specified purposes and specified circumstances.

Schedule 9, para 16(1) - The function of the Secretary of State to give his consent to an order either in the form submitted or with such modifications as he thinks fit.

Schedule 9, para 16(2) - The function of the Secretary of State to comply with a duty to take sufficient and reasonably practical steps to inform the local authority and other persons likely to be concerned where consent to an order is proposed to be given with modifications which appear to him substantially to affect the character of the order.

Schedule 9, para 17 - The function of the Secretary of State to make an order granting a general consent for the making of orders requiring that consent under this part of the Schedule.

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

	<p>Schedule 9, para 21 - The function of the Secretary of State to make regulations for providing the procedure to be followed by a local authority in relation to the making of orders and any functions conferred on him by the Local Authorities' Traffic Orders (Procedure) (Scotland) Regulations 1999 S.I. 1999/614.</p> <p>Schedule 9, para 24 - The function of the Secretary of State to make regulations with respect to the procedure in connection with the making by him of any order made by virtue of paragraph 3 or made under paragraph 7 of Schedule 9 or of any order which he is authorised to make with respect to roads for which he is the traffic authority under any of the provisions referred to in paragraph 20(1) and any functions conferred on him by the Secretary of State's Traffic Orders (Procedure) (Scotland) Regulations 1987 S.I. 1987/2244.</p> <p>Schedule 9, para 26(1) - The function of the Secretary of State to consider any objections made to an order under any of the provisions referred to in paragraph 20(1) of the Schedule before giving a direction under paragraph 2.</p> <p>Schedule 9, para 26(2) - The function of the Secretary of State in complying with the duty to take such steps as appear to him to be sufficient and reasonably practical for informing any local authority and any other person likely to be concerned of any modifications which appear to him to affect substantially the character of the order.</p>
<p>The Transport Act 1985 (c.67):</p>	
<p>(a) section 19(7); and</p>	<p>Section 19(7) - The function of the Secretary of State to make an order designating bodies appearing to him to be eligible in accordance with subsection (8) for the purposes of the granting of permits for the use of a small bus in terms of subsection (3) for educational and other bodies; and to make provision for the issues referred to in paragraph (a) to (c) in subsection (7).</p>
<p>(b) Schedule 4, paragraph 15.</p>	<p>Schedule 4, paragraph 15 - The function of the Secretary of State* of being consulted by the Lord Chancellor on appointment of judicial members of the tribunal, retention of a judicial member beyond normal retirement age, removal of a judicial member, and the terms and conditions of service.</p>

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

<p>The Road Traffic Act 1988 (c.52), sections 13(2), 13A(1), 27(6) and 31(2).</p>	<p>Section 13(2) - The function of the Secretary of State to make regulations (generally or as regards any area, class or description of competition or trial or any particular competition or trial) to authorise or provide for authorising the holding on a public way of competitions or trials (other than races or trials of speed) involving the use of motor vehicles; and to impose conditions.</p>
<p>The Road Traffic Act 1988 (c.52), sections 13(2), 13A(1), 27(6) and 31(2).</p>	<p>Section 13A(1) - The function of the Secretary of State to make regulations to authorise a motoring event in a public place other than a road. Section 27(6) - The function of the Secretary of State to make regulations prescribing the procedure to be followed in connection with the making of orders by a local authority dealing with the control of dogs on roads and requiring the publication in a prescribed manner of a notice of the making and effect of the order. Section 31(2) - The function of the Secretary of State to make regulations to authorise or provide for authorising the holding on a public way (other than a bridle way) of races or trials of speed of any class or description or of a particular race or trial of speed involving cycles; and to impose conditions.</p>

The following functions have been made exercisable by a Minister of the Crown subject to a requirement for agreement of or consultation with the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

<p>The Road Traffic Regulation Act 1984 (c.27):</p>	
<p>(a) section 17(2);</p>	<p>The function of the Secretary of State to make regulations with respect to the use of special roads but only to the extent that such regulations can apply to special roads specified in the regulations and not to special roads generally or to all special roads of a particular class.</p>
<p>(b) section 25(1) and 64(1)(a);</p>	<p>Section 25(1) - The function of the Secretary of State to make regulations with respect to the precedence of vehicles and pedestrians respectively, and generally with respect to the movement of traffic (including pedestrians), at and in the vicinity of crossings. Section 64(1)(a) - The function of the Ministers acting jointly to specify by regulations as a traffic sign an object or</p>

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

	device for conveying to traffic on roads or any specified class of traffic, warnings, information, requirements, restrictions or prohibitions of any description.
(c) section 65(1);	The function of the Secretary of State as Traffic Authority to cause or permit traffic signs to be placed on or near a road.
(d) section 81(2);	Section 81(2) - The function of the Ministers acting jointly by order made by statutory instrument and approved by a resolution of each House of Parliament, to increase or reduce the rate of speed which applies on a restricted road.
(e) section 85(2)(a); and	The function of the Secretary of State to give general directions for the purpose of securing that adequate guidance is given to drivers of motor vehicles as to whether any, and if so what, limit of speed is to be observed on any road.
(f) sections 86(2) and 88(1) and (4).	Section 86(2) - The function of the Secretary of State by regulations to vary the speed limits which apply to specified classes of traffic. Section 88(1) and (4) - The function of the Secretary of State in the interests of safety or for the purpose of facilitating the movement of traffic, by order to set speed limits for a period not exceeding 18 months and of continuing such limits either indefinitely or for a specified period.
The Road Traffic Act 1988 (c.52) , section 36(5).	The function of the Secretary of State for Scotland, acting with the Secretary of State for Transport and the Secretary of State for Wales, by regulations to specify any traffic sign, failure to comply with which carries the penalty of discretionary disqualification.
The Road Traffic Act 1988 (c.52) , section 36(5).	The function of the Secretary of State for Scotland, acting with the Secretary of State for Transport and the Secretary of State for Wales, by regulations to specify any traffic sign, failure to comply with which carries the penalty of discretionary disqualification.

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2000 ([S.I. 2000/1563](#)).

The Road Traffic Regulation Act 1984 (c.27) , section 88(1)(a) and (4)	Section 88(1)(a) and (4) of the 1984 Act concern temporary speed limits.. Under section 88(1)(a), the Secretary of State can make an Order imposing a maximum speed limit, for periods up to 18 months, on: all roads in an area specified in the Order; all roads of a class specified in the Order; or
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	<p>any particular road specified in the Order.</p> <p>Under section 88(4) such Orders can be continued in force for further periods or indefinitely. This Order transfers the functions under sections 88(1)(a) and (4) in respect of temporary speed limits but only in relation to making orders applying to specified roads.</p>
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Residual Functions

The functions of the Secretary of State for Scotland under sections 64, 65 and 81 of the Road Traffic Regulation Act 1984 and section 36(5) of the Road Traffic Act 1988 (regulations specifying objects or devices as traffic signs; directions as to the placing of traffic signs; orders to increase or reduce speed limit on restricted roads; specifying traffic signs for certain purposes of the 1988 Act) were transferred to the Secretary of State by the Transfer of Functions (Road Traffic) Order 1999 (S.I. 1999/3143).

SECTIONS

Section E2: Rail Transport

Purpose and Effect

This Section reserves the provision and regulation of railway services, including rail safety, rail transport security, the subject-matter of the Channel Tunnel Act 1987 and the Railway Heritage Act 1996. Certain matters are excepted. This section was amended by S.I. 2000/3252.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	31-Mar-98	1052

Details of Provision

Reservation

The provision and regulation of railway services is a reserved matter. This includes rail safety. The interpretation provision at the end of the Section provides that railway services are those defined in section 82 of the Railways Act 1993 but excluding the wider meaning of railway given by section 81(2) of that Act. This means that railway services for the purposes of the reservation include services in relation to the carriage of passengers (including luggage, parcels and mail) and of goods and services in relation to stations, maintenance facilities and the provision and operation of the rail network itself. As the wider meaning of “railway” does not apply (“railway” having the meaning given by section 67(1) of the Transport and Works Act 1992), tramways and guided transport systems are not included, therefore the Scottish Parliament has legislative competence in regard to those matters.

The following are also reserved:

- (a) rail transport security;
- (b) the subject-matter of the *Channel Tunnel Act 1987*; and
- (c) the subject-matter of the *Railway Heritage Act 1996* which provides powers to make a railway heritage scheme.

Exceptions

As amended by [S.I. 2000/3252](#) there are four main exceptions from the reservation:

- (a) Grants so far as relating to railway services. However, certain grant provisions noted below continue to be reserved by way of exceptions to the general exception. This means that the Scottish Parliament is able to legislate about capital and revenue grants for services relating to the carriage of passengers, stations, maintenance facilities and the rail network itself. Legislative and executive competence includes, without the need for express mention, powers in relation to special grants to local authorities under section 108A of the Local Government Finance Act 1992 and grants for public passenger transport services under section 56 of the Transport Act 1968, where the grants relate to railway services.

The matters which are not within this exception and thus continue to be reserved are:

- i. *the subject-matter of section 63 of the Railways Act 1993*. This section provides for government financial assistance where railway administration orders are made;
 - ii. *grants in relation to railway services as defined in section 82(1)(b) of the Railways Act 1993* (carriage of goods by railway); and
 - iii. *the subject-matter of section 136 of the Railways Act 1993*. This section deals with compensation payable to a passenger service operator who is required to run a passenger service which would not be commercially viable in accordance with a public service obligation under Council Regulation ([EEC](#)) 1191/69 as amended.
- (b) Imposing requirements about the preparation and submission of strategies relating to the provision of rail services on Scottish public authorities with mixed functions relating to such services. The purpose of this exception which was added by [S.I. 2000/3252](#), was to enable the Scottish Parliament to legislate in the [Transport \(Scotland\) Act 2001 \(asp 2\)](#) to empower the Scottish Ministers to require Scottish public authorities with mixed functions to produce joint transport strategies specifically covering the provision of rail services.
- (c) The transfer of functions of passenger transport executives or passenger transport authorities relating to the provision and regulation of rail services conferred by Part II of the [Transport Act 1968\(c.73\)](#) and sections 32 to 36 of the [Railways Act 1993\(c.43\)](#) to, and the allocation of such functions among, Scottish public authorities (other than cross-border public authorities and public authorities exercising functions solely in relation to reserved matters) which may be set up wholly or mainly to exercise functions relating to transport. The purpose of this exception, which was added by [S.I. 2000/3252](#), was to enable the Scottish Parliament to legislate in the [Transport \(Scotland\) Act 2001 \(asp 2\)](#) to confer on, or allocate among, certain Scottish public authorities the same rail responsibilities as any other passenger transport executive. It does not, however, enable the Scottish Parliament to create new types of passenger transport executive rail functions.

Executive Devolution

The following functions have been made concurrently exercisable by a Minister of the Crown and the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

The Railways Act 1993 (c.43) :	
(a) section 74(1) and (3);	Section 74(1) - The function of receiving from the Rail Regulator his annual report on his activities during each financial year and the activities of the Monopolies and Mergers Commission during the same year so far as relating to references made to the Commission by the Regulator. Section 74(3) - The function of the Secretary of State to comply with

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

	the duty to lay before Parliament a copy of every report made by the Rail Regulator under section 74(1) and to arrange for publication of every such report.
(b) section 75(1) and (2);	Section 75(1) - The function of the Secretary of State to receive from the Director of Passenger Rail Franchising his annual report of his activities during each financial year and the general performance of franchisees during that year in carrying out their functions under franchise agreements. Section 75(2) - The function of the Secretary of State to comply with the duty to lay before each House of Parliament a copy of every report made to him by the Franchising Director under section 75(1) and to arrange for the publication of every such report.
(c) section 76(6)(a);	The function of the Secretary of State to receive a report of the findings of the Central Rail Users' Consultative Committee where it has investigated any matter.
(d) section 79(1);	The function of the Secretary of State of receiving the annual report of the Central Rail Users Consultative Committee and the duty to lay a copy of those reports before each House of Parliament.
(e) section 137; and	Section 137(1) - The function of the Secretary of State to enter into agreements with goods service operators for the making of payments in respect of track access charges. Section 137(2) - The function of the Secretary of State to be satisfied that certain benefits are likely to result from the provision of services under an agreement. Section 137(3) - The function of the Secretary of State for making payments under agreements entered into under this section shall be paid out of money provided by Parliament. Section 137(4) - The definition of "goods service operator" and "track access charge".
(f) section 139(1), (2), (3), (5) and (6).	Section 139(1) - The function of the Secretary of State to make grants towards the provision of facilities for or in connection with the carriage of goods by railway or the loading or unloading of such goods.

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

	<p>Section 139(2) - The function of the Secretary of State to be satisfied as to the matters set out in paragraphs (a) to (c).</p> <p>Section 139(3) - The function of the Secretary of State to take a view as to the nature and purpose of the expenditure to be grant aided.</p> <p>Section 139(5) - The function of the Secretary of State to consider an application under that subsection and to require supporting evidence with respect to the matters set out in paragraphs (a) to (c).</p> <p>Section 139(6) - The function of the Secretary of State to impose terms and conditions.</p>
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Section E3: Marine Transport

Purpose and Effect

This Section reserves certain matters relating to international and UK shipping including marine safety and security, navigational rights, regulation of the British merchant fleet and all matters relating to the employment of seafarers.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	31-Mar-98	1067
LC	23-Jul-98	1141
LC	23-Jul-98	1145

Details of Provisions

Reservation

In general, matters relating to marine transport are reserved where there is a need for consistent provision across the UK, for example in order to comply with international obligations or agreements (such as those relating to vessel safety or the employment of seafarers) or for practical reasons (e.g. regarding coastguards and lighthouses).

The Section provides that the subject-matter of the following Acts are reserved matters:

- (a) *the Coastguard Act 1925*. This Act defines the activities and powers of HM Coastguard;
- (b) *the Hovercraft Act 1968*, except so far as relating to the regulation of noise and vibration caused by hovercraft. This is to ensure that matters relating to marine safety in relation to hovercraft are reserved;
- (c) *the Carriage of Goods by Sea Act 1971*. This Act incorporates into UK law international agreements (the Hague-Visby rules) which set out the circumstances in which the carrier or the cargo owner are liable for the loss or damage of goods at sea;
- (d) *section 2 of the Protection of Wrecks Act 1973* (prohibition on approaching dangerous wrecks). This deals with the designation of protected areas around dangerous wrecks;
- (e) *the Merchant Shipping (Liner Conferences) Act 1982*. This Act makes provision for the exemption from normal competition regulations of 'liner conferences', i.e. cartels of deep sea container shipping operators concerned to prevent over-capacity and damaging price

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

competition on certain specified routes. The Act also incorporates into UK law the United Nations Convention on a Code of Conduct for Liner Conferences;

- (f) *the Dangerous Vessels Act 1985*. This deals with the powers of harbour masters and the Secretary of State in relation to dangerous vessels;
- (g) *the Aviation and Maritime Security Act 1990*, other than Part I (Aviation Security). This Act covers matters of maritime security;
- (h) *the Carriage of Goods by Sea Act 1992*. This Act makes provision about bills of lading and deals with rights and liabilities under shipping contracts;
- (i) *the Merchant Shipping Act 1995*. This Act deals with a wide range of marine matters. It specifies what constitutes British ships, and deals with their registration. It also deals with such matters as masters and seamen in seagoing ships, marine safety, fishing vessels, marine pollution from ships, liability for oil pollution from ships, lighthouses, salvage and wreck, and enforcement officers;
- (j) *the Shipping and Trading Interests (Protection) Act 1995*. This Act gives powers in relation to measures to be taken in response to discriminatory foreign action against UK shipping and trade interests. This reservation is consistent with the reservation of the general area of protection of trading interests (Section C15); and
- (k) *sections 24 and 26 to 28 of the Merchant Shipping and Maritime Security Act 1997*. These sections make provision about wrecks, piracy and international maritime bodies.

The following matters are also reserved:

Navigational rights and freedoms. These derive from international law. Coastal states, such as the UK, have a duty not to impose requirements on foreign ships which would have the practical effect of denying or impairing these rights or freedoms. Uniform treatment of passing shipping traffic all around the UK is necessary to ensure compliance with the UK's international obligations.

Financial assistance for shipping services which start or finish or both outside Scotland. With one exception about bulk freight services (noted below), the Scottish Parliament is not able to legislate about financial assistance to shipping services between Scotland and other parts of the UK or Europe since differing approaches might distort the market for shipping services. The Scottish Parliament is, however, able to legislate about financial assistance to shipping services operating wholly within Scotland.

Exceptions

The following matters are excepted from the reservation:

Ports, harbours, piers and boatslips, except in relation to the matters reserved by virtue of paragraph (d), (f), (g) or (i). The Scottish Parliament therefore has legislative competence over ports, harbours, piers and boatslips in Scotland. The exception does not, however, extend to the reserved matters of maritime security and safety.

Regulation of works which may obstruct or endanger navigation. This exception gives the Scottish Parliament legislative competence over the regulation of works which may obstruct or endanger the exercise of navigational rights and freedoms. The general reservations relating to oil and gas (Section D2) and telecommunications (Section C10) mean, however, that consents for works related to those industries will be reserved matters.

The subject-matter of the Highlands and Islands Shipping Services Act 1960 in relation to financial assistance for bulk freight services. The 1960 Act allows for financial assistance to shipping services serving the Highlands and Islands from any port of embarkation. The exception allows the Scottish Parliament, to continue to subsidise bulk freight shipping services between the Highlands and Islands and locations outside Scotland which are necessary for the social and economic well-being of island communities.

Executive Devolution

The following functions were included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750), as amended by S.I. 2000/1563.

The Merchant Shipping (Formal Investigations) Rules 1985 (S.I. 1985/1001), rule 4(1) ¹²	The function of the Secretary of State to appoint assessor
The Merchant Shipping (Section 63 inquiries) Rules 1997 (S.I. 1997/347), rule 5(1)	The function of the Secretary of State to appoint assessor

The following functions have been made exercisable by a Minister of the Crown subject to a requirement for agreement of or consultation with the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

The Food and Environment Protection Act 1985 (c.48) , sections 5, 6, 7 and 10(1) and Schedule 3.	Section 5 - The functions of the Secretary of State as licensing authority in relation to deposits of substances or articles in the sea or under the sea bed, the scuttling of vessels, loading with a view to such deposit and towing or propelling with a view to scuttling. Section 6 - The functions of the Secretary of State as licensing authority in relation to incineration of substances or articles at sea or loading for that purpose. Section 7 - The function of the Ministers of making orders to exempt operations from the requirement to be licensed. Section 10(1) - The function of carrying out operations to protect the marine environment. Schedule 3 - The functions of the Secretary of State as licensing authority of dealing with representations concerning the refusal to grant, the variation or revocation of, or the provisions contained in, a licence.
The Merchant Shipping Act 1995 (c.21) , section 10(2)(f).	The function of the Secretary of State, by regulation, to make provision for and in connection with the registration of a fishing vessel as British ships (section 10(2)(f), provide for regulations to be made with respect to (among other matters) the marking of ships registered or to be registered, including marks for identifying the port to which a fishing vessel is to be treated as belonging).

The Lord Advocate and the Solicitor General for Scotland continue to be Commissioners for the Northern Lighthouse Board.

¹² This entry was omitted as from 16 June 2000 by Article 6 of S.I. 2000/1563.

¹² This entry was omitted as from 16 June 2000 by Article 6 of S.I. 2000/1563.

Section E4: Air Transport

Purpose and Effect

This Section reserves the regulation of aviation and air transport (including air safety and security) and the arrangements for compensation and repatriation of passengers on an operator's insolvency. It was amended by [S.I. 2000/3252](#).

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	31-Mar-98	1067

Details of Provisions

Reservation

The regulation of aviation and air transport is a reserved matter. That includes the subject-matter of the following Acts:

- ((a)- *the Carriage by Air Act 1961; the Carriage by Air (Supplementary Provisions) Act 1962;*
(c) *the Carriage by Air and Road Act 1979* (so far as it relates to carriage by air).

These three Acts implement the provisions of the Warsaw Convention (as amended at the Hague and Montreal) which applies to all international carriage by aircraft of persons, baggage or cargo for reward;

- ((d) *the Civil Aviation Act 1982*. This Act deals with such matters as the constitution and functions of the Civil Aviation Authority, aerodromes, the regulation of civil aviation, aircraft and related matters;
- ((e) *the Aviation Security Act 1982*. This Act deals with offences against the safety of aircraft and the protection of aircraft, aerodromes and air navigation installations against acts of violence;
- ((f) *the Airports Act 1986*. This Act deals with the transfer of airport undertakings of local authorities, the regulation of the use of airports and the economic regulation of airports, the status of airport operators as statutory undertakers and related matters; and
- ((g) *sections 1 and 48 of the Aviation and Maritime Security Act 1990*. These sections relate to endangering safety at aerodromes and powers in relation to certain aircraft.

In addition, arrangements to compensate and repatriate passengers where an air transport operator becomes insolvent are reserved. At present the non-statutory Air Travel Trust Fund, which operates in conjunction with the Air Travel Organisers' Licence Scheme, provides funds for the repatriation and compensation of passengers where an air transport operator becomes insolvent.

Exceptions

The following exceptions from the reservation are made, as amended by [S.I. 2000/3252](#):

- (a) *The subject-matter of the following sections of the Civil Aviation Act 1982:*
- i. section 25 (the power of the Secretary of State to provide aerodromes);
 - ii. section 30 (the provision of aerodromes and facilities at aerodromes by local authorities);
 - iii. section 31 (power to carry on ancillary business in connection with local authority aerodromes);
 - iv. section 34 (financial assistance for certain aerodromes);

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

- v. section 35 (facilities for consultation at certain aerodromes);
 - vi. section 36 (health controls at certain aerodromes); and
 - vii. sections 41 to 43 and 50 (powers in relation to land) where land is to be or was acquired for airport development or expansion.
- (b) *The subject-matter of Part II and sections 63, 64 and 66 of the Airports Act 1986.* These relate to the transfer of airport undertakings of local authorities, airport bylaws, and functions of operators of designated airports in respect of abandoned vehicles.
- (c) *The subject-matter of sections 59 and 60 (acquisition and disposal of land) of the Airports Act 1986* where land is to be or was acquired for the purpose of airport development or expansion; and
- (d) Imposing requirements about the preparation and submission of strategies relating to the provision of air services on Scottish public authorities with mixed functions relating to such services. The purpose of this exception which was added by [S.I. 2000/3252](#), was to enable the Scottish Parliament to legislate in the [Transport \(Scotland\) Act 2001 \(asp 2\)](#) to empower the Scottish Ministers to require Scottish public authorities with mixed functions to produce joint transport strategies specifically covering the provision of air services.

Executive Devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

<p>The Civil Aviation Act 1982 (c.16) sections 38(2), 42(1), 50(2), 78, 79(1), 80 and 88(10) and (11).</p>	<p>Section 38(2) - The function of the Secretary of State to make an order directing specified aerodrome authorities to fix charges for the use of an aerodrome by reference among other things to any fact or matter relevant to aircraft noise or the extent or nature of any inconvenience resulting from such noise; and in such order to give directions as to the manner in which charges are to be fixed.</p> <p>Section 42(1) - The function of the Secretary of State to authorise the Civil Aviation Authority to acquire land compulsorily in Scotland.</p> <p>Section 50(2) - The function of the Secretary of State to give written authorisation to any person to enter upon land to make a relevant survey where section 50 applies.</p> <p>Section 78(1) - The function of the Secretary of State to publish a notice imposing a duty on an aircraft operator to comply with requirements specified in the notice so as to limit or mitigate the effect of noise and vibration connected with the taking off or landing of an aircraft at an aerodrome.</p> <p>Section 78(2) - The function of the Secretary of State to take a view that requirements mentioned in subsection (1) have not been complied with, to afford to the aircraft operator an opportunity of</p>
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*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

	<p>making representations and to consider those representations and thereafter to give the person managing the aerodrome concerned a direction requiring that facilities for using the aerodrome are withheld to a specified extent from the aircraft operator.</p> <p>Section 78(3) - The function of the Secretary of State, by publishing a notice, to prohibit specified aircraft from taking off or landing at an aerodrome, to specify the maximum number of occasions on which specified aircraft may take off or land and to determine the persons who are to be entitled to make the appropriate arrangements for aircraft of which they are the operators.</p> <p>Section 78(4)(a) - The function of the Secretary of State, by notice, to specify the circumstances in which the take off or landing of an aircraft can be disregarded for the purposes of a notice under subsection (3).</p> <p>Section 78(5)(a) - The function of the Secretary of State to comply with the duty to consult before making a determination in respect of an aerodrome in pursuance of subsection (3)(c).</p>
<p>The Civil Aviation Act 1982 (c.16) sections 38(2), 42(1), 50(2), 78, 79(1), 80 and 88(10) and (11) (contd.).</p>	<p>Section 78(5)(c) - The function of the Secretary of State to authorise any person to detain an aircraft where it appears to the Secretary of State that it is about to take off in contravention of any prohibition or restriction imposed in pursuance of subsection (3).</p> <p>Section 78(5)(f) - The function of the Secretary of State, by notice to the person managing an aerodrome, to determine that a particular occasion or series of occasions on which aircraft take off or land at an aerodrome are to be disregarded for the purposes of a notice under subsection (3).</p> <p>Section 78(6) - The function of the Secretary of State to give to a person managing a designated aerodrome appropriate directions so as to avoid, limit or mitigate the effect of noise and vibration connected with the take off or landing of an aircraft.</p> <p>Section 78(7) - The function of the Secretary of State to apply for an order of the Court of Session under section 45(b) of the Court of Session Act 1988.</p> <p>Section 78(8) - The function of the Secretary of State to make an order after consultation requiring a person managing</p>

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

	<p>a designated aerodrome to provide specified noise measuring equipment, to produce specified reports and to allow inspection of the equipment.</p> <p>Section 78(8) - The function of the Secretary of State also under this subsection of receiving the specified reports and authorising any person to inspect noise measuring equipment.</p> <p>Section 78(9) - The function of the Secretary of State to afford to a person upon whom a duty has been imposed by subsection (8) an opportunity to make representations with respect to any failure to perform that duty, to consider any such representations and thereafter to take appropriate steps to remedy the failure and to recover in court any expenses incurred by the Secretary of State.</p> <p>Section 78(11) - The function of the Secretary of State after consultation to make an order repealing any provision of a local Act which he considers is unnecessary.</p> <p>Section 78(12) - The function of the Secretary of State to consider what incidental or supplementary provisions may be appropriate in respect of any notice published in pursuance of subsections (1), (3) or (4) and the function also of varying or revoking an existing notice.</p>
<p>The Civil Aviation Act 1982 (c.16) sections 38(2), 42(1), 50(2), 78, 79(1), 80 and 88(10) and (11) (contd.).</p>	<p>Section 79(1) - The function of the Secretary of State to make a scheme requiring the person managing an aerodrome to make grants towards the insulation against noise of such classes of buildings as the Secretary of State thinks fit.</p> <p>Section 80 - The function of the Secretary of State to designate an aerodrome for the purposes of sections 78 and 79.</p> <p>Section 88(10) - The function of the Secretary of State to make an order designating an airport for the purposes of section 88.</p> <p>Section 88(11) - The function of the Secretary of State after consultation to make an order repealing any enactment in a local Act which appears to him to be unnecessary.</p>
<p>The Airports Act 1986 (c.32), sections 37(5), 65(2) and (6) and 68(1).</p>	<p>Section 37(5) - The function of the Secretary of State after consultation to determine that an airport should cease to be subject to economic regulation under Part IV of the Act.</p>

Section 65(2) - The function of the Secretary of State to make an order directing that the road traffic enactments (as defined in subsection (6)) shall have effect in relation to an airport subject to such modifications as appear to him necessary or expedient for the purposes set out in paragraphs (a) and (b).
Section 65(6) - The function of the Secretary of State to make an order designating an airport for the purposes of Section 65.
Section 68(1) - The function of the Secretary of State after consultation to make an order requiring an airport operator to provide maintain and operate equipment for monitoring aircraft movement and to make specified reports and to permit an authorised person to inspect the equipment. In addition, the function of the Secretary of State under paragraph (b) to receive specified reports and to authorise any person to inspect equipment.

Section E5: Miscellaneous Transport Matters

Purpose and Effect

This Section reserves the transport of radioactive material, technical specifications for public passenger transport for disabled people, and regulation of the carriage of dangerous goods.

Details of Provisions

Reservation

This Section provides that the following are reserved matters:

- (a) *Transport of radioactive material.* Radioactive material is defined by reference to section 1(1) of the Radioactive Material (Road Transport) Act 1991 as material having a specific activity in excess of 70 kilobecquerels per kilogram or any lesser specific activity specified in an order made by the Secretary of State.
- (b) Technical specifications for public passenger transport for disabled persons including the subject-matter of:
 - i. *section 125(7) and (8) of the Transport Act 1985* which together require the Secretary of State to consult the Disabled Persons Transport Advisory Committee before issuing guidance as to measures with a view to making access to public transport services by road easier for disabled persons and making such transport better adapted to the needs of disabled people; and
 - ii. *Part V of the Disability Discrimination Act 1995 (public transport)* which makes provision about standards of accessibility for the transport of disabled people by taxi, bus or train and sets out measures to require the adoption of such standards by the relevant operators;
- (c) Regulation of the carriage of dangerous goods.

Executive Devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

<p>The Civic Government (Scotland) Act 1982 (c.45), section 20.</p>	<p>Section 20(1) - The function of the Secretary of State to make regulations to prescribe conditions which are to be imposed or not imposed by licensing authorities in relation to taxi and private hire car licences and driver licences but only in so far as necessary to implement in Scotland any relevant requirements of Part V of the Disability Discrimination Act 1995.</p> <p>Section 20(2) - The function of the Secretary of State to make regulations to prescribe types, sizes and designs of vehicles for the purposes of section 10(4) of the 1982 Act but only in so far as necessary to implement in Scotland any relevant requirements of Part V of the Disability Discrimination Act 1995.</p>
<p>The Civic Government (Scotland) Act 1982 (c.45), section 20.</p>	<p>Section 20(2A) - The function of the Secretary of State to consider what provisions may be necessary or expedient in regulations made under sub-section (1) or (2) in relation to the carrying in taxis of disabled persons and the function of prescribing such other categories of dog trained to assist disabled persons together with the function of prescribing kinds of disabilities in relation to such disabled persons.</p>
<p>The Disability Discrimination Act 1995 (c.50), section 33.</p>	<p>Section 33(2) - The function of the Secretary of State to make regulations to provide for the application of any taxi provision (as defined in sub-section (4)) in relation to certain vehicles or drivers.</p> <p>Section 33(3) - The function of the Secretary of State to consider what modifications may be appropriate in the application of any taxi provision by regulations made under sub-section (2).</p> <p>Section 33(4) - The function of the Secretary of State to make an order designating certain transport facilities forming part of any port, airport, railway station or bus station for the purposes of section 33.</p>

Section F1: Social Security Schemes

Purpose and Effect

This Section reserves social security matters.

General

The reservation describes social security not in terms of benefits for specific purposes but in terms of the power and responsibilities which underlie any type of social security provision as follows:

- (a) the establishment and financing from central or local government expenditure of general or specific schemes of assistance to or in respect of individuals by way of benefits (which includes pensions, allowances, grants or loans) for social security purposes;
- (b) requiring persons (such as employers or individuals or local authorities) to set up or administer schemes for social security purposes or to make contributions or payments towards them and to keep records and supply information in connection with all aspects of scheme administration, including verification of claims and investigating fraud; and
- (c) the establishment of a liability for a person to maintain himself or another for social security and child support purposes.

The reservation has been cast in this way to make allowance for changes over time in the exact scope and coverage of the UK-wide social security system, and the way in which benefits are delivered. For example, in recent years some benefits previously provided directly by central government (such as sickness or maternity benefit) have been replaced by a structure of requirements on employers to make defined payments to their employees. Similarly some new benefits (such as Disability Living Allowance) have been established. The reservation, which needs to be read together with the definition of social security purposes in the interpretation paragraph, makes allowance for changes of this kind.

The provision of compensation for injury resulting from vaccination, as provided for by the Vaccine Damage Payment Scheme, which are paid through the same channels as social security, is also reserved.

The current law on social security covers the following matters, some of which are given as examples in the illustrations paragraph (which is not intended to be exhaustive of all the matters covered by the reservation):

- (a) National Insurance contributions and contributory National Insurance benefits such as the state retirement pension. The Secretary of State for Social Security has specific responsibility for the NI Fund;
- (b) other social security benefits of all kinds, including employment-related benefits (such as Job Seekers Allowance);
- (c) payments in respect of industrial accidents, injuries and diseases;
- (d) statutory sick pay and statutory maternity pay;
- (e) the liability to maintain oneself, a spouse and dependent children under 19, or any person in respect of whom an undertaking to maintain has been made under the Immigration Act 1971;
- (f) grants and loans for special needs payable through the Social Fund and the Independent Living Funds;
- (g) the administration of the social security and employment benefits system whether carried out by the Department of Social Security, other government departments or others;
- (h) decision-making and appeals arrangements;
- (i) the funding of resettlement provision for persons without a settled way of life under section 30 of the Jobseekers Act 1995;
- (j) payments under the vaccine damage payments scheme;

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

- (k) the recovery of benefits where compensation is paid in consequence of accident, injury or disease and the recovery of benefits from earnings, and deductions from benefits to meet an individual's debts; and
- (l) public bodies whether tribunal, executive, advisory or regulatory dealing with these issues.

Section 110 provides the Secretary of State (for Social Security) the power to take account of the implications of varied Scottish rates of income tax (as may be provided for under Part IV of the Scotland Act) for social security, child support and pensions purposes and to determine whether a person is to be treated as a Scottish taxpayer and to specify what shall be treated as the Scottish rate of tax in any year of assessment. The purpose of these provisions is primarily to ensure that benefit decisions can be made promptly without uncertainty over the appropriate tax rate to apply where tax is relevant to benefit entitlement.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	31-Mar-98	1068
LC	23-Jul-98	1070
LC	23-Jul-98	1145
LR	3-Nov-98	200
LR	3-Nov-98	201

Details of Provisions

First Reservation

This reserves legislative competence in respect of schemes supported from central or local funds which provide assistance for social security purposes to or in respect of individuals by way of benefits. This relates to social security benefits (such as retirement pension, income support or housing and council tax benefit) which are directly administered and funded by central or local government in whole or in part. The reservation covers all aspects of the establishment, financing and administration of such benefits and activity connected with them (such as, decision-making and appeals and anti-fraud activity). The Scottish Parliament does not have competence to set up or finance benefit schemes where these are for social security purposes (for example, by seeking to provide benefits for social security purposes to people who are not entitled to claim certain social security benefits), but the reservation does not prevent it from providing benefits or allowances for other purposes within its competence, for example education maintenance grants or fosterage allowances. A non-exhaustive definition of social security purposes is in the interpretation paragraph.

Second Reservation

This reserves competence to require persons (including companies and authorities) to establish and administer schemes for social security purposes, to make payments to or in respect of those schemes and to keep records and supply information in connection with them. The reservation is intended to cover activities to do with National Insurance, such as the requirement on individuals to pay and employers to collect National Insurance contributions; and to cover those types of social security provision which operate through requirements on employers or others to make payments in accordance with a regulatory framework (such as statutory sick pay and statutory maternity pay) rather than by direct central or local government delivery. The funding of social security schemes and the requirement for others such as local authorities to provide them (e.g. housing and council tax benefit) is also reserved.

Social security legislation also imposes requirements on employers to make payments of a minimum amount of sick pay or maternity pay in prescribed circumstances. This reservation also covers such arrangements.

Third Reservation

This reserves legislative competence over the circumstances in which a person is liable to maintain himself or another for the purposes of social security legislation and the Child Support Acts 1991 to 1995. Social security legislation places a legal duty on an individual to maintain himself and his spouse and dependant children or any person in respect of whom he has given an undertaking to maintain under the Immigration Act 1971. This requirement applies generally but it only becomes relevant when a person makes a claim to an income related social security benefit. When this happens the Secretary of State may seek an order from the sheriff in Scotland for the recovery of the benefit from the liable person. So far as the maintenance of a dependant child is concerned, that legislation is largely superseded by the Child Support Acts 1991 and 1995 (the subject-matter of which is separately reserved under Section F2).

Fourth reservation

This reserves the subject-matter of the Vaccine Damage Payment Scheme. The Vaccine Damage Payment Scheme provides for compensation for injury resulting from vaccination. Vaccine damage payments are determined and paid through the same channels as social security.

Illustrations of reservation

The illustrations provide a non-exhaustive list of some of the types of matter falling within the reservation:

- (a) National Insurance. This covers National Insurance contributions as well as contributory National Insurance benefits such as the state retirement pension;
- (b) Social Fund. This covers grants and loans for special needs;
- (c) administration and funding of housing benefit and council tax benefit;
- (d) recovery of benefits paid because of accident, injury or disease from persons paying damages and deductions from benefits for the purpose of meeting an individual's debts;
- (e) sharing information between government departments for the purposes of the enactments relating to social security; and
- (f) making decisions for the purposes of schemes mentioned in the reservation and appeals against such decisions.

Exceptions from reservation

This provides for the subject-matter of following enactments which might otherwise fall within the reservation, but which relate to devolved matters, to be excepted from the reservation:

- (a) *Part II of the Social Work (Scotland) Act 1968*, which provides for the promotion of social welfare by local authorities. This includes provision in exceptional circumstances for payments to persons in need and other social welfare services such as the provision of home-help and residential nursing accommodation;
- (b) *section 2 of the Chronically Sick and Disabled Persons Act 1970*, which relates to the provision of various welfare services by local authorities to persons resident in their area;
- (c) *section 50 of the Children Act 1975*, which gives local authorities the power to make payments towards maintenance for children;
- (d) *section 15 of the Enterprise and New Towns (Scotland) Act 1990 (industrial injuries benefit)*, which deals with payments to persons undergoing training who have injured themselves at work; and

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

- (e) *sections 22, 29 and 30 of the Children (Scotland) Act 1995*, which provide for payments to be made or other assistance to be provided to children or their families. Section 22 imposes a duty on local authorities to safeguard and promote the welfare of children who are in need by providing a range and level of services appropriate to their needs. In exceptional circumstances cash payments can be made. Section 29 imposes a duty on local authorities to assist young persons, who they formerly looked after, at school leaving age or subsequently through the provision of advice or other assistance including financial assistance. Section 30 authorises local authorities to give financial assistance to such young persons to meet the cost of education and training.

Interpretation

For the purposes of the reservation, “benefits” includes pensions, allowances, grants, loans and any other form of financial assistance. This ensures that all the various types of financial assistance provided as part of social security are covered.

Providing assistance for social security purposes to or in respect of individuals includes, among other things, providing assistance to or in respect of individuals:

- (a) who qualify by reason of old age, survivorship, disability, sickness, incapacity, injury, unemployment, maternity or the care of children or others needing care;
- (b) who qualify by reason of low income; or
- (c) in relation to their housing costs or liabilities for local taxes. This includes all the main purposes of social security provision. It also includes assistance in relation to housing costs or liabilities for local taxes, as described above.

Executive Devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

<p>The Social Security Administration Act 1992 (c.5), sections 51(1), 52(3) and 189(10) and Schedule 2, paragraph 1(5).</p>	<p>The functions of the Secretary of State of being consulted by the Lord Chancellor on appointments of the President or a chairman of tribunals and deputy Social Security Commissioners; on regulations under the Act generally; and on removal of Social Security Commissioners or the President or a chairman of tribunals.</p>
<p>The Social Security Act 1998 (c.14), sections 5(1) and 79(2), Schedule 1, paragraph 1(4) and Schedule 4, paragraph 8.</p>	<p>Section 5(1) - The function of the Secretary of State of being consulted by the Lord Chancellor regarding appointment of a President of appeal tribunals. Section 79(2) - The function of the Secretary of State of being consulted by the Lord Chancellor regarding regulations with respect to proceeding before the Commissioners. Schedule 1, paragraph 1(4) - The function of the Secretary of State of being consulted by the Lord Chancellor regarding removal of the President of appeal tribunals. Schedule 4, paragraph 8 - The function of the Secretary of State of being consulted by the Lord Chancellor regarding exercise of powers under paragraphs 1(2), 5(1) or 6 of Schedule 4.</p>

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

The following functions have been made concurrently exercisable by a Minister of the Crown and the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

The Social Security Administration Act 1992 (c.5) , paragraph 7(1)(b) of Schedule 2.	The function of the Secretary of State to pay allowances to persons attending proceedings under the Act.
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The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2000 ([S.I. 2000/1563](#)).

The Tax Credits Act 1999 (c.10) section 15	The function of the Secretary of State under section 15 of the Tax Credits Act 1999 to make regulations, so far as it is exercisable by him in or as regards Scotland, is to be exercisable by him only with the agreement of the Scottish Ministers. Section 15 provides for these regulations to put in place a scheme establishing a new category of persons whose charges for providing child care are to be taken into account for the purposes of eligibility for the childcare element of the Working Families Tax Credit and Disabled Persons Tax Credit.
The Tax Credits Act 1999 (c.10) section 15 (contd.).	The scheme is to provide that a person shall not fall within the new category unless he is approved by an accredited organisation in accordance with such criteria as may be determined by or under the scheme. The scheme is also to authorise the making of grants or loans to, and the charging of reasonable fees by, accredited organisations. Section 15(3) enables the Secretary of State to accredit organisations who may approve childcare providers for the purposes of eligibility for the childcare element of the Working Families Tax Credit and Disabled Persons Tax Credit. S.I. 2000/1563 provides that the function of accrediting organisations is to be treated as exercisable in or as regards Scotland in so far as accreditation is for the purpose of the application of a scheme in relation to child care providers in Scotland. The function is then executively devolved to the Scottish Ministers to that extent by article 3 and the Schedule.

[S.I. 1999/1750](#) also transferred non-statutory functions in relation to the provision of premises and support staff for the purposes of carrying out the functions of the Social Security Commissioners.

Section F2: Child Support

Purpose and Effect

This Section reserves the subject-matter of the Child Support Acts 1991 and 1995.

General

The provisions of the Child Support Acts give the Secretary of State for Social Security a duty to determine whether there is a liability to pay maintenance in respect of a child not living with both parents, to require an application for maintenance to be made for the child (when benefit is claimed), to assess and collect any amounts due and to enforce payment. In order to give effect to these responsibilities, the Secretary of State is given powers where necessary to establish or assume paternity. The Acts limit the jurisdiction of the courts to make individual decisions on child maintenance in circumstances covered by the Acts. The Acts apply - and supersede Scots family law - where a person responsible for a child who is not living with both parents makes a claim to an income-related benefit and in certain other limited circumstances. In Scotland the Acts also permit an application for maintenance by the child personally, if aged 12 or more.

The Scottish Parliament is, however, able to legislate on issues concerning the maintenance of dependent children, as part of Scots family law, in circumstances or cases which are not covered by the subject-matter of the Child Support Acts. For example, aliment is excepted from the reservation because it is that part of Scots private law which deals with the obligations of one person to pay maintenance in respect of children and others. The Parliament is not able to legislate, for instance, to remove or exempt child maintenance provision from the jurisdiction of the Acts. Nor can the Parliament establish different formulae for the calculation of maintenance for child support purposes under the Acts as they apply in Scotland. But the Parliament could for example establish general criteria for the presumption of paternity, since this is a matter about which the Child Support Act provisions rest on general civil law.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LR	3-Nov-98	201

Details of Provisions

The reservation refers to the subject-matter of the Child Support Acts 1991 and 1995.

Exception

The subject-matter of sections 1 to 7 of the Family Law (Scotland) Act 1985, which deal with aliment, is excepted from the reservation. Without a specific exception it may have been doubtful whether or not aliment was a reserved matter. Aliment, as explained above, is that part of Scots private law which deals with the obligations of one person to pay maintenance in respect of children and others. Without the specific exception, the reservation of the Child Support Acts may have restricted unduly the Scottish Parliament's competence to legislate in relation to the law on aliment because those Acts confer powers on the Secretary of State to collect the Scottish form of maintenance such as aliment, as well as child support maintenance. However, the reservation of child support does not prevent the Scottish Parliament from having competence to legislate about aliment.

The interpretation section ensures that if section 30(2) of the Child Support Act 1991, which deals with the collection of payments other than child support maintenance, is not in force on the principal appointed day (1 July 1999), then it is nevertheless to be treated as if it were a part of the subject-matter of the 1991 Act and therefore a reserved matter. Section 30(2) was not in force on 1 July 1999.

Executive Devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

The Child Support Act 1991 (c.48):	
(a) sections 22(3), 24(9), 25(6) and 45(1) and (6) and Schedule 4, paragraph 7; and	Section 22(3) and Schedule 4 paragraph 7 - The function of the Secretary of State of being consulted by the Lord Chancellor on regulations with respect to proceedings before Child Support Commissioners and in respect of the exercise of functions under paragraphs 1(2), 4(1) or (2)(b) of Schedule 4. Section 24(9) - The function of the Secretary of State of being consulted by the Lord Chancellor on regulations under section 24(6) or (7). Section 25(6) - The function of the Secretary of State of being consulted by the Lord Chancellor on regulations under section 25(2), (3) or (5).
The Child Support Act 1991 (c.48) (contd.):	Section 45(1) and (6) - The functions of the Secretary of State* to make orders sending specified appeals to courts rather than appeal tribunals and of being consulted by the Lord Chancellor as to the abolition of such tribunals.
(b) Schedule 4, paragraph 2A.	The function of the Secretary of State to pay allowances to persons attending any proceedings before a Child Support Commissioner.

[S.I. 1999/1750](#) also transferred non-statutory functions in relation to the provision of premises and support staff for the purposes of carrying out the functions of the Child Support Commissioners appointed under section 22 of the Child Support Act 1991.

Section F3: Occupational and Personal Pensions

Purpose and Effect

This Section reserves occupational and personal pension schemes, including public service pension schemes.

General

This Section reserves matters relating to occupational and personal pensions including public service pensions. Most of the statutory provisions concerning occupational and personal pensions are contained in the Pension Schemes Act 1993 and Part I of the Pensions Act 1995. Section 1 of the 1993 Act provides definitions of “occupational pension scheme”, “personal pension scheme” and “public service pension scheme” which are applied with modifications here. Section 126(1) makes clear that these definitions apply but as if the reference to employed earners in the definition of personal pension schemes were to any earners.

Occupational pensions are usually payable under trusts set up by an employer, or more rarely a group of employers, in respect of their employees. The trust deed sets out the

rules as to how the scheme is to operate, e.g. the rates of contributions and benefits, who is liable to pay the contributions and when and to whom benefits are payable. Some employers operate a number of separate schemes, some a single scheme for all their employees, while others may provide a scheme for only certain of their employees e.g. by restricting pension arrangements to executives or salaried staff or to employees who have worked for the company for at least 2 years. The occupational pension scheme will be administered by the trustees appointed under the trust deed in accordance with the rules as to the operation of the scheme. The scheme rules must, however, comply with legislative requirements and can be overridden when a conflict arises.

Public service pension schemes are a particular category of occupational pension schemes. They are generally established under legislation and cover a wide range of public service employees. A definition of public service schemes is set out in section 1 of the Pension Schemes Act 1993. There is no statutory obligation on an employer in the United Kingdom to establish an occupational pension scheme or to participate in a scheme established for an industry in which he operates. However, if an employer or group of employers sets up such a scheme then certain statutory requirements must be met. These fall into three main headings:

- (a) requirements affecting the administration of schemes, and the duties of trustees and professional advisors;
- (b) financial management of schemes, including rules on investments, contributions and solvency, and the conditions under which schemes can contract out of the State Earnings Related Pension Scheme; and
- (c) the right of individual scheme members, including preservation of the pension rights of people leaving the scheme before pension age, the transfer of rights from one non-State pension scheme to another, the indexation of rights before and after pension age, requirements for the equal treatment of men and women and rules on the disclosure of information to scheme members.

In addition, most schemes seek to comply with conditions for tax approval, which determine whether the scheme can benefit from advantageous tax treatment, particularly in relation to income and corporation taxes.

Personal pension schemes are established by financial institutions, principally insurance companies. They are essentially contracts between individuals and pensions providers, though groupings of individual pensions may be administered together for convenience. Contributions, which may also include contributions from an employer, are paid into the scheme and invested. Personal pension schemes attract a range of tax concessions and their marketing is regulated under the Financial Services Act 1986.

Provision about pensions payable to any person is also reserved except in relation to former members (and office-holders) of the Scottish Parliament and Ministers. Also excepted from the reservation is legislative competence in relation to allowing or requiring any devolved public body to provide for pensions for its members or staff. In all these cases the provision made will be subject to the general requirements of the Pensions Acts.

The reservation of matters relating to occupational and personal pensions interacts with areas of Scots private law which are being devolved, for example trust law and family law. In particular, so far as family law is concerned, Scots law has, since 1985, required pension rights accrued during the marriage to be taken into account by a court making financial provision on divorce. The law relating to what financial provision is made on divorce and the question as to whether and to what extent pension rights are taken into account by the court will in general be a matter of Scots law within the legislative competence of the Scottish Parliament.

However, although the Scottish Parliament has legislative competence over Scottish trust law and family law, its competence will be subject to the reservation in respect of

pensions. In particular, the obligations of the trustees or managers of occupational and personal pension schemes are a reserved matter.

Section 12A of the Family Law (Scotland) Act 1985 (as amended by section 167 of the Pensions Act 1995) allows the court to order the trustees or managers of a pension scheme to pay the whole or part of a lump sum due to or in respect of a member to his or her divorcing spouse when it becomes due. These are known as earmarking/attachment rules. Parts III and IV of, and Schedules 3 to 6 and part of Schedule 12 to, the [Welfare Reform and Pensions Act 1999 \(c.30\)](#) deal with pension sharing on divorce. They also amend the earmarking provisions in section 12A of the 1985 Act. Accordingly, although the Scottish Parliament can legislate, for example, to require pension rights accrued during the marriage to be taken into account on divorce, it could not legislate to impose obligations upon trustees or managers of occupational or personal pension schemes to earmark or make provision for pension sharing.

This effect is achieved partly by this reservation and partly by paragraph 2 of Schedule 4 to the Scotland Act, as amended by the Scotland Act 1998 (Modifications of Schedule 4) Order 2000 ([S.I. 2000/1831](#)). Paragraph 2(3), as so amended, ensures that the Scottish Parliament cannot modify the obligations of trustees or managers in relation to occupational or personal pension schemes or of persons responsible for other pension arrangements in relation to the sharing of rights under pension arrangements on divorce. See that paragraph for more details.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	31-Mar-98	1068
LC	23-Jul-98	1146
LC	23-Jul-98	1147
LC	23-Jul-98	1148
LR	2-Nov-98	11

Details of Provisions

First reservation

This provides that the regulation of occupational pension schemes and personal pension schemes, including the obligations of trustees and managers of pension schemes, is a reserved matter.

“Occupational pension scheme”, “personal pension scheme” and “public service pension scheme” are defined in section 126(1) as having the meanings given by section 1 of the Pension Schemes Act 1993 but as if the reference to employed earners in the definition of personal pension schemes were to any earners.

Second reservation

This reserves provision about pensions payable to, or in respect of, any persons. This covers matters such as the payment of pensions, the manner of provision and contribution in respect of pensions. This is subject to an exception which permits the Scottish Parliament to make provision about pensions payable to or in respect of:

- (a) the persons referred to in section 81(3) of the Act. That section provides that the Parliament may make provision (whether by an ASP or a resolution) for the payment of pensions to ex- members and office-holders of the Parliament or of the Scottish Executive. The reservation should not prevent the Parliament making such provision; and
- (b) in a Scottish public authority with mixed functions or no reserved functions (as defined in Part III of Schedule 5), persons who are or have been a member of the public body, the

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

holder of a public office or a member of the staff of the body, holder or office. This would permit the Parliament, for example, when legislating to establish a new Scottish public authority, to require it to provide pensions for its members and staff. It also enables any ministerial functions in relation to the pensions of existing Scottish public authorities to transfer to the Scottish Ministers.

Third reservation

This reserves the subject-matter of the Pensions (Increase) Act 1971, which provides for index-linking of a wide range of public service pensions.

Fourth reservation

This reserves schemes for payment of pensions which are listed in Schedule 2 to the Pensions (Increase) Act 1971. This includes pension schemes for local authorities, police, fire, teachers and the NHS. Many of the functions in relation to these schemes have, however, been executively devolved to the Scottish Ministers. Two exceptions are made from the reservation of these schemes which tie in with the exceptions mentioned under the Second Reservation above. These are for pensions schemes for MSPs and members of the Scottish Executive provided by the Parliament under section 81 and the pension schemes for employees of Scottish Enterprise and Highlands and Islands Enterprise, which are the only Scottish non-departmental public bodies whose pensions are listed in the 1971 Act.

Fifth reservation

This reservation covers, as regards classes of persons to whom public service pension schemes apply, statutory provision for compensation for loss of office or employment, for loss or diminution of emoluments, or employment being affected by constitutional changes in an overseas territory, and also covers as regards these classes of persons statutory provision for death or injury benefit. The reservation will accordingly cover the statutory compensation schemes which exist for public employees such as local government employees, teachers and NHS employees who lose their employment or suffer diminution of emoluments as a result, for instance, of redundancy or reorganisation.

Interpretation

Pensions are defined as including gratuities and allowances.

Executive Devolution

The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750) provides for widespread executive devolution in the area of public service pensions, reflecting the former responsibility of the Secretary of State for Scotland for such pensions. The powers of the Secretary of State under the Superannuation Act 1972 to make regulations establishing and maintaining pension schemes for local government employees, teachers and NHS employees have been transferred to the Scottish Ministers, who thus have policy responsibility for the content of these schemes. In the case of teachers and NHS employees the consent of the Treasury to the making of the regulations is still required as before. The powers of the Secretary of State under the Fire Services Act 1947 and the Police Pensions Act 1976 to make subordinate legislation governing pensions of fire-fighters and police officers have similarly been transferred to the Scottish Ministers. The power of the Secretary of State under section 24 of the Superannuation Act 1972 to make regulations providing for compensation for local government employees, teachers, NHS employees, fire-fighters and police officers have also been transferred to the Scottish Ministers, who thus have policy responsibility for such compensation. The function under section 4 of the Small Landholders (Scotland) Act 1911 has also been transferred, as it is used in practice to provide for pensions. The function of paying remuneration to members of a Pensions Appeal Tribunal (para 2 of the Schedule to the Pensions Appeal Tribunals Act 1943) is also executively devolved.

Apart from these powers to make subordinate legislation, all executive powers of the Secretary of State under primary or subordinate legislation in respect of pensions or compensation for local government employees, teachers, NHS employees, fire-fighters or police officers and functions exercisable in respect of the Firemen's Pension Scheme and the Police Pensions Appeal Tribunals have been transferred to the Scottish Ministers.

[S.I. 1999/1750](#) also transferred non-statutory functions in relation to the provision of premises and support staff for the purposes of carrying out the functions of the Pensions Appeal Tribunal and of funding of payments made by a Pensions Appeal Tribunal under rules 26 to 28 of the Pensions Appeal Tribunals (Scotland) Rules 1981.

Section F4: War Pensions

Purpose and Effect

This Section reserves war pensions.

General

The current law on war pensions is contained in a mixture of statute law and a variety of Orders made under the Royal Prerogative. War pensions are payments made in respect of death or disablement of ex servicemen and a wide range of auxiliary, reserve and analogous personnel including in certain circumstances civilians. Basic entitlement to a war pension arises where disablement or death of a member of the armed forces has occurred or arisen in consequence of service at any time since the First World War. War pensions are distinct from state pensions paid from the National Insurance Fund (which are in any case reserved under Section F1 (Social Security Schemes)). Service pensions for those in the armed forces, which are analogous to public service occupational pensions, are also distinct from war pensions, but these are reserved in any case under Section F3 (Occupational and Personal Pensions). War pensions are paid by the Department of Social Security.

Schemes for the payment of war pensions also contain powers to make a variety of other payments. For example, the Secretary of State has a discretionary power under Article 26 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983 to meet necessary medical expenses arising from war disablement that are not otherwise provided for under UK legislation.

The reservation includes the provision and administration of such pensions, and the establishment and regulation of public bodies, including tribunals and advisory and executive bodies, with functions in connection with these matters. Thus the establishment and functions of the Pensions Appeal Tribunal, the Central Advisory Committee on War Pensions and the local War Pensions Committees are all reserved.

Details of Provisions

Reservation

The first part of the reservation reserves schemes for the payment of pensions, as defined, for or in respect of persons who have a disablement or who have died as a consequence of service as members of the armed forces of the Crown.

The second part of the reservation reserves the subject-matter of a number of particular schemes made under the following enactments which enable provision to be made, which is analogous to war pensions, in respect of persons other than ex-servicemen. These are:

- (a) *the Personal Injuries (Emergency Provisions) Act 1939*. The 1939 Act makes provision for a scheme for making payments in respect of certain personal injuries to civil defence volunteers and civilians during World War II;

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

- (b) *the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939, sections 3 to 5 and 7.* Section 3 makes provision for the payment of awards to or in respect of mariners in British ships who have suffered war related injury or detention. Section 4 makes similar provision for pilots, crews of pilot boats, lighthouses etc., section 5 for certain persons serving on naval ships and section 7 makes general provision for these schemes; and
- (c) *the Polish Resettlement Act 1947.* The 1947 Act makes provision for war pensions and other payments and assistance to be given to Polish naval and armed forces under British command during the Second World War and Polish resettlement forces and their dependants.

Illustrations of reservation

The provision of pensions under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983 is given as an illustration of the scope of the reservation. The 1983 Order provides the power for payment of a range of pensions, grants, allowances, supplements and gratuities in respect of persons disabled or who have died through service in HM Forces.

Interpretation

For the purposes of this Section, ‘pensions’ include grants, allowances, supplements and gratuities. This encompasses all of the various means by which compensation in respect of war injuries is given.

Section G1: Architects

Purpose and Effect

This Section reserves the regulation of the profession of architect.

General

This is one of several reservations in Head G which covers the regulation of certain professions.

Details of Provisions

This reserves regulation of the profession of architect. The matters reserved include professional qualifications, eligibility to practice as an architect, and control over the professional competence and conduct of architects.

Section G2: Health Professions

Purpose and Effect

This Section reserves the regulation of the health professions.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LR	2-Nov-98	11
CC	31-Mar-98	1080

Details of Provisions

Reservation

This reserves the regulation of the health professions. This includes professional qualifications, eligibility to practice and control over standards of professional competence and conduct. This does not reserve matters such as the pay and conditions

of service of the health professions within the National Health Service in Scotland or their deployment and management.

Health professions are defined for the purposes of this reservation in the *interpretation* paragraph as meaning the professions regulated by various enactments. The professions regulated by the specified enactments include doctors, dentists, dental auxiliaries, opticians, pharmacists, nurses, midwives, health visitors, chiropodists, dieticians, physiotherapists, medical laboratory scientific officers, orthoptists, prosthetists and orthotists, arts therapists, occupational therapists, radiographers, osteopaths, chiropractors and veterinary surgeons.

Exceptions

There is excepted from the reservation, the subject matter of:

- (a) *section 21 of the National Health Service (Scotland) Act 1978*. This enables the Scottish Parliament to legislate about the matter of what vocational training and experience is required to be possessed by doctors before they can provide general medical services in the NHS. This is a matter which is regulated by section 21 This exception is in line with the overall devolution of Health Service matters; and
- (b) *section 25 of that Act*. Similarly, this section gives the Scottish Parliament legislative competence to regulate the provision of general dental services for the NHS so far as that relates to vocational training and disciplinary proceedings. This is part of the subject-matter of section 25.

Executive Devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

The Medical Act 1983 (c.54) , Schedule 4, paragraph 7.	The function of the Secretary of State of making rules as to the functions of assessors appointed to advise the Professional Conduct Committee, the Health Committee and the Preliminary Proceedings Committee.
The Nurses, Midwives and Health Visitors Act 1997 (c.24) :	
(a) section 19(5); and	The function of the Secretary of State* and the Lord Chancellor to approve, by order, rules under section 10 which apply to proceedings in Scotland.
(b) Schedule 2, paragraph 4.	The function of the Secretary of State and the Lord Chancellor to make, by order, provision with regard to the functions of assessors relative to proceedings in Scotland.

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2000 ([S.I. 2000/1563](#)).

The Nurses, Midwives and Health Visitors Act 1997 (c.24) . Sections 5(2), (3), (5), (6), (7), (8) and (9), 6(1)(e), 17(1) and (3), 18(1) and (6) and 24(4).	All Ministerial functions under the Nurses, Midwives and Health Visitors Act 1997 in relation to the National Board for Nursing, Midwifery and Health Visiting for Scotland are transferred. The functions concerned are:-
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*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

	<p>Section 5(2) and (3) - appointment of Chairman and members; specification of number of members of Board; forming an opinion of which qualifications/ experience will be of value to the Board in relation to the appointment of members.</p> <p>Section 5(5) and (6) - Payment of remuneration to members; providing for pensions, allowances etc.; Determining travelling and other allowances for chairman, members and persons appointed to committees.</p> <p>Section 5(7), (8) and (9) - Specifying officers to be appointed by the Board; making “further provision with respect to the constitution and administration of the Board”, including provision for payments etc. to employees and for issuing directions to the Board in respect of its powers to appoint staff.</p> <p>Section 6(1)(e) - Prescribing other functions relating to nurses, midwives or health visitors which are to be performed by the Board.</p> <p>Section 17(1) and (3) - Approval for the Board to charge fees in respect of certain matters including training, qualification, examination and certification of nurses, midwives and health visitors; making grants to the Boards towards approved expenses.</p> <p>Section 18(1) and (6) - Directing the Board to keep accounts and records in relation to the accounts; determining form of annual report, and time limit for Board to submit annual report on the performance of their functions; (see also article 8 of the Order)</p> <p>Section 24(4) - Appointing a day for section 5(6) (Board to pay travelling and other allowances to chairman, members etc.) to cease to have effect.</p> <p>Audit arrangements were also amended by article 8 of S.I. 2000/1563</p>
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Advice to The Queen

Special arrangements for giving advice to The Queen were described in a Prime Ministerial answer on 30 June 1999 (WA col 215) and an associated paper deposited in the House of Commons Library.

Under the Professions Supplementary to Medicine Act 1960, the Privy Council makes a determination approving courses and qualifications for state registration purposes in the fields of professions supplementary to medicine. By convention the Secretary of State for Scotland was one of the three Privy Counsellors required by the Act to approve courses run by Scottish institutions. The role of the Secretary of State for Scotland in relation to such courses has passed to the First Minister.

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

The Secretary of State for Scotland also had a role in relation to nominating Privy Council appointments of Scottish representatives to various statutory bodies relating to the health professions, such as the General Medical Council, the General Dental Council and the General Optical Council. The First Minister has taken over the Secretary of State for Scotland's role in nominating Privy Council appointments of Scottish representatives to these bodies. Advice and nominations for the other Privy Council appointments to these bodies comes from the Secretary of State for Health. Administrative arrangements have been put in place to provide for consultation between the Scottish Ministers and the Secretary of State for Health before either party puts forward nominations to the Privy Council.

Section G3: Auditors

Purpose and Effect

This Section reserves the regulation of the profession of auditor.

Details of Provisions

The reservation covers regulation of the profession of auditor. The reserved matter includes in particular professional qualifications, eligibility to practice and control over standards of professional competence and conduct.

Section H1: Employment and Industrial Relations

Purpose and Effect

This Section reserves employment rights and duties and industrial relations, except for the setting of wages for agricultural workers insofar as this is dealt with by the Agricultural Wages (Scotland) Act 1949.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	31-Mar-98	1082
LC	23-Jul-98	1070
LC	27-Jul-98	1277

Details of Provisions

Reservation

What are reserved are employment rights and duties and industrial relations, including the subject-matter of the following:

- (a) *the Employers' Liability (Compulsory Insurance) Act 1969* which requires employers to insure against liability for injury or disease sustained by employees and arising out of and in the course of their employment;
- (b) *the Employment Agencies Act 1973* which regulates employment agencies and employment businesses;
- (c) *the Pneumoconiosis etc. (Workers' Compensation) Act 1979* which makes provision for lump sum payments to be paid by the State to or in respect of persons disabled by industrial lung diseases caused by various kinds of noxious dust at work;
- (d) *the Transfer of Undertaking (Protection of Employment) Regulations 1981* which provide for the protection of employees' rights on the transfer of an undertaking, such as the sale or disposal of a business;

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

- (e) *the Trade Union and Labour Relations (Consolidation) Act 1992*. This Act covers a wide range of matters to do with trade unions and labour relations including such matters as employers' associations, collective bargaining, procedures for handling redundancies, industrial action, and the role of ACAS, the Certification Officer, the Central Arbitration Committee and the Commissioner of Rights of Trade Union members;
- (f) *the Industrial Tribunals Act 1996*¹³ which is about industrial tribunals and the Employment Appeal Tribunal;
- (g) *the Employment Rights Act 1996*. This Act consolidates enactments about employment rights and covers matters such as protection of wages, suspension from work, rights to time off work and to notice, maternity rights, unfair dismissal, redundancy, and employees' rights on the insolvency of an employer; and
- (h) *the National Minimum Wage Act 1998*. This Act provides for the setting of minimum wages in almost all sectors of employment.

Exception

The subject-matter of the Agricultural Wages (Scotland) Act 1949 is excepted from the reservation. This Act establishes the Scottish Agricultural Wages Board which has the power to fix minimum wages, holiday entitlements and other terms and conditions of employment for agricultural workers. Apart from this exception about the wages of agricultural workers, matters relating to wages will fall within the reservation. So, for example, the Scottish Parliament is not able to legislate to set a national minimum wage.

Executive Devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

<p>The Criminal Justice and Public Order Act 1994 (c.33), section 128.</p>	<p>The function of the Secretary of State of making regulations for the establishment, maintenance and operation of procedures for the determination of rates of pay and allowances to prison officers in Scotland and such other terms and conditions of employment as the Secretary of State considers fall to be determined in association with the determination of rates of pay and allowances.</p>
<p>The Employment Tribunals Act 1996 (c.17), section 3.</p>	<p>The function of the Secretary of State* to provide, by order, that certain proceedings may be brought before an employment tribunal.</p>
<p>The Employment Rights Act 1996 (c.18), section 63A(1)(c) and (2)</p>	<p>The functions of the Secretary of State to prescribe a standard of achievement and specify qualification awarding bodies for the purpose of an employee's who ordinarily work in Scotland.</p>

¹³ This Act was renamed the Employment Tribunals Act 1996 by section 1 of the Employment Rights (Dispute Resolution) Act 1998.

Section H2: Health and Safety

Purpose and Effect

This Section reserves health and safety at work. It was largely replaced by article 6 of the Scotland Act 1998 (Modifications of Schedules 4 and 5) Order 1999 (S.I. 1999/1749).

General

This Section is part of Head H which reserves a number of matters relating to employment.

Details of Provisions

Reservation

The reserved matters are:

- (a) *the subject-matter of Part I of the Health & Safety at Work etc. Act 1974*. That Part makes provision for the general purposes of securing the health, safety and welfare of persons at work, protecting persons other than persons at work against risks to health or safety arising out of or in connection with the activities of persons at work, and controlling the keeping and use of explosive or highly flammable or otherwise dangerous substances, and generally preventing the lawful acquisition, possession and use of such substances; and
- (b) *the Health and Safety Commission (HSC), the Health and Safety Executive (HSE) and the Employment Medical Advisory Service (EMAS)*. By virtue of paragraph 3 of Part III of Schedule 5, this has the effect of reserving the constitutions of these bodies, the conferral or removal of their functions, and the conferral or removal of any functions specifically exercisable in relation to them. HSC and HSE are primarily concerned with matters which are reserved as part of the subject-matter of Part I of the 1974 Act. However, they have certain functions which are exercisable in relation to matters which are not otherwise reserved. For example, the Commission has powers to direct investigations into fires. The reservation of the Commission by name has the effect of preventing the Scottish Parliament from modifying that function, but not from legislating about general fire safety. EMAS is established by Part II of the 1974 Act. It has functions of advising Ministers, the HSC, employers and employees on health in relation to employment. The effect of its reservation by name is that the Scottish Parliament is not able to legislate about EMAS's functions, but may, for example, legislate about promoting health in the work place.

Interpretation

The interpretation provisions provide that:

- (a) the expressions “work” and “at work” in Part I of the 1974 Act are to be taken to have the meanings they have on the principal appointed day (1 July 1999). This is consistent with paragraph 5(1) of Part III of Schedule 5 which provides that references to the subject matter of an enactment are to be read as references to the subject matter of that enactment as it has effect on the principal appointed day. However the subject-matter of Part I of the 1974 Act is not fixed because it includes a power for the Secretary of State to extend the definition of “work” for the purposes of health and safety regulations. This interpretation provision ensures that this power cannot be used to extend the scope of the reservation beyond that which it had on the principal appointed day; and
- (b) the subject matter of Part I of the 1974 Act includes certain specified aspects of fire safety but not any other aspects of fire safety. Those specified aspects are those which are, in practice, regulated under health and safety legislation.

Agency arrangements

Article 6(2) of [S.I. 1999/1749](#) provides for certain references in section 13 of the 1974 Act to Ministers to include a reference to the Scottish Ministers. This allows the HSC and the Scottish Ministers to make arrangements for the HSC to perform functions on behalf of the Scottish Ministers (provided that the Secretary of State considers that they can appropriately be performed by the HSC). In that section, “functions” does not include the making of regulations or legislative instruments.

Section H3: Job Search and Support

Purpose and Effect

This Section reserves the provision of advice and support to assist people to select, obtain and retain employment or to assist people to obtain suitable employees, including such assistance for disabled persons. Excepted from the reservation is legislative competence in respect of training for employment. Matters relating to careers services are also excepted from the reservation.

General

The intention behind this reservation is to reserve the matters for which the Employment Service is currently responsible under the Disabled Persons (Employment) Act 1944 and the Employment and Training Act 1973.

Section 56(1)(g) provides for certain devolved functions under the 1973 Act to be shared powers so that the UK Ministers can continue after 1 July 1999 to provide, through the Employment Service, the kind of programmes of employment training assistance being provided by the Employment Service in Scotland prior to 1 July 1999.

Scottish Enterprise (SE) and Highlands and Islands Enterprise (HIE) also have duties to assist people seeking work to obtain training for work which to some extent run parallel with the activities of the Employment Service. In order to allow the Scottish Parliament to have legislative competence over these activities of SE and HIE, and to accord with the general devolution of matters relating to economic development and training, training for employment is excepted from the reservation of the Employment and Training Act 1973.

The Scottish Parliament is able to legislate about careers guidance services. Provision for these services is made in sections 8-10A of the Employment and Training Act 1973, as inserted by sections 45 and 46 of the Trade Union Reform and Employment Rights Act 1993. These sections confer a duty on the Secretary of State to secure the provision of careers services for school and certain college students and a power to arrange provision of such services for other persons. The duty also extends to assisting such persons ceasing to undergo education to obtain appropriate employment, training or additional education. That duty, so far as extends to Scotland, has transferred to the Scottish Ministers by virtue of section 53 of the Act.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	31-Mar-98	1082
LR	3-Nov-98	201

Details of Provisions

This Section reserves the subject matter of:

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

- (a) *the Disabled Persons (Employment) Act 1944*. Under this Act the Secretary of State for Education and Employment through the Employment Service makes arrangements to facilitate disabled people to obtain employment or work on their own account and to train for such employment or work; and
- (b) *the Employment and Training Act 1973*, except so far as relating to training for employment. The main provisions of this Act enable the Secretary of State to make arrangements for the purpose of assisting persons to select, obtain training for, obtain and retain employment or for the purposes of assisting persons to obtain suitable employees. The subject-matter of the Act so far as relating to training for employment is not reserved.

Exceptions

There is also excepted from the reservation, the subject-matter of:

- (a) *sections 8 to 10A of the Employment and Training Act 1973*. These sections concern the provision of careers guidance services, as indicated above; and
- (b) *sections 2(3)(c) and 12 of Enterprise and New Towns (Scotland) Act 1990*. They deal with the provision of assistance by the provision of Scottish Enterprise and Highlands and Islands Enterprise to persons seeking to establish themselves as self-employed persons. The net result of this part of the exception is that it ensures that matters relating to the activities of Scottish Enterprise and Highlands and Islands Enterprise to assist people to obtain training for employment and also assist people to establish their own businesses, are within the competence of the Scottish Parliament.

Executive Devolution

The following functions have been made exercisable by a Minister of the Crown subject to a requirement for agreement of or consultation with the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

<p>The Employment and Training Act 1973 (c.50), section 2(3A).</p>	<p>The function of the Secretary of State to authorise or direct Scottish Enterprise or Highlands and Islands Enterprise to act on his behalf in making arrangements under section 2.</p>
<p>The Enterprise and New Towns (Scotland) Act 1990 (c.35), section 14A.</p>	<p>The functions of a Minister of the Crown to confer powers or impose duties on Scottish Enterprise and Highlands and Islands Enterprise to do anything in connection with unemployment, training for employment or unemployment.</p>
<p>The Welfare Reform and Pensions Act 1999 (c.30)</p>	<p>Section 60 of the Welfare Reform and Pensions Act 1999 contains provisions for implementing Employment Zones. Prototype Employment Zones have been operating under earlier legislation. The new powers in the Act enable schemes to be set up in designated areas where special benefit rules can apply. In order to help participants back to work, the schemes allow them to anticipate funding for up to 6 months' worth of spending on training and jobsearch, combined with money equivalent to the payments they would normally receive from the jobseeker's</p>

	<p>allowance. The powers in the Act also enable the Secretary of State to provide a wider range of support for activities within the Zones which help people to get and keep work, including support for unemployed people who are seeking to become self-employed. Section 60(5)(c)(i) enables the Secretary of State to make payments to persons providing facilities which are designed to assist claimants for jobseeker's allowance to obtain sustainable employment. S.I. 2000/1563 enables the Scottish Ministers to make payments under section 60(5)(c)(i), if they wish to do so, in so far as they consider that the facilities are capable of supporting training of persons for employment. If that criterion is satisfied, the Scottish Ministers will be able to fund any eligible activity within an employment zone in Scotland. This function is to be exercisable by the Scottish Ministers concurrently with the Secretary of State for Education and Employment.</p>
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Section 11: Abortion

Purpose and Effect

This Section reserves matters relating to abortion.

General

In Scotland the law relating to abortion, both civil and criminal, is mostly common law, with the exception of the Abortion Act 1967 (as amended). At common law in Scotland it is a crime to procure or attempt to procure an abortion. Certain exceptions or defences were provided by the common law but these are now superseded by the 1967 Act which sets out the circumstances in which it is lawful, for the purposes of the law relating to abortion, to carry out an abortion. The 1967 Act introduces in effect a similar regime for the whole of Great Britain.

The 1967 Act also makes provision for the approval of places where terminations of pregnancies may lawfully be carried out and for the making of regulations to require certification and notification of doctors opinions before a termination is carried out.

Attempts have been made to seek civil law remedies in Scotland to prevent abortions being carried out under the 1967 Act but these were unsuccessful.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	31-Mar-98	1093
LC	27-Jul-98	1284
LR	3-Nov-98	202

Details of Provisions

Legislative competence relating to abortion is reserved. This means that the Scottish Parliament cannot make statutory provisions to alter the criminal law relating to abortion

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

in Scotland or provision in the Abortion Act 1967, such as to alter the circumstances in which an abortion may be lawfully carried out. Subject to what is said below, it also could not legislate to modify any other provision, whether of the civil or criminal law, which relates to the matter of abortion.

The effect of sections 29(4) and 35 of the Act is that, while the Parliament could legislate to modify a provision of Scots private law (concerning, say, the date of acquisition of human personality, and its consequences, for the purposes of Scots private law) which affected abortion, it could only do so in order to achieve consistency in the application of Scots private law in relation to devolved and reserved matters; and if such a provision were adversely to affect the operation of the law as it applies to abortion the Secretary of State would have the power to intervene.

Executive Devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

The Abortion Act 1967 (c.87) , sections 1(3) and 2.	Section 1(3) - The function of the Secretary of State to approve places where a termination of pregnancy may be carried out. Section 2(1) - The function of the Secretary of State to make regulations to prescribe the arrangements for certifying of medical opinions; the related confidentiality provisions. Section 2(2) - a requirement to notify terminations to the Chief Medical Officer in Scotland.
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Section J2: Xenotransplantation

Purpose and Effect

This Section reserves matters relating to xenotransplantation.

General

Xenotransplantation is the transplantation of viable organs or other tissues (e.g. bone or cells) from animals to humans, or the use of viable animal tissue extra-corporeally, perhaps as part of a medical device.

There is currently no legislation which specifically regulates xenotransplantation, but there are other statutory provisions which touch upon it. For example, the welfare of animals which have been genetically modified for xenotransplantation purposes is covered by the Animals (Scientific Procedures) Act 1986. The subject-matter of that Act, which regulates the use of animals for experimental or scientific purposes (including vivisection), is reserved by Section B7. A non-statutory body, the UK Xenotransplantation Interim Regulatory Authority (UKXIRA) exists to monitor and regulate developments in the xenotransplantation field.

The Scottish Parliament has legislative competence over the regulation of other types of transplantation, notably the removal and therapeutic use of human organs and tissues for the purposes of transplantation into other humans, and in dealing in such organs and tissues.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	31-Mar-98	1093
LC	27-Jul-98	1284

Details of Provisions

The whole area of xenotransplantation is reserved including the regulation of any activities connected with xenotransplantation.

Section J3: Embryology, Surrogacy and Genetics

Purpose and Effect

This Section reserves surrogacy arrangements, human fertilisation and embryology and genetics.

General

Certain other matters in the health field which raise major ethical issues and/or which require expertise to be pooled at a United Kingdom level for them to be satisfactorily regulated (abortion, xenotransplantation) are also reserved. With the exception of the matters which are reserved in this Head, the Scottish Parliament has legislative competence over matters of sexual behaviour, whether as a health or social issue, involving civil or criminal law.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	31-Mar-98	1093

Details of Provisions

First reservation

This reserves surrogacy arrangements, as defined by the Surrogacy Arrangements Act 1985, including the subject-matter of the 1985 Act.

The 1985 Act defines surrogacy arrangements by reference to a 'surrogate mother' who is a woman who carries a child in pursuance of an arrangement made before she began to carry the child and made with a view to that child being handed over to, and the parental rights being exercised by, another person. The arrangement is a surrogacy arrangement if, were a woman to whom the arrangement relates to carry a child in pursuance of it, she would be a surrogate mother.

The Act makes provision prohibiting third parties from initiating or negotiating any surrogacy arrangements on a commercial basis, receiving any payments from the surrogate mother or the person for whom she is carrying the child and advertising in connection with surrogacy arrangements.

The Act does not however deal with the legality under the common law of surrogacy arrangements. It is not an offence in the criminal law of Scotland to enter into a surrogacy arrangement and it is not an offence under the common law or the 1985 Act for persons to enter into a private arrangement. Section 36(1) of the Human Fertilisation and Embryology Act 1990 amended the 1985 Act to the effect that no surrogacy arrangement is enforceable and the 1990 Act also makes provision as to the parentage of children born as the result of surrogacy arrangements.

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

The Scottish Parliament is not able to legislate in respect of any matter relating to surrogacy arrangements within the meaning of the 1985 Act, including the legality of surrogacy arrangements for the purposes of the criminal law or the enforceability of any such arrangements for the purposes of the civil law nor will it be able to amend the provisions of the 1985 Act, except as permitted by paragraph 3 of Schedule 4.

Second reservation

This reserves the subject-matter of the Human Fertilisation and Embryology Act 1990 which deals principally with:

the regulation of the creation, keeping or using of human embryos or gametes outside the body;

the regulation or prohibition of any activities involving the creation, keeping or using of human embryos or gametes outside the body, including research and the provision of infertility treatment services; and

the definition of the parents of any child being or having been carried by a woman as the result of the placing in her of an embryo or of eggs and sperm or her artificial insemination.

The Act also established the Human Fertilisation and Embryology Authority which regulates research or treatment which involves the creation, keeping and using of human embryos outside the body, or the storage or donation of human eggs and sperm.

The 1990 Act also makes provision regarding the parentage of children born as a result of surrogacy arrangements and confers a power on the Courts to make an Order providing for a child born as a result of a surrogacy arrangement to be treated in law as the child of the couple who commissioned the surrogate mother to carry the child. Whilst parentage is usually a matter for Scots private law, the Scottish Parliament is not able to make provision amending section 30 in relation to surrogacy arrangements or the other matters covered by the 1990 Act.

Third reservation

All matters relating to human genetics not already reserved by the reservation of the subject-matter of the Human Fertilisation and Embryology Act 1990 will be reserved. This includes research, testing or treatment concerning the human genome or genetic disorders including gene therapy research and all matters relating to the social, ethical and economic consequences of human genetics, such as providing genetic tests for insurance or employment purposes or patenting genetic material.

Executive Devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

[The Human Fertilisation and Embryology Act 1990 \(c.37\)](#), section 30(9).

The function of the Secretary of State to make regulations under section 30(9), as read with section 45 to provide (a) for any provision of the enactments about adoption to have effect with or without modifications in relation to orders under section 30 and applications for such orders as it has effect in relation to adoption, and applications for adoption orders, and (b) for references to adoption in any enactment to be read in the way specified in section 30(9). These orders are considered to have effect similar to adoption orders.

Section J4: Medicines and Poisons

Purpose and Effect

This Section reserves legislative competence over matters relating to the regulation and control of medicines (for both humans and animals), medicinal products, poisons and biological substances and the regulation of prices of medicines supplied to the National Health Service.

General

The reservation of the control and safety of medicines is intended to cover medicines for both human and animal use.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	31-Mar-98	1113

Details of Provisions

First reservation

This reserves the subject-matter of the following enactments:

- (a) *The Medicines Act 1968*. This regulates the manufacture, distribution and importation of medicines for human use, medicines for administration to animals and medicated animal feeding stuffs. It establishes the Medicines Commission and provides for committees to be established to assist Ministers; those established include the Committee on Safety of Medicines and the Veterinary Products Committee. The Commission and the Committees advise Ministers on matters under the Act and on other matters relating to medicinal products. The 1968 Act also provides for the regulation of the sale and supply of medicinal products, the registration of pharmacies in the community and the conduct of these businesses, the advertising and promotion of sales of medicinal products, establishment of the *British Pharmacopoeia* and other compendia, and powers of enforcement.
- (b) *The Medicines for Human Use (Marketing Authorisations etc.) Regulations 1994* and *the Marketing Authorisations for Veterinary Medicinal Products Regulations 1994*. These regulations govern the licensing of the marketing of medicines for human and veterinary use respectively.
- (c) *The Poisons Act 1972*. This Act is concerned with the regulation of the sale and storage of non-medicinal poisons within Great Britain. It makes provision for the categorisation of poisons and determination of the persons (either pharmacists only or pharmacists and others on a local authority list) who may sell different categories of non-medicinal poisons. The Secretary of State determines how a poison is categorised for the purposes of the Act, acting on the recommendation of the Poisons Board. The 1972 Act also provides for inspection and enforcement to be carried out by the Pharmaceutical Society of Great Britain.
- (d) *The Biological Standards Act 1975*. This Act provides for the establishment of the National Biological Standards Board whose main duties are to set standards for and to test the purity and potency of biological substances such as vaccines, antibodies, hormones and blood products.

Second reservation

This reserves the regulation of prices charged for medical supplies or medicinal products supplied for the purposes of the National Health Service in Scotland, which is the health service established under section 1 of the National Health Service (Scotland) Act 1978.

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

The existing statutory powers to control the maximum prices to be charged for medical supplies and medicinal products required by the National Health Service in the National Health Service Act 1977 (for England and Wales) and the National Health Service (Scotland) Act 1978 (for Scotland) have never been used. Instead there is a voluntary agreement made with the pharmaceutical industry known as the Pharmaceutical Price Regulation Scheme (the PPRS) which is wider than the statutory powers. The reservation of this matter is not therefore restricted to the subject-matter of the existing statutory provisions but is intended to cover the matter as regulated in the PPRS.

Under section 27 of the 1978 Act the Secretary of State for Scotland has a power to make regulations regarding the provision of pharmaceutical services. As part of those regulations he sets a drug tariff which is used for the purposes of reimbursing pharmacists for the cost of supplying medicines. The reservation of the regulation of prices charged for medicines supplied to the Health Service does not cover the regulation of provision of pharmaceutical services (including the drug tariff) except in respect of the price of supplying medicines by way of providing those services.

“Medical supplies” and “medicinal products” are defined by reference to section 49(3) of the National Health Service (Scotland) 1978 and section 130(1) of the Medicines Act 1968 respectively.

Executive Devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

<p>The Pharmacy Act 1954 (c.61), Schedule 1C, paragraph 3(4)(b).</p>	<p>The function of the Secretary of State* to approve appointment of persons as chairman or deputy chairman of panel of persons eligible for membership of appeals tribunals.</p>
<p>The Medicines Act 1968 (c.67), section 109.</p>	<p>Section 109(1) and (2) - The function of the Secretary of State to enforce in Scotland, or to secure the enforcement in Scotland of, the provisions of the Act and of any regulation or orders made under it. Section 109(3) - The function of the Secretary of State to make regulations providing for the Pharmaceutical Society of Great Britain to have a power to enforce any regulations made under Section 66 of the Act relating to medicinal products.</p>

The following functions have been made exercisable by a Minister of the Crown subject to a requirement for agreement of or consultation with the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

<p>The Medicines Act 1968 (c.67), sections 2(2) and (4) and 4(5).</p>	<p>Section 2(2) and (4) - the function of appointing the members and chairman of the Medicines Commission. Section 4(5) - the function of appointing members of committees.</p>
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Residual Functions

The functions of the Secretary of State for Scotland (as “Secretary of State concerned with health in Scotland” or as “Secretary of State concerned with agriculture in Scotland”) under the Medicines Act 1968, the Medicines Act 1971, the Marketing Authorisations for Veterinary Medicinal Products Regulations 1994 and the Registration of Homeopathic Veterinary Medicinal Products Regulations 1997, and the Poisons Act 1972 were transferred to the Secretary of State for Health, the Secretary of State for the Home Department and the Minister for Agriculture, Fisheries and Food, as appropriate, by the Transfer of Functions (Medicines and Poisons) Order 1999 (S.I. 1999/3142).

Section J5: Welfare Foods

Purpose and Effect

This Section reserves schemes for the distribution of welfare foods made under regulations under section 13 of the Social Security Act 1988.

General

Schemes for the distribution of welfare foods made by regulations under section 13 of the

Social Security Act 1988 provide nutritional supplements for expectant and breast-feeding mothers and children under the age of five. This is done by providing, free or at a reduced rate, liquid cow’s milk, dried milk, vitamin tablets and vitamin drops. Eligibility for this part of the scheme is dependent upon entitlement to certain income-related benefits and so is closely linked to social security schemes, which are reserved under Section F1. There is also provision for children under the age of 5 years and in day care for two hours or more per day to receive, free of charge, liquid cow’s milk or dried milk, and other children aged 5 and over but under the age of 16 who are unable because of a physical or mental disability to attend school, to receive liquid cow’s milk.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	27-Jul-98	1284
LR	3-Nov-98	202

Details of Provisions

This reservation ensures that the Scottish Parliament has no legislative competence to make provision about the matters which are or could be covered by welfare food schemes as described above. The 1988 Act amends the law relating to social security in a number of ways; section 13 is only concerned with making provision for welfare food schemes.

Executive Devolution

The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750) transferred non-statutory functions in relation to the welfare foods scheme.

Agency Arrangements

The Scotland Act 1998 (Agency Arrangements) Order 1999 ([S.I. 1999/1512](#)) specified certain functions exercisable by the Scottish Ministers in relation to the welfare foods scheme for the purpose of section 93 of the Scotland Act.

Section K1: Broadcasting

Purpose and Effect

This Section reserves broadcasting. All regulatory responsibilities relating to television and radio broadcasting will be reserved including the functions of the regulatory bodies. The functions and regulation of the BBC will also be a reserved matter.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	4-Mar-98	1095
CC	4-Mar-98	1096
LC	27-Jul-98	1308
LR	3-Nov-98	234

Details of Provisions

Reservation

The subject-matter of the Broadcasting Acts 1990 and 1996 and the BBC, are reserved matters.

The regulatory framework for broadcasting is an important aspect of the single market in the UK. The management of the airwaves and of competition in the independent television sector will therefore continue to be carried out on a UK-wide basis.

The Broadcasting Acts 1990 and 1996 broadly cover:

- (a) the Independent Television Commission and the Radio Authority, the regulation of the provision of television and sound programme services and related services, including provision by means of broadcasting, telecommunications systems, satellite or any other means, the issue of licences to independent television companies and control of the activities of licence holders;
- (b) the control of material in television and sound programmes and related services; and
- (c) the regulation of standards in the provision of such services including the functions of the Broadcasting Standards Commission.

The BBC operates under its Royal Charter, and is also subject to some of the provisions of the Broadcasting Acts.

The reservation does not prevent the Scottish Parliament from discussing broadcasting in Scotland. It is able (without any special provision in the Act) to invite the BBC, the ITC and other broadcasting bodies to attend hearings of its committees and to discuss broadcasting priorities but it cannot require them to attend or give evidence.

Executive Devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

<p>The Broadcasting Act 1990 (c.42), section 183.</p>	<p>The function of the Secretary of State to pay to the Independent Television Commission for each financial year such amount as he may, with the approval of the Treasury, determine to be appropriate for the purposes of the section which is the financing of television and sound programmes in Gaelic out of the Gaelic Broadcasting Fund.</p>
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The following functions have been made concurrently exercisable by a Minister of the Crown and the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

<p>The Broadcasting Act 1990 (c.42), Schedule 1, paragraph 15(1), Schedule 8, paragraph 15(1) and Schedule 19, paragraph 12(3).</p>	<p>Schedule 1, paragraph 15(1) - The functions of the Secretary of State:</p> <ul style="list-style-type: none"> (a) of receiving from the Independent Television Commission a general report of their proceedings during each financial year; and (b) of laying copies of each such report before each House of Parliament. <p>Schedule 8, paragraph 15(1) - The functions of the Secretary of State:</p> <ul style="list-style-type: none"> (a) of receiving from the Radio Authority a general report of their proceedings during each financial year; and (b) of laying copies of each such report before each House of Parliament. <p>Schedule 19, paragraph 12(3) The functions of the Secretary of State of receiving the Gaelic Television Committee's annual report and of laying a copy of the report before Parliament.</p>
<p>The Broadcasting Act 1996 (c.55), section 125(1).</p>	<p>The functions of the Secretary of State:</p> <ul style="list-style-type: none"> (a) of receiving from the Broadcasting Standards Commission a report of their proceedings during each financial year; and (b) of laying copies of each such report before each House of Parliament.

The following functions have been made exercisable by a Minister of the Crown subject to a requirement for agreement of or consultation with the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

<p>The Broadcasting Act 1990(c.42):</p> <ul style="list-style-type: none"> (a) section 1(2)(b), as read with paragraph 2(3) of Schedule 1; 	<p>Section 1(2)(b), as read with paragraph 2(3) of Schedule 1 - the function of the Secretary of State of appointing a member of the Independent Television Commission suited to make the interest of Scotland his special care.</p>
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*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

(b) section 83(2)(b), as read with paragraph 2(1A) of Schedule 8.	Section 83(2)(b) as read with paragraph 2(1A) of Schedule 8 - The function of the Secretary of State, in appointing members of the Radio Authority under section 83, to appoint a member who appears to him to be suited to make the interests of Scotland his special care.
The Broadcasting Act 1996 (c.55) , section 106(2)(c), as read with paragraph 3(1A) of Schedule 3.	Section 106(2)(c), as read with paragraph 3(1A) of Schedule 3 - the function of the Secretary of State of appointing members of the Broadcasting Standards Commission, but only so far as relating to appointment of a member suited to make the interests of Scotland his special care.

Advice to The Queen

Special arrangements for giving advice to The Queen were described in a written answer by the Prime Minister on 30 June 1999 (WA col 215) and an associated paper deposited in the House of Commons Library.

The National Governor for Scotland of the BBC is appointed under the provisions of the Royal Charter. The Secretary of State for Culture, Media and Sport will consult the Scottish Ministers about the appointment of the National Governor for Scotland

Section K2: Public Lending Right

Purpose and Effect

This Section reserves the public lending right.

General

The Public Lending Right Scheme is a scheme for payments to authors in respect of copies of their books which are lent out to the public by public libraries. Annual payments to authors are based on loans of their books in a sample of UK library authorities. The scheme and the central fund provided by Parliament to pay for it are administered by a Registrar of Public Lending Right.

Details of Provisions

Reservation

Legislative competence in regard to the public lending right is reserved by reference to the subject-matter of the Public Lending Right Act 1979. The 1979 Act establishes the framework for the scheme, the details of which are set out in rules made under sections 1 and 3 of the Act, and provides for the appointment of the Registrar of Public Lending Right.

Section K3: Government Indemnity Scheme

Purpose and Effect

This Section reserves the Government Scheme under which libraries, museums, art galleries and other bodies or person may be indemnified in respect of loss of or damage to works of art lent to other institutions, bodies or persons.

General

In order to encourage public access to works of art and other objects on loan, the Government encourages loans of works to museums, galleries, libraries etc. by relieving them of the cost of commercial insurance by undertaking to indemnify the lender for the loss of, or damage to, the object loaned. This is known as the “Government Indemnity Scheme”, which is established under powers conferred on Ministers by the National Heritage Act 1980.

Details of Provisions

Legislative competence in respect of the subject-matter of sections 16 and 16A of the National Heritage Act 1980 is reserved. Section 16 sets out the conditions under which Ministers may undertake to give indemnities and section 16A requires them to make reports to Parliament.

Section K4: Property Accepted in Satisfaction of Tax

Purpose and Effect

This Section reserves the acceptance of property and works of art in satisfaction of tax.

General

This Section concerns the ability of the Commissioners of Inland Revenue under the Inheritance Tax Act 1984 to accept land, books, works of art and certain other items in satisfaction of liability to inheritance tax or interest thereon. That matter is reserved by the general reservation of fiscal matters, with certain exceptions, by Section A1. The present Section reserves legislative competence in respect of the ability of Ministers to direct how the property accepted by the Inland Revenue should be disposed of, and to pay the Commissioners sums equal to the amounts of tax concerned.

Details of Provisions

Reservation

The subject-matter of the following is reserved:

- (a) *section 8 of the National Heritage Act 1980*, which covers Ministerial powers to pay the Commissioners of the Inland Revenue; and
- (b) *section 9 of the same Act*, which empowers Ministers to direct how the property accepted by the Inland Revenue should be disposed of.

Executive Devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

[The National Heritage Act 1980 \(c.17\)](#), section 9(1) to (6), as read with section 9(8) and (9)(a), (b) and (c), and sections 16 and 16A.

Section 9:

- (a) The functions conferred on Secretary of State to direct the disposal of property accepted in satisfaction of tax, so far as concerns certain property in which there is a Scottish interest.
- (b) The function of the Secretary of State to lay before Parliament an annual statement giving particulars of any disposal or transfer made in pursuance of directions given under

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

	<p>this section., so far as concerns any disposal or transfer of property in which there is a Scottish interest.</p> <p>Section 16 - The functions of the Secretary of State (as “Minister” under the Act) to undertake to indemnify any institution, body or person for the loss of, or damage to, any object belonging to that institution, body or person while on loan to any other institution, body or person in Scotland falling within section 16(2).</p> <p>(Note: the Secretary of State is the sole remaining Minister for the purposes of the 1980 Act by virtue of a Transfer of Functions Order - S.I. 1992/1311).</p> <p>Section 16A - The function of the Secretary of State to lay before Parliament a report under section 16A(1) on undertakings given by him (and on outstanding contingent liabilities in respect of such undertakings) in respect of objects loaned to institutions, bodies or persons in Scotland.</p>
<p>The Inheritance Tax Act 1984 (c.51), section 230.</p>	<p>The function conferred on the Secretary of State to agree to the Commissioners’ accepting in satisfaction of tax or interest payable under section 233 any property to which section 230 applies, so far as relates to property in which there is a Scottish interest.</p>

The following functions have been made exercisable by a Minister of the Crown subject to a requirement for agreement of or consultation with the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

<p>The National Heritage Act 1980 (c.17), section 9(1) to (5), as read with section 9(8) and (9)(d).</p>	<p>The functions of the Secretary of State to direct the disposal of property accepted in satisfaction of tax, so far as concerns property which an institution in Scotland and an institution elsewhere have both expressed an interest in acquiring.</p>
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Section 11: Judicial Remuneration

Purpose and Effect

This Section reserves the determination of the salaries of certain senior judicial posts in Scotland. The payment of judicial salaries, however, is a matter for the Scottish Ministers as are recommendations on judicial appointments.

General

This Section reserves only the determination of the level of the salaries of the holders of certain specified judicial posts in Scotland. The responsibility for determining their level rests with the UK Government. Payment of salaries is not covered by the

reservation. The Scottish Ministers are therefore responsible for paying the salaries, which are charged on the Scottish Consolidated Fund. The determination of judicial pensions is a reserved matter as a consequence of the reservation of occupational and personal pensions at Section F3 and the UK Ministers will therefore retain their current statutory responsibilities for pensions in respect of the specified posts as well as others.

The reservation should be read with section 95 of the Act which provides for the appointment and dismissal of judges of the Court of Session.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	31-Mar-98	1113
CC	31-Mar-98	1114
LC	27-Jul-98	1318

Details of Provisions

Reservation

This Section reserves the determination of the salaries of the following:

- (a) Judges of the Court of Session. This covers all the judges of the Court of Session including the Lord President of the Court of Session and the Lord Justice Clerk. The salaries of judges of the Court of Session are currently determined by the Secretary of State with the consent of the Treasury under section 9(1) of the Administration of Justice Act 1973. The salaries were formerly charged on the UK Consolidated Fund. This was modified by virtue of section 119(3) of the Scotland Act so that these salaries are charged on the Scottish Consolidated Fund, thus allowing them to be paid without requiring the prior annual approval of the Scottish Parliament. This maintains the previous position whereby they were paid without requiring Parliamentary approval;
- (b) Sheriffs Principal and Sheriffs. Again these salaries are determined by the Treasury under the Sheriff Courts (Scotland) Act 1907. They are now charged on the Scottish Consolidated Fund by virtue of section 119(3);
- (c) Members of the Lands Tribunal for Scotland. These are determined by the Secretary of State with the approval of the Treasury under the Lands Tribunal Act 1949, sections 2(6) and (9). Paragraph 9 of Schedule 8 to the Act provides for the remuneration of members of the Lands Tribunal to be charged on the Scottish Consolidated Fund (prior to devolution they were paid out of monies provided by Parliament). Travel and subsistence allowances for members of the Lands Tribunals for Scotland, which are also determined under section 2(6) of the 1949 Act, are not a reserved matter and are now determined by the Scottish Ministers; and
- (d) The Chairman of the Scottish Land Court. Paragraph 3 of Schedule 1 to the Scottish Land Court Act 1993 provides for the determination of the salary payable to the Chairman and members of the Land Court by the Treasury and for the salary to be paid out of the Consolidated Fund. Only the salary of the Chairman of the Land Court is to be a reserved matter. Accordingly, his salary continues to be determined by the Treasury while the salary payable to the other members is a devolved matter determined by the Scottish Ministers. The salaries of both the Chairman and the other members are charged on and paid out of the Scottish Consolidated Fund by virtue of section 119(3).

Paragraph 5(a) of Schedule 4 to the Act prevents the Scottish Parliament from modifying the effect of section 119(3) in relation to any provision of an Act of Parliament relating to judicial salaries, namely the effect of section 119(3) upon those provisions mentioned above which provide for the judicial salaries to be charged on the Scottish Consolidated Fund.

Section L2: Equal Opportunities

Purpose and Effect

The Section reserves equal opportunities, subject to certain exceptions.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	31-Mar-98	1114
LC	27-Jul-98	1322
LC	27-Jul-98	1324
LR	2-Nov-98	11

Reservation

There is no current statutory definition of “equal opportunities”. For the purposes of this reservation, the interpretation provision at the end of the Section states that “equal opportunities” means the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.

Current legislation makes provision in relation to the prevention or elimination of discrimination on grounds of sex, marital status, race or disability. There is no current domestic legislation dealing with discrimination on grounds such as age or sexual orientation. All these matters are, however, reserved.

The reservation refers to equal opportunities, including the subject-matter of:

- (a) *the Equal Pay Act 1970*. This makes provision for the elimination of discrimination on the grounds of sex in relation to the terms and conditions of employment, including pay;
- (b) *the Sex Discrimination Act 1975*. This makes provision for the prevention or elimination of discrimination on the grounds of sex or marital status. It covers sex discrimination against women, sex discrimination against men and also sex discrimination against transsexuals in relation to employment, training, education and the provision of goods, facilities, or services to the public or a sector of the public. The Act established the Equal Opportunities Commission which is charged with working towards the elimination of discrimination, the promotion of equality of opportunity between men and women generally, and the enforcement of its provisions. It is also required to keep under review the workings of the 1970 Act and the 1975 Act;
- (c) *the Race Relations Act 1976*. This makes provision for the elimination of discrimination on racial grounds. It made provision in relation to administration and enforcement similar to that provided in relation to sex discrimination by the 1975 Act. The 1976 Act also established the Commission for Racial Equality which has duties similar to those of the Equal Opportunities Commission; and
- (d) *the Disability Discrimination Act 1995*. This makes provision for the elimination of discrimination against disabled persons in connection with employment and the provision of goods, facilities and services and the disposal or management of premises. Part V of this Act, the subject-matter of which is expressly reserved under Section E5, is about standards for public passenger transport of disabled people. The Act covers persons suffering either physical or mental disability. The 1995 Act also established the National Disability Council which advised the Secretary of State on matters relevant to the elimination of discrimination against disabled persons. The NDC has now been replaced by the Disability

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

Rights Commission, which was established by the Disability Rights Commission Act 1999.

The reservation of the subject matter of these enactments also includes the bodies established by them, namely the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission. However, in view of the existence of the exceptions to the equal opportunities reservation, it may be questionable whether or to what extent the Scottish Parliament might have been able to legislate with respect to them, such a to confer functions upon them, Paragraph 3(2)(c) of Part III of Schedule 5 also provides that these 3 bodies are included among the “reserved bodies” for the purposes of paragraph 3(1) of Part III of Schedule 5. That paragraph makes it clear that the Scottish Parliament cannot legislate about the constitution of such bodies or to confer functions on it or functions which are specifically exercisable in relation to them.

Exceptions

The exceptions from the reservation mean that the Scottish Parliament has competence over:

- (a) The encouragement (other than by prohibition or regulation) of equal opportunities, and in particular of the observance of the equal opportunity requirements. “Equal opportunity requirements” are defined in the interpretation section as the requirements of the law for the time being relating to equal opportunities so that it can expand to include any new categories of prohibited anti-discriminatory behaviour. This allows the Parliament to exhort public authorities and others to adopt equal opportunity policies, and to allocate financial and other resources to the encouragement of equal opportunities; and
- (b) Imposing duties on:
 - i. any office-holder in the Scottish Administration, or any Scottish public authority with mixed functions or no reserved functions, to make arrangements with a view to securing that the functions of the office-holder or authority are carried out with due regard to the need to meet the equal opportunity requirements; or
 - ii. any cross-border public authority to make arrangements with a view to securing that its Scottish functions are carried out with due regard to the need to meet the equal opportunity requirements.

These exceptions from the reservation will allow the Scottish Parliament for example to develop schemes to secure better provision of services to groups who may be the subject of discrimination or to legislate to require certain public authorities and office-holders to have due regard to equal opportunity requirements. “Scottish functions” are defined in the interpretation paragraph as meaning functions which are exercisable in or as regards Scotland and which do not relate to reserved matters.

Executive Devolution

The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ([S.I. 1999/1750](#)).

<p>The Race Relations Act 1976 (c.74), sections 19(5) and 57(5).</p>	<p>Section 19(5) - The function of the Secretary of State to cause a local inquiry to be held under section 67 of the Education (Scotland) Act 1980 into any matter arising from section 19(3) of the 1976 Act.</p> <p>Section 57(5) - Where a person has given notice to the Secretary of State of a claim that he has been discriminated against in</p>
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*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

	contravention of section 17 or 18 of the 1976 Act by a body to which section 19(1) of the Act applies, the function of the Secretary of State to give notice informing the claimant that the does not require further time to consider the matter.
The Education (Scotland) Act 1980 (c.44) , section 70 as applied by the Race Relations Act 1976 (c.74) , section 19(3).	Section 70 - The functions of the Secretary of State under section 70 of the Education (Scotland) Act 1980, as applied by section 19(3) of the 1976 Act, to enforce the duties imposed by sections 17, 18 and 19(1) of the 1976 Act on a body to which section 19(1) of the 1976 Act applies.

The following functions have been made exercisable by a Minister of the Crown subject to a requirement for agreement of or consultation with the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

The Sex Discrimination Act 1975 (c.65) , section 53(1), as read with section 53(1A).	The function of the Secretary of State of appointing commissioners of the Equal Opportunities Commission, but only so far as relating to appointment of a commissioner with special knowledge of Scotland.
The Race Relations Act 1976 (c.74) , section 43(1), as read with section 43(1A).	The function of the Secretary of State of appointing commissioners of the Commission for Racial Equality, but only so far as relating to appointment of a commissioner with special knowledge of Scotland.
The Disability Discrimination Act 1995 (c.50) , paragraph 3(3), as read with paragraph 3(3A) of Schedule 5.	The function of the Secretary of State of appointing members of the National Disability Council, but only so far as relating to the appointment of a member with special knowledge of Scotland.

Section L3: Control of Weapons

Purpose and Effect

This Section reserves the control of weapons of mass destruction.

General

There are three existing enactments dealing with matters covered by this reservation: the Biological Weapons Act 1974, which prohibits the development, production, acquisition and possession of certain biological agents and toxins and of biological weapons; the Chemical Weapons Act 1996, which is concerned with the control of chemical weapons and certain toxic chemicals; and the Nuclear Explosions (Prohibition and Inspections) Act 1998. Certain matters relating to firearms are also reserved.

Details of Provisions

This reserves the control of nuclear, biological, chemical and any other weapon of mass destruction, as distinct from other weapons, such as firearms.

Section L4: Ordnance Survey

Purpose and Effect

This Section reserves the Ordnance Survey.

General

The Ordnance Survey (OS) is the national mapping organisation for Great Britain and the Isle of Man. The Ordnance Survey Department is currently responsible to the Secretary of State for the Environment, Transport and the Regions.

Details of Provisions

This reserves the subject-matter of the Ordnance Survey Act 1841, which confers functions on the Secretary of State in respect of the survey of Great Britain and the Isle of Man by virtue of which the OS Department prepares the OS maps.

Section L5: Time

Purpose and Effect

This Section reserves the establishment of timescales and time-zones, the calendar and other matters related to time.

General

The reservation covers certain matters relating to the determination of time and dates generally. It does not, extend to the calculation of periods of time for the purposes of the civil law such as the expiry of obligations, or for any other purpose related to devolved matters.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	31-Mar-98	1132
CC	31-Mar-98	1133
LC	27-Jul-98	1326
LR	3-Nov-98	242
L3	9-Nov-98	580

Details of Provisions

The reservation covers the designation of the timescale and time zones used in the UK and matters related to them, such as Greenwich Mean Time or Co-ordinated Universal Time; the determination of units of time such as minutes, hours, days, months and years and the calendar generally; the determination of the date of Easter, such as, by the Easter Act 1928; and the determination of summer time, under the Summer Time Act 1972.

Exception from Reservation

There are two exceptions from this reservation:

- (a) the computation of periods of time for any purpose such as whether particular days are to be included when periods of time are calculated and determining when obligations expire or become unenforceable for the purposes of the civil law; and

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

(b) the subject-matter of:

- i. *section 1 of the Banking and Financial Dealings Act 1971*. The dates for bank holidays are determined under this section. The Scottish Parliament is thus able to determine the dates of bank holidays in Scotland and also any public and local holidays in Scotland; and
- ii. *the Term and Quarter Days (Scotland) Act 1990*. This sets out for Scotland the dates of term days, Whitsunday and Martinmas: 28 May and 28 November respectively, and the other quarter days, Candlemas and Lammas: 28 February and 28 August. These days are used in various legal documents made under Scots law, such as leases, agreements and undertakings.

Advice to The Queen

Special arrangements for giving advice to The Queen were described in a Prime Ministerial answer on 30 June 1999 (WA col 215) and an associated paper deposited in the House of Commons Library. The Secretary of State for Scotland's role in providing advice to the Privy Council on Proclamations by Her Majesty in Council under section 1 of the Banking and Financial Dealings Act 1971 altering statutory bank holidays in Scotland etc. has passed to the First Minister.

Section L6: Outer Space

Purpose and Effect

This reserves activities in outer space.

General

Under the Outer Space Act 1986 the Secretary of State is responsible for the granting of licences to any UK body or person intending to engage in activities in outer space. This relates to the fact that the UK Government has potential liability under international law for damage caused through such activities. The licensing of such activities, and all other matters relating to the regulation of such activities is reserved.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	27-Jul-98	1333
LR	3-Nov-98	247

Details of Provisions

The reservation extends to all matters related to the regulation of activities in outer space. In addition the negotiation of international agreements relating to outer space would fall within the reservation of foreign affairs under Paragraph 7 of Part I of Schedule 5.

Part III: General provisions

Purpose and Effect

This Part contains general provisions about Scottish public authorities, reserved bodies and financial assistance to industry. It also contains a general interpretation provision.

Detail of Provisions

Paragraphs 1 and 2: Scottish public authorities

These paragraphs clarify the extent to which the Scottish Parliament can legislate with regard to a Scottish public authority with mixed functions and a Scottish public authority with no reserved functions. There are other provisions in the Act which refer to such authorities - see sections 91, 92, 118, 119, Schedule 5, Part II, Sections B13 and L2.

Paragraph 1(1) provides that the Schedule does not reserve any Scottish public authority if some of its functions relate to reserved matters and some do not, unless it is a cross-border public authority. This is referred to as a Scottish public authority with mixed functions. A Scottish local authority is an example of such an authority.

The expression “Scottish public authority” is defined in section 126(1) as meaning any public body (except the Scottish Parliamentary Corporate Body), public office or holder of such an office whose functions are exercisable in or as regards Scotland. Section 126(3) makes provision for determining whether any function of a public body etc relates to reserved matters. A cross-border public authority is defined in section 88.

Paragraphs 1(2) and (3) make it clear that paragraph 1(1) means that the Scottish Parliament can legislate as regards the constitution of the authority (including its establishment and dissolution, its assets and liabilities and its funding and receipts) and as regards conferring or removing any function specifically exercisable in relation to the authority, but not where that function is specifically exercisable in relation to a particular function of the authority if that particular function relates to reserved matters.

Paragraph 2 provides that paragraph 1 of Part I of the Schedule (which reserves aspects of the Constitution) does not reserve any Scottish public authority with functions none of which relate to reserved matters. This ensures that such authorities are not caught by the reservation of the Crown. This type of authority is referred to as a Scottish public authority with no reserved functions.

Paragraph 3: Reserved bodies

This paragraph makes clear what is meant by the reservation of certain bodies to which it applies which are referred to in the cross heading as “reserved bodies”.

Paragraph 3(1) provides that the reservation of a “reserved body” has effect to reserve the following key aspects of it:

- (a) its constitution, including its establishment and dissolution, its assets and liabilities and its funding and receipts;
- (b) conferring functions on it or removing functions from it; and
- (c) conferring or removing any functions specifically exercisable in relation to it.

Paragraph 3(2) provides that paragraph 3 applies to the following bodies:

- (a) bodies reserved by name in Part 11 of Schedule 5. These are¹⁴:
 - the Bank of England (Section A1);
 - the Industrial Development Advisory Board (Section C14);
 - the Health and Safety Commission, the Health and Safety Executive and the Employment Medical Advisory Service (Section H2, as inserted by [S.I. 1999/1749](#), article 6);
 - the BBC (Section K1);

¹⁴ This list also used to include the Post Office which was reserved by C11. However that Section was amended by [S.I. 2000/3252](#) and there is no longer any reference to the Post Office.

- (b) each of the councils reserved by Section C12 in Part 11. These are the Research Councils;
- (c) the Commission for Racial Equality, the Equal Opportunities Commission and the Disability Rights Commission¹⁵.

Paragraph 4: Financial Assistance to Industry

Paragraph 4 clarifies the extent to which the Scottish Parliament can legislate about financial assistance to industry.

Paragraph 4(1) provides that the giving of financial assistance to commercial activities is not reserved where it is for the purpose of promoting or sustaining economic development or employment. This would include provision of a general nature which permits assistance to industries whose regulation is a reserved matter.

However, provision is made by paragraph 4(2) for certain exceptions. These are as follows:

- (a) the giving of financial assistance to any activities in pursuance of a power exercisable only in relation to activities which are reserved. This means that the Parliament cannot legislate for such assistance specifically in relation to a reserved commercial activity such as coal mining;
- (b) the giving of financial assistance in relation to matters covered in Part I of Schedule 5 (such as the Constitution, the Crown, foreign affairs, etc.), except for the matters in paragraph 9 (defence). The Parliament could therefore give financial assistance of a general nature to the defence industry in Scotland; and
- (c) the giving of financial assistance to the “reserved bodies” to which paragraph 3 of Part III of Schedule 5 applies (see list above).

Paragraph 4(2)(c) clarifies that paragraph 4(1) does not prejudice the non-reservation of specific types of financial assistance to industry in Sections C11¹⁶, E2 and E3 of Part II of Schedule 5, such as financial assistance for certain types of rail and shipping services or the provision of certain services at public post offices.

Paragraph 4(3) clarifies that paragraph 4(1) does not affect the question whether any matter other than financial assistance to which it applies is reserved..

The provisions in Schedule 5 relating to financial assistance should be read in conjunction with section 56. This provides for a number of “devolved” functions relating to the giving of specific types of financial assistance to be shared powers. This means that a UK Minister can also exercise those listed functions in or as regards Scotland.

Paragraph 5: Interpretation

Paragraph 5 makes provision as to how references to the subject matter of any enactment are to be construed.

Many reservations (or exceptions from reservations) in Schedule 5 are expressed by reference to the subject matter of particular enactments. Paragraph 5(1) provides that references in Schedule 5 to enactments are to be read as references to that enactment as it has effect on the principal appointed day (1 July 1999) or, if it ceased to have effect at any time within the period ending with that day and beginning with the day on which the Scotland Act was passed (17 November 1999), as it had effect immediately before that time. Accordingly, it does not matter if those enactments are amended or even

¹⁵ 18 The reference to the Disability Rights Commission was substituted for a reference to the National Disability Council by paragraph 4 of Schedule 4 to the Disability Rights Commission Act 1999.

¹⁶ This was added by Article 2(2) of [SI 2000/3252](#).

repealed after that time: the references to them in the Schedule will continue to be read as they have effect on 1 July 1999.

“Principal appointed day” is defined in section 126(1) to mean the day which is designated as such in a commencement order under section 130. This day is 1 July 1999 by virtue of [S.I. 1998/3178](#).

Paragraph 5(1) is disapplied by Section C11 in Part II of Schedule 5, as amended by [S.I. 2000/3252](#). This is because it refers to the subject matter of the Postal Services Act 2000. Instead that Section provides that this reference falls to be read by reference to the subject matter of that Act at the date when it received Royal Assent (28 July 2000).

Paragraph 5(2) provides for the making of transitional provision in relation to the operation of Schedule 5 at any time before 1 July 1999.

SCHEDULE 6: Devolution Issues

Purpose and Effect

This Schedule is given effect to by section 98. The Schedule defines devolution issues and provides for special procedures to apply to them when they arise in legal proceedings in Scotland, England and Wales and Northern Ireland. It also makes provision for proceedings in the House of Lords and for direct references to the Judicial Committee.

General

A number of legal questions may be raised as a result of the Scotland Act and the establishment of the Scottish Parliament and the Scottish Executive. There may, for example, be questions as to whether an Act of the Scottish Parliament is within the legislative competence of the Parliament or whether some function has transferred from a Minister of the Crown to the Scottish Ministers or whether a member of the Scottish Executive has acted or failed to act compatibly with the Convention rights or with Community law.

These important questions affect the boundary of the devolution settlement and are called “devolution issues”. This Schedule defines what they are and provides special procedures to apply to them when they arise in legal proceedings. This Schedule does not confer jurisdiction upon the courts to deal with such questions. It assumes that such questions may arise in legal proceedings whether before a court or a tribunal in Scotland, England and Wales and Northern Ireland and then provides for certain procedures to apply.

The main aspects of the special procedures which apply in the case of proceedings in Scotland are:

- (a) that the Advocate General and the Lord Advocate may institute proceedings for the determination of a devolution issue and the Lord Advocate may defend any such proceedings;
- (b) that, where a devolution issue arises in proceedings before a court or tribunal, intimation of the issue has to be given to the Advocate General and the Lord Advocate and they are then entitled to take part in the proceedings, so far as they relate to the devolution issue;
- (c) that, where a devolution issue arises in a court below the level of the Inner House of the Court of Session or the High Court (sitting as a court of Criminal Appeal), the court may refer it to the Inner House or, as the case may be, the High Court. A tribunal may refer such an issue to the Inner House and must do so if there is no appeal from their decision;
- (d) that the Inner House of the Court of Session or the High Court (sitting as a court of Criminal Appeal) may refer a devolution issue to the Judicial Committee - except where the issue has been referred to them;

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

- (e) that there is an appeal against the determination of a devolution issue by the Inner House or the High Court (sitting as a court of Criminal Appeal) to the Judicial Committee. Leave to appeal from the court concerned or special leave from the Judicial Committee is required in the case of the High Court or the Court of Session where there is no appeal to the House of Lords;
- (f) that any devolution issue which arises in the House of Lords must be referred to the Judicial Committee unless the House of Lords considers that it would be more appropriate, having regard to all the circumstances, that it should determine the issue;
- (g) that any of the Law Officers may require any court or tribunal to refer any devolution issue to the Judicial Committee; and
- (h) that any of the Law Officers may refer a devolution issue directly into the Judicial Committee provided it is not the subject of proceedings.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	4-Mar-98	1160
CR	12-May-98	203
CR	12-May-98	204
LC	8-Oct-98	578
LC	8-Oct-98	581
LC	8-Oct-98	582
LC	8-Oct-98	585
LC	8-Oct-98	586
LC	8-Oct-98	588
LC	8-Oct-98	589
LC	8-Oct-98	590

Details of Provisions

Part 1 - Preliminary

Part 1 (paragraphs 1 and 2) defines “devolution issue” for the purposes of this Schedule as meaning one of a series of questions in the following sub-paragraphs:

sub-paragraph (a), a question whether an Act of the Scottish Parliament or any provision of such an Act is within the Parliament’s legislative competence;

sub-paragraph (b), a question whether any function which any person purported or is proposing to exercise is a function of the Scottish Ministers, the First Minister or the Lord Advocate. This would include any question as to whether the function has transferred to the Scottish Ministers under section 53 or has remained with a Minister of the Crown;

sub-paragraph (c), a question whether the purported or proposed exercise of a function by a member of the Scottish Executive is or would be within devolved competence. This is relevant, for example, as to whether a function is exercisable by the Scottish Ministers by virtue of section 53;

sub-paragraph (d), a question whether a purported or proposed exercise of a function by a member of the Scottish Executive is incompatible with any of the Convention Rights or with Community law;

sub-paragraph (e), a question whether a failure to act by a member of the Scottish Executive is incompatible with any of the Convention Rights or with Community law;

sub-paragraph (f), any other question about whether a function is exercisable within devolved competence or in or as regards Scotland, and any other question arising by virtue of the Scotland Act about reserved matters. The questions swept up into this sub-paragraph can arise in various circumstances. For example, there could be a question whether Her Majesty is making an Order in Council within devolved competence (see note on section 118) or whether a function is exercisable “in or as regards Scotland” so that it may transfer by an order under section 63 or whether a public body is a Scottish public authority whose functions are exercisable only “in or as regards Scotland” (see definition in section 126(1)) or whether the functions of a body relate to a reserved matter (see section 126(3)).

Paragraph 2 provides that a devolution issue should not be taken to arise in proceedings before a court or tribunal merely because a party argues that there is such a question if the court or tribunal considers the argument to be frivolous or vexatious.

Part 2: Proceedings in Scotland

Part 2 of the Schedule provides for proceedings about devolution issues in Scotland.

Paragraph 3 provides that Part 2 applies in relation to devolution issues in proceedings in Scotland.

Paragraph 4 provides that either the Lord Advocate or the Advocate General may raise proceedings for the determination of a devolution issue. It also specifically provides that when such proceedings are raised by the Advocate General then the Lord Advocate has the right to defend them. Paragraph 4 also provides that these powers do not prejudice any other powers which may be exercisable by any person.

Paragraph 5 provides that when a devolution issue arises in proceedings before a court or tribunal, intimation of it must be given to the Advocate General and Lord Advocate (if they are not already a party to the proceedings).

Paragraph 6 provides that, if the Advocate General and/or Lord Advocate are given intimation of a devolution issue in any case, they will be able to participate in that case as a party in relation to that issue.

Paragraph 7 provides for references of devolution issues from courts in Scottish civil proceedings (other than the House of Lords or a court of 3 or more judges of the Court of Session) to the Inner House of the Court of Session. In effect this section allows reference of devolution issues that arise in civil proceedings in the Sheriff Court and in the Outer House of the Court of Session to the Inner House. Such references are not mandatory.

Paragraph 8 provides that when a devolution issue arises in a tribunal in Scotland from which there is no appeal the issue must be referred to the Inner House. It further provides that any tribunal from which there is an appeal may make such a reference.

Paragraph 9 provides for references of devolution issues from criminal courts in Scotland to the High Court of Justiciary sitting as a court of Criminal Appeal. It allows reference of devolution issues that arise in proceedings in the District Courts; in criminal proceedings in the Sheriff Court; and High Court proceedings before one judge to a larger bench of judges in the High Court.

Paragraph 10 provides that a court consisting of 3 or more judges of the Court of Session may refer a devolution issue that arises in a case before it to the Judicial Committee. The court is not empowered to make such references where the devolution issue has been referred to the court by another court or tribunal under paragraphs 7 and 8. Accordingly, when the Inner House is acting as a court of first instance or as the court of appeal in

ordinary course it will be able to refer a devolution issue that arises before it to the Judicial Committee.

Paragraph 11 provides that a court consisting of 2 or more judges of the High Court of Justiciary may refer a devolution issue that arises in a case before it to the Judicial Committee. The court is not empowered to make such references where the devolution issue has itself been referred to it by another court under paragraph 9. Accordingly, when a bench of 2 or more judges is acting as the court of criminal appeal it will be able to refer a devolution issue that arises before it to the Judicial Committee.

Paragraph 12 provides that an appeal against a determination of a devolution issue by the Inner House of the Court of Session, where that issue has been referred to the Inner House by another court or tribunal under paragraphs 7 or 8, will lie to the Judicial Committee.

Paragraph 13 provides that an appeal against a determination of a devolution issue by a court of 2 or more judges of the High Court of Justiciary (sitting in ordinary course or on a reference from another court under paragraph 9) or a court of three or more judges of the Court of Session from which there is no appeal to the House of Lords (in effect the Lands Valuation Appeal Court) will lie to the Judicial Committee. However, such an appeal could only be made with the leave of the relevant court or, if that leave is refused, with special leave of the Judicial Committee itself.

Part 3: Proceedings in England and Wales

Part 3 (paragraphs 14-23) make similar provisions to Part 2 but for proceedings in England and Wales.

Part 4: Proceedings in Northern Ireland

Part 4 (paragraphs 24-31) make similar provisions to Part 2 but for proceedings in Northern Ireland.

Part 5: General

Paragraph 32 provides that where a devolution issue arises in judicial proceedings in the House of Lords the issue will normally be referred to the Judicial Committee. However, if the House of Lords considers that it would be more appropriate in the circumstances of any case that it determines the issue it will be able to do so.

Paragraph 33 provides that the Lord Advocate, the Advocate General, the Attorney General or the Attorney General for Northern Ireland (i.e. all the principal Law Officers) may require any court or tribunal to refer to the Judicial Committee any devolution issue that has arisen in proceedings to which he is a party.

Paragraph 34 provides that all the principal Law Officers may refer to the Judicial Committee any devolution issue which is not the subject of proceedings. This power enables the Law Officers to refer any vires question to the Judicial Committee if it is not already the subject of a judicial dispute.

Paragraph 35 provides the procedure that must be followed when one of the principal Law Officers has made a reference to the Judicial Committee under paragraph 34 relating to the proposed exercise of a function by member of the Scottish Executive. The Law Officer making the reference must notify a member of the Scottish Executive that he is doing so. Having been so notified, no member of the Scottish Executive shall exercise the function as proposed until the reference has been disposed of. If a member of the Scottish Executive does attempt to exercise the function the Advocate General will be able to raise proceedings against him.

Paragraph 36 enables a court where a devolution issue has arisen in a case, to take account of any additional expenses incurred because of the participation of a Law

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

Officer who was not previously party to the proceedings in deciding any question as to costs or expenses in the case.

Paragraph 37 provides that any power to regulate the procedures by which courts and tribunals conduct their business will include the power to make provision for the purposes of this Schedule including when a devolution issue is to be raised or referred; the procedure for sisting or staying (holding a case in abeyance); and the manner and timescale in which notice or intimation must be given.

Rules for the Court of Session, High Court of Justiciary and the Sheriff Court are provided by:

Act of Sederunt (Devolution Issues Rules) 1999 (S.I. 1999/1345);

Act of Adjournal (Devolution Issues Rules) 1999 (S.I. 1999/1346); and

Act of Sederunt (Proceedings for Determination of Devolution Issues Rules) 1999 (S.I. 1999/1347).

Paragraph 38 provides that any power or duty to refer a devolution issue to a court shall be interpreted as a power or, as the case may be duty, to refer the issue to the court for a decision i.e. a binding decision upon that issue.

SCHEDULE 7: Procedure for Subordinate Legislation

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	8-Oct-98	624
LR	28-Oct-98	2039
Stage	Date	Column
LR	2-Nov-98	16
LR	2-Nov-98	122
LR	2-Nov-98	123
LR	2-Nov-98	125
L3	9-Nov-98	542
LCCCLA	17-Nov-98	1201

Details of Provisions

The Table in paragraph 1 sets out the type of parliamentary procedure to which subordinate legislation under the various powers provided by the Scotland Act is to be subject. For each power specified in the left-hand column, the appropriate type of procedure is normally that in the corresponding entry in the right-hand column. The parliamentary procedure is designated by a letter from A to K, with these being explained in paragraph 2. This is subject to the special cases set out in paragraphs 3 and 4, where the procedure is altered in certain circumstances. Two other special cases are provided for in the notes at the foot of the table.

Where a power to make subordinate legislation does not appear in the table (e.g. the power in section 103(3)(c)), such subordinate legislation is not subject to any parliamentary procedure.

Paragraph 2 explains each of the types of procedure ("Type A" to "Type K"). These differ as to:

- (a) whether the instrument is to be subject to procedure in:

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which received Royal Assent on 19th November 1998*

the Houses of Commons and Lords only (Types B, C, G and I);
the House of Commons only (Type E and K);
the Scottish Parliament only (Types D and J); or
both Parliaments (Types A, F and H).

(b) whether the instrument is to be:

laid in draft and approved (Types A to E);
subject to annulment (unless laid in draft and approved) (Types F and G); or
subject to annulment (Types H to K).

In relation to the United Kingdom Parliament, references to orders being laid in draft and approved or being subject to annulment are to be interpreted with reference to the Statutory Instruments Act 1946 and the standing orders of each House. In relation to the Scottish Parliament, such references are to be interpreted with reference to the Scotland Act 1998 (Transitory and Transitional Provisions)(Statutory Instruments) Order 1999 (S.I. 1999/1096) and to the Standing Orders of the Parliament.

Paragraph 3 alters the procedure to which an instrument would be subject where it contains provisions which "add to, replace or omit any part of the text of an Act". In any such case, the type of procedure is changed to one which requires the instrument to be laid in draft and approved by the Parliament or Parliaments concerned. Thus, if an order under paragraph 7 of Schedule 2 (normally subject to Type H - annulment by either Parliament) were to amend primary legislation, then it would instead be subject to Type A (laid in draft and approved by both Parliaments). This paragraph gives effect to the report of the Delegated Powers and Deregulation Committee of the House of Lords (24th report 1997/98) which recommended that any "Henry VIII power" used to amend primary legislation should be subject to affirmative resolution procedure.

Paragraph 4 provides that, where the general power to make transitory or transitional provision conferred by section 129(1) is used to appropriate sums from the Scottish Consolidated Fund or for sums to be appropriated in aid, then the instrument is to be laid in draft and approved by the Scottish Parliament. The use of the power in this way is also constrained by section 112(2), which requires it to be exercised by Her Majesty in Council. The use of section 129(1) in this way is necessary to put in place the transitional financial arrangements for the year 1999-2000. Note that the procedure for such orders was further amended by article 5 of the Scotland Act 1998 (Transitory and Transitional Provision) (Subordinate Legislation under the Act) Order 1998 (S.I. 1998/3216) for the period up to the principal appointed day.

Paragraph 5 provides that subordinate legislation made under an open power (or by Order in Council under section 89 or 90) which revokes, amends or re-enacts subordinate legislation under that power may be subject to a different procedure from the original subordinate legislation. For example, the original subordinate legislation may be made by Order in Council subject to affirmative resolution procedure, but this may be revoked by an order subject to annulment.

SCHEDULE 8, Paragraph 1: Public Revenue (Scotland) Act 1833

Purpose and Effect

Provides for the Scottish Ministers rather than the Treasury to regulate the activities of the Queen's and Lord Treasurer's Remembrancer (Q<R) in Scotland and to issue direction to him in respect of the exercise of his powers.

General

The QLTR is responsible for the collection of certain hereditary revenues of the Crown which are excepted from the general reservation of the Crown. The Crown is reserved under Schedule 5, Part I, paragraph 1(a). The hereditary revenues in question are those from bona vacantia, ultimis haeres and treasure trove which are excepted under Schedule 5, Part I, paragraph 3(3)(a).

The 1833 Act provides for the regulation of and the power to issue directions to the Q<R in respect of the performance of these duties in Scotland. The modification provides for these powers over the Q<R to be exercised by the Scottish Ministers.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CR	12-May-98	757

Details of Provisions

Substitutes the “Treasury” in both places where it appears in section 2 of the 1833 Act with the “Scottish Ministers”.

SCHEDULE 8, Paragraph 2: Crown Suits (Scotland) Act 1857

Purpose and Effect

This paragraph makes amendments to the Crown Suits (Scotland) Act 1857 consequential to the establishment of the Scottish Administration and of the post of Advocate General for Scotland. It amends the 1857 Act to enable actions by or against the Scottish Administration to run in the name of the Lord Advocate while actions by or against the UK Government may be brought by or against the Advocate General.

General

The Crown Suits (Scotland) Act 1857 regulates the institution of suits at the instance of, and against, the Crown and public Departments in the Scottish courts. In particular it provides that every action, suit, or proceeding to be instituted in Scotland on the behalf of or against Her Majesty, or in the interest of the Crown, or on behalf of or against any public department, may be lawfully raised in the name and at the instance of or directed against Her Majesty's Advocate for the time being as acting under the 1857 Act, provided always, that before instituting or defending any such action, suit, or proceeding, Her Majesty's Advocate shall have the authority of Her Majesty or of the public department respectively on whose behalf or against whom such action, suit, or proceeding shall be instituted, to the institution or defence thereof.

The modifications listed in paragraph 2 of Schedule 8 add the Scottish Administration to the references to the Crown and public departments as appropriate, to extend the application of the 1857 Act to every action, suit or proceeding to be instituted in Scotland on behalf of or against the Scottish Administration. They further amend references to “Her Majesty’s Advocate” to refer instead to “the appropriate Law Officer” and insert a definition of “appropriate Law Officer” to mean:

- (a) the Lord Advocate, where the action, suit or proceeding is on behalf of or against any part of the Scottish Administration; and
- (b) the Advocate General for Scotland, in any other case.

Details of Provisions

Paragraph 2(1) provides that the Crown Suits (Scotland) Act 1857 shall be amended.

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

Paragraph 2(2) provides that in section 1 (Crown Suits may be brought by or against the Lord Advocate):

- (a) after “Crown” there is inserted “(including the Scottish Administration)”, and
- (b) for “Her Majesty’s Advocate for the time being” there is substituted “the appropriate Law Officer”.

Paragraph 2(3) provides that in section 2 (authority of Crown required):

- (a) for “Her Majesty’s Advocate” there is substituted “the appropriate Law Officer”; and
- (b) after “Majesty” there is inserted “of the part of the Scottish Administration”.

Paragraph 2(4) provides that in section 3 (absence of authority cannot be founded upon):

- (a) for “Her Majesty’s Advocate” there is substituted “the appropriate Law Officer”.

Paragraph 2(5) inserts into the 1857 Act a new section 4A which provides that in the 1857 Act, “the appropriate Law Officer” means:

- (a) the Lord Advocate, where the action, suit or proceeding is on behalf of or against any part of the Scottish Administration; and
- (b) the Advocate General for Scotland, in any other case.

Paragraph 2(6) provides that in section 5 of the 1857 Act (change of Lord Advocate not to affect proceedings):

- (a) for “Her Majesty’s Advocate” there is substituted “the Lord Advocate or the Advocate General for Scotland”; and
- (b) for “the office of Her Majesty’s Advocate” there is substituted “that office”.

See also the Scotland Act 1998 (General Transitory, Transitional and Savings Provisions) Order 1999 ([S.I. 1999/901](#)), which includes transitional provisions relating to these amendments.

SCHEDULE 8, Paragraph 3: Sheriff Courts and Legal Officers (Scotland) Act 1927

Purpose and Effect

Part I of the Sheriff Courts and Legal Officers (Scotland) Act 1927 makes provision as to the appointment of sheriff clerks, procurators fiscal and their deputies.

The provisions of Part I of the 1927 are, by virtue of paragraph 8(2)(a) of Part I of Schedule 5, not reserved and some Ministerial functions conferred by Part I of that Act transferred to the Scottish Ministers under section 53, and section 55(1) of the Scotland Act will provide for Treasury consent requirements not to apply to the exercise of those functions by the Scottish Ministers.

However, this does not apply in relation the functions conferred by Part I of the 1927 Act on the Lord Advocate in relation to the appointment of procurators fiscal and their deputies. These will remain part of the retained functions of the Lord Advocate but it is not intended that the Lord Advocate should have to exercise them subject to consultation with the Treasury. Therefore, this paragraph removes the need for consultation with the Treasury on decisions about the appointment, numbers and salary levels of procurators fiscal and their deputies. The amendments will, however, as a consequence also repeal such Treasury consent requirements in relation to the appointment, numbers and salary levels of sheriff clerks and their deputies.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CR	12-May-98	757

Details of Provisions

Paragraph 3(1) provides that the Sheriff Courts and Legal Officers (Scotland) Act 1927 is to be amended.

Paragraph 3(2) provides that in section 1(2) (appointment etc. of procurator fiscal), “with the consent of the Treasury” is omitted. The effect is that Treasury consent is not required for the fixing by the Lord Advocate of the number of procurators fiscal in Scotland or the limits of the districts for which they act.

Paragraph 3(3) provides that in section 2 (appointment of sheriff clerk and procurator fiscal deputes), “with the consent of the Treasury as to numbers and salaries” is omitted. The effect is that Treasury consent is not required as to the numbers and salaries of sheriff clerk deputes appointed by the Secretary of State or of procurator fiscal deputes by the Lord Advocate.

Paragraph 3(4) provides that in section 3 (whole-time sheriff clerks and procurators fiscal and deputes), “and either case with the consent of the Treasury” is omitted. The effect is that Treasury consent is not required to determinations by the Scottish Ministers (in the case of a sheriff clerk or sheriff clerk depute) or the Lord Advocate (in the case of a procurator fiscal or a procurator fiscal depute) that such an office shall be a whole-time office, thereby preventing the person from engaging in certain other employments.

Paragraph 3(5) provides that in section 5 (whole-time clerks), “with the consent of the Treasury as to numbers and salaries” is omitted. The effect is that Treasury consent as to numbers and salaries is not required to the appointment by the Scottish Ministers or Lord Advocate of whole-time clerks or whole-time assistants to sheriff clerks or procurators fiscal.

Paragraph 3(6) provides that in section 12 (prosecution at instance of procurator fiscal), “after consultation with the Treasury” is omitted. The effect is that Treasury consent is not required to the making of an order by the Lord Advocate directing that certain proceedings in the sheriff court are to be taken by and at the instance of the procurator fiscal.

See also paragraph 14 of Schedule 2 to the Scotland Act 1998 (Consequential Modifications)(No.2) Order 1999 (S.I. 1999/1820)) which makes amendments to sections 6, 12 and 13.

SCHEDULE 8, Paragraph 4: Administration of Justice (Scotland) Act 1933

Purpose and Effect

This paragraph amends provisions which give the Secretary of State power of appointment to certain posts in the Supreme Courts on the nomination of the Lord Advocate. The amendment removes the power of the Lord Advocate to nominate candidates.

General

Section 24(7) provides for the Secretary of State to appoint to the office of Macer, on nomination by the Lord Advocate.

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

Section 25 provides for the Secretary of State to appoint to the offices of Principal Clerk of Justiciary, Accountant of Court and Auditor of the Court of Session on nomination of the Lord Advocate.

The provisions requiring the Lord Advocate to nominate candidates for posts in the service of the High Court, including macers, date from a period when the more senior posts in the Supreme Courts were often filled on a part-time basis by members of the legal profession and other prominent figures.

Posts in the service of the Court of Session and the High Court are now filled by members of the Scottish Court Service, who may be promoted or transferred to these posts in the course of their career. In addition, posts in the High Court and the Court of Session are frequently combined (the posts of Principal Clerk of Session and Principal Clerk of Justiciary are nowadays filled by a single appointment) or filled on rotation by Court Service officers serving for a period of time in the Supreme Courts. In the case of the Auditor of Court (who is not a member of the Scottish Court Service) the practice now is to advertise the post. In practice, such posts are filled after consultation with the Lord President/Lord Justice-General; and the requirement for the Lord Advocate formally to nominate to these posts is therefore otiose, particularly in the case of the appointment of macers.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CR	12-May-98	757

Details of Provisions

Paragraph 4 provides that, in the Administration of Justice (Scotland) Act 1933, in sections 24(7) and 25 (officers of Court of Session, etc.), “and shall be exercised on nomination by the Lord Advocate” is omitted.

SCHEDULE 8, Paragraph 5: Private Legislation Procedure (Scotland) Act 1936

Purpose and Effect

This amendment is intended to ensure that a promoter of private legislation may not apply for a provisional order under the Private Legislation Procedure (Scotland) Act 1936 where the powers sought are wholly within the competence of the Scottish Parliament. Such powers should be sought from the Scottish Parliament under whatever private legislation procedure it provides.

General

Section 53 transfers powers to the Scottish Ministers to make, confirm or approve subordinate legislation including certain types of subordinate legislation in the nature of private legislation, namely, special procedure orders and provisional orders. Section 94 modifies existing enactments for those purposes, and also ensures that the powers to make or confirm provisional orders conferred by the 1936 Act are not transferred.

Section 28 gives the Scottish Parliament power to make laws for Scotland to be known as Acts of the Scottish Parliament. It is inherent in this power that the Scottish Parliament is able to pass private Acts as well as public and general Acts, section 36(3) allows the Parliament to provide a modified Bill procedure for private Bills and section 94(2) allows the Parliament to make provision for special procedure orders. The Scottish Parliament has now made provision for Private Bills in its Standing Orders.

Details of Provisions

The 1936 Act provides a procedure by way of provisional order, rather than a private Bill in the UK Parliament, by which any public authority or person may obtain parliamentary powers in relation to certain matters in Scotland. This paragraph amends section 1 of that Act so as to ensure that it does not apply where the powers sought are wholly within the competence of the Scottish Parliament. Such powers would have to be sought from the Scottish Parliament under its private legislation procedures, or from the UK Parliament by other means, such as the promotion of a private Bill.

The 1936 Act procedure could still be used where the powers sought relate to both devolved and reserved matters.

See also article 13 of the Scotland Act 1998 (General Transitory, Transitional and Savings Provisions) Order 1999 (S.I. 1999/901) (inserted by article 4 of S.I. 1999/1334), which provides that the amendment made by paragraph 5 of Schedule 8 to the Scotland Act does not affect the operation of the Private Legislation Procedure (Scotland) Act 1936 in relation to any petition for a Provision Order presented to the Secretary of State before the principal appointed day. This provision ensures that those applications which were already in progress on the principal appointed day were not affected by the amendment.

SCHEDULE 8, Paragraph 6: United Nations Act 1946

Purpose and Effect

This paragraph amends the wording of subsection (4) of section 1 of the United Nations Act 1946 to provide that any Order in Council made under that section will be laid before the Scottish Parliament as well as before Westminster if any provision in the Order would be within the legislative competence of the Scottish Parliament.

General

Despite the devolution of the implementation and observation of international obligations in relation to devolved matters, it should be possible for the UK Government to use section 1 of the United Nations Act 1946 to implement sanctions on a UK-wide basis. Section 56(1)(b) of the Scotland Act enables existing sanctions licensing to continue on a UK-wide basis by making the relevant Ministerial functions exercisable concurrently by the Scottish Ministers and a Minister of the Crown.

Section 1 of the 1946 Act deals with the implementation of any Security Council resolution. It is used most often to implement UN sanctions by means of licensing of exports and other trade. For the most part they make provision about reserved matters, but certain devolved matters may be covered such as limitations on the provision of training. On occasion, too, the power would be used to implement a resolution which would have a major impact upon a devolved matter. For instance, a recent Order under the 1946 Act enabled the High Court of Justiciary to sit in the Netherlands for the Lockerbie case.

Orders in Council under the 1946 Act require to be laid before Parliament. In the light of the Lockerbie order in particular, it is right that the Scottish Parliament should have a role in relation to an Order in Council under the 1946 Act which makes provision about devolved matters in Scotland. Accordingly, this paragraph amends the 1946 Act to provide that Orders in Council made under it are always to be laid before the UK Parliament even where they relate only to devolved matters, and that they are to be laid also before the Scottish Parliament except in those cases where they relate only to reserved matters.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LR	3-Nov-98	252

SCHEDULE 8, Paragraph 7: Crown Proceedings Act 1947

Purpose and Effect

This paragraph makes amendments to the Crown Proceedings Act 1947 consequential to the establishment of the Scottish Administration, to the inclusion of the Lord Advocate in the Scottish Executive and to the establishment of the post of Advocate General for Scotland.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	8-Oct-98	649

General

The amendments made in this paragraph should be read alongside the amendments made in paragraph 2 to the Crown Suits (Scotland) Act 1857. These Acts make provision about court actions in Scotland which involve the Crown.

The Crown Proceedings Act 1947 makes provision about the civil liabilities and rights of the Crown and about civil proceedings by and against the Crown, and related matters. Part V of the Act provides for the application of the Act in Scotland.

The amendments add the Scottish Administration to the references to the Crown and public departments as appropriate. They further amend references to “the Lord Advocate” to refer instead to the Advocate General for Scotland or to “the appropriate Law Officer” as appropriate, and insert a definition of “appropriate Law Officer” to mean:

- (a) the Lord Advocate, where the proceedings are against the Scottish Administration; and
- (b) the Advocate General for Scotland, in any other case.

The paragraph also modifies those provisions in the Crown Proceedings Act 1947 which refer to Her Majesty’s Government in the United Kingdom so as to include also the Scottish Administration.

Details of Provisions

Paragraph 7(1) provides that the Crown Proceedings Act 1947 shall be amended.

Paragraph 7(2) amends section 38(2) of the 1947 Act consequential on the establishment of the Scottish Administration, which will be a new part of the Crown (the “Crown in right of the Scottish Administration”) separate from the UK Government.

The phrase the “Crown in right of the Scottish Administration” draws a clear distinction between the Scottish Administration and the UK Government in Scotland.

The amendments ensure that certain provisions in the Act relating to the Crown in right of Her Majesty’s Government in the United Kingdom (the UK Government) also apply to the Crown in right of the Scottish Administration.

Section 38(2) of the 1947 Act provides that the references in the Act to “Her Majesty’s aircraft” do not include aircraft belonging to Her Majesty otherwise in right of Her Government in the United Kingdom. There is also a provision in the definition of “Her Majesty’s ships” excepting from that expression any ship in which Her Majesty is interested in otherwise than in right of Her Government in the United Kingdom unless that ship is for the time being demised or sub-demised to Her Majesty in right of Her said Government or in the exclusive possession of Her Majesty in that right. The amendments ensure that the definitions also cover aircraft and ships belonging to the Crown or in which the Crown has an interest in right of the Scottish Administration. Sub-paragraph (c) also provides that the definition of “officer” in relation to the Crown includes a member of the Scottish Executive as well as a Minister of the Crown.

Paragraph 7(3) amends section 40(2) of the 1947 Act, which provides savings in respect of certain Crown liabilities and proceedings so that they apply to Crown liabilities in respect of, and Crown proceedings in right of, the Scottish Administration as well as the UK Government.

It also provides that the Scottish Ministers can provide a certificate to the effect that any alleged liability of the Crown arises otherwise than in respect of the Scottish Administration or that any proceedings by the Crown are otherwise than in right of the Scottish Administration. Section 40(3) already provides that the Secretary of State can issue a certificate to the effect that any alleged liability of the Crown arises otherwise than in respect of Her Majesty’s Government in the UK or to the effect that any proceedings by the Crown are proceedings otherwise in right of Her Majesty’s Government in the UK.

Paragraph 7(4) amends section 44 of the 1947 Act. Section 44 provides that proceedings against the Crown may be instituted in the Sheriff Court. A proviso to the section provides that the proceedings must be remitted to the Court of Session if the Lord Advocate certifies that the proceedings may involve an important question of law or may be decisive of other cases or are for other reasons more fit for trial in the Court of Session.

This amendment provides that in the proviso to section 44 (remit from sheriff court to Court of Session on Lord Advocate’s certificate):

- (a) for “Lord Advocate” there is substituted “appropriate Law Officer”; and
- (b) at the end there is inserted:

“In this proviso, “the appropriate Law Officer” means:

- (a) the Lord Advocate, where proceedings are against the Scottish Administration;
and
- (b) the Advocate General for Scotland, in any other case.”

This has the effect that, where proceedings in the sheriff court are against the Scottish Administration, the Lord Advocate may produce a certificate that the proceedings may involve an important question of law, or may be decisive of other cases, or are for other reasons more fit for trial in the Court of Session, in which case the proceedings would be remitted to the Court of Session. In relation to proceedings in the sheriff court against the Crown but which are not against the Scottish Administration, such a certificate would be produced by the Advocate General for Scotland.

Paragraph 7(5) amends section 50 (application to Scotland of section 35). Section 35 provides that a power to make rules of court includes power to make rules for the purpose of giving effect to the provisions of the Crown Proceedings Act 1947 and that such rules may contain provisions to have effect in relation to any proceedings by or against the Crown. A different subsection (2) of section 35 is substituted for Scotland

by section 50. It provides that certain provisions shall apply as regards proceedings involving the Crown in the Court of Session or the sheriff court.

Paragraph 7(5) amends section 35(2)(d) as substituted for Scotland and inserts a new subsection (e). The references to the Crown in the Scottish version of section 35(2)(a), (b) and (c) without express mention will apply to the Scottish Administration but the Scottish version of section 35(2)(d) is to be amended so that the reference to the Crown in that subsection means only the Crown in right of the UK Government. Subsection (2)(d) is concerned with the matter of set-off or counterclaim in proceedings against a Government Department. The amendment provides that:

- (a) after “Crown” there is inserted “in right of her Majesty’s Government in the United Kingdom”,
- (b) for “Lord Advocate” there is substituted “Advocate General for Scotland”; and
- (c) after “department”, in the second place where it appears, there is inserted:
 - “(i) shall not be entitled to avail itself of any set-off or counterclaim if the subject matter thereof relates to the Scottish Administration, and
 - (ii)”,and.”

The new subsection (2)(e) is as follows:

- “(e) a part of the Scottish Administration, in any proceedings against that part or against the Lord Advocate on its behalf, shall not be entitled to avail itself of any set-off or counterclaim if the subject matter thereof relates to another part of the Scottish Administration or to the Crown in right of Her Majesty’s Government in the United Kingdom.”

These amendments to section 35(2) as it applies to Scotland provide that the Crown in any proceedings against a UK Government Department cannot avail itself of any set off or counterclaim if the subject matter relates to the Scottish Administration and vice versa. No permission from the Court will be available. The amendment also provides that the Scottish Administration is not able to avail itself of any set-off or counterclaim in respect of money owed to other parts of the Scottish Administration, such as the Registrar General or the Keeper of the Registers of Scotland without the leave of the Court.

Paragraph 7(8) amends section 51(2) of the 1947 Act. Section 51(2) makes provision for the application of section 38(4) of the Act to Scotland. Section 38 is the interpretation provision. Section 38(4) as it applies to Scotland provides that references in Parts III (judgements and executions) and IV (miscellaneous and supplemental) of the 1947 Act to civil proceedings by or against the Crown or to civil proceedings to which the Crown is a party shall be construed as including a reference to civil proceedings which the Lord Advocate, or any Government department, or any officer of the Crown as such is the party. The amendment inserts “or the Advocate General for Scotland” after “Lord Advocate”.

This amendment is one of a number, in this and in the Crown Suits (Scotland) Act 1857, which reflect the fact that the Lord Advocate will act for the Crown where the court proceedings are on behalf of or against part of the Scottish Administration and that the Advocate General will act for the Crown in other Scottish cases.

See also the Scotland Act 1998 (General Transitory, Transitional and Savings Provisions) Order 1999 ([S.I. 1999/901](#)), which includes transitional provisions relating to these amendments.

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

SCHEDULE 8, Paragraph 8: Public Registers and Records (Scotland) Act 1948

Purpose and Effect

Paragraph 8 amends the Public Registers and Records (Scotland) Act 1948 so that the Secretary of State's statutory power to appoint a Keeper of the Registers of Scotland and a Keeper of the Records of Scotland will transfer to Scottish Ministers.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CR	12-May-98	757

Details of Provisions

Section 1(1) of the Public Registers and Records (Scotland) Act 1948 provides the Secretary of State with the power to appoint the Keeper of the Registers and the Keeper of the Records. Paragraph 8 substitutes "Scottish Ministers" for "Secretary of State" in section 1(1) of the Public Registers and Records (Scotland) Act 1948.

SCHEDULE 8, Paragraph 9: Lands Tribunal Act 1949

Purpose and Effect

This paragraph amends the Lands Tribunal Act 1949 so that the remuneration of members of the Lands Tribunal for Scotland is a charge on the Scottish Consolidated Fund.

General

This amendment is related to several provisions concerning the remuneration of the senior judiciary. Under Schedule 5 (Part II, Section L1) the determination of the remuneration of judges of the Court of Session, sheriffs and certain other senior judicial postholders including members of the Lands Tribunal for Scotland are a reserved matter. Payment of the remuneration will, of course, be funded from the assigned budget of the Scottish Parliament. Before devolution, most of these judicial salaries are a direct charge on the Consolidated Fund. Under section 119 they became a direct charge on the Scottish Consolidated Fund. The present amendment removes the anomaly that the remuneration of members of the Lands Tribunal is not a direct charge on the Consolidated Fund.

The determination of judicial pensions is also reserved (Part II, Section F3), which allows Scottish judges to continue to receive pensions under the UK pension schemes.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LR	3-Nov-98	253

Details of Provisions

The paragraph amends section 2 of the Lands Tribunal Act 1949 by:

- (a) providing in subsection (9) that subsection (8) does not apply in relation to the Lands Tribunal for Scotland. Subsection (8) provides for remuneration and certain expenses to be defrayed out of moneys provided by Parliament. A consequential amendment to subsection (9)(a) is also made;

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

- (b) inserting a new subsection (10) which provides that that remuneration of members of the Lands Tribunal for Scotland is a charge on the Scottish Consolidated Fund.

SCHEDULE 8, Paragraph 10: Defamation Act 1952

Purpose and Effect

This paragraph amends section 10 of the Defamation Act 1952 for the purpose of extending its provisions on the limitation on privilege at elections to cover elections to the Scottish Parliament.

General

Section 10 of the Defamation Act 1952 provides that a defamatory statement published by a candidate at a local government or Parliamentary election is not entitled to privilege for the purposes of the law of defamation on the grounds that it is material to an election issue. This amendment applies the same provision to elections to the Scottish Parliament and complements section 41 (Defamatory statements) and the amendments to the Defamation Act 1996 at paragraph 22 of this Schedule. Paragraph 11 makes the same modification for the purposes of the law of defamation in Northern Ireland.

Details of Provisions

Paragraph 10 amends section 10 of the Defamation Act 1952 so that its provisions, as described above, apply also in relation to elections to the Scottish Parliament.

SCHEDULE 8, Paragraph 11: Defamation Act (Northern Ireland) 1955

Purpose and Effect

This paragraph amends section 10(2) of the Defamation Act (Northern Ireland) 1955 for the same purposes as the amendment made by paragraph 10 to section 10 of the Defamation Act 1952.

General

Section 10(2) of the Defamation Act (Northern Ireland) 1955 makes the same provision in the law of Northern Ireland as section 10 of the Defamation Act 1952, relating to the limitation on privilege at elections. As with the amendment to section 10 of the 1952 Act in paragraph 10 of this Schedule, this provision ensures that the same limitation on privilege applies to elections to the Scottish Parliament.

Details of Provisions

This makes amendment to the Defamation Act (Northern Ireland) 1955 identical in effect to those made by paragraph 10 to the Defamation Act 1952.

SCHEDULE 8, Paragraph 12: Registration of Births, Deaths and Marriages (Scotland) Act 1965

Purpose and Effect

Paragraph 12 amends the Registration of Births, Deaths and Marriages (Scotland) Act 1965 so that the Secretary of State's statutory power to appoint the Registrar General for Births, Deaths and Marriages for Scotland will transfer to Scottish Ministers.

General

Section 1(1) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 provides the Secretary of State with the power to appoint the Registrar General for Births, Deaths and Marriages for Scotland.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CR	12-May-98	757

Details of Provisions

Paragraph 12 substitutes “Scottish Ministers” for Secretary of State in section 1(1) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965.

SCHEDULE 8, Paragraph 13: Pensions (Increase) Act 1971

Purpose and Effect

Paragraph 13 amends the Pensions (Increase) Act 1971 so as to ensure that any pensions payable to or in respect of Members of the Scottish Parliament (MSPs), Members of the Scottish Executive and the staff of the Scottish Parliamentary Corporate Body (SPCB) under pensions schemes established in accordance with section 81(4)(b) and paragraph 3(4)(b) of Schedule 2 of the Act will be increased in accordance with the provisions made in the 1971 Act. The effect of this is that the levels of pensions payable under such schemes would, like other official pensions, have to be increased annually in line with the Retail Price Index figure set out in an order by the Treasury.

General

Any pension schemes established by the Parliament or the Scottish Parliamentary Corporate Body (SPCB) providing pensions in respect of MSPs or Members of the Scottish Executive and the staff of the SPCB are in effect public service pensions and therefore ought to be increased in line with the provision made in relation to official pensions by the 1971 Act. This will provide for inflation-proofing of pensions and will help to ensure that whatever pension scheme the Parliament adopts should meet with the Inland Revenue’s tax approval rules. This does not, however, apply the 1971 Act to pensions payable under private arrangements. This will bring the pension provisions for MSPs, members of the Scottish Executive and the staff of the SPCB in line with what exists for Members of the Westminster Parliament, Members of the European Parliament and which is also proposed for Members of the Welsh Assembly.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CR	12-May-98	757

SCHEDULE 8, Paragraph 14: Superannuation Act 1972

Purpose and Effect

This paragraph amends section 1(6) of the Superannuation Act 1972. The 1972 Act makes provision for the Principal Civil Service Pension Scheme (PCSPS) and those bodies entitled to be admitted to the Scheme are listed in Schedule 1 of the 1972 Act. However, section 1(6) of the 1972 Act currently provides that no employment or office can be added to the schedule unless the persons employed are remunerated from

the Consolidated Fund. This amendment adds the Scottish Consolidated Fund to the criteria.

General

Paragraph 3(3) of Schedule 2 to the Act makes provision for the SPCB to determine the terms and conditions of staff of the Parliament including the arrangements for the payment of pensions. The SPCB can establish and administer one or more pension schemes.

One option open to the SPCB might be to arrange admittance for the staff of the Parliament to the Principal Civil Service Pension Scheme (PCSPS) under the 1972 Act. It is a matter for the Minister of the Civil Service to decide whether or not any employment or office should be admitted. Those eligible are listed in Schedule 1 of the Superannuation Act 1972 and the Minister of the Civil Service can under section 1(6) of the 1972 Act add or remove employment to this list. However, no employment should be added unless the remuneration of persons in that employment is paid for out of funds provided by Parliament or the Consolidated Fund.

The amendment to section 1(6) to enable the Minister to add to Schedule 1 persons remunerated out of the Scottish Consolidated Fund facilitates the admittance of the staff of the Parliament and any other employees who may be remunerated out of the SCF.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LR	3-Nov-98	253

SCHEDULE 8, Paragraph 15: European Communities Act 1972

Purpose and Effect

This paragraph makes various modifications to the European Communities Act 1972.

General

This provision is one of a number dealing with the relations between the Scottish Parliament and Executive and the European Union. Schedule 5 provides that international relations including those with the European Communities (and their institutions) are to be reserved to the UK Parliament and Government. But the Scottish Parliament and Executive are responsible for observing and implementing obligations under Community law in relation to devolved matters.

Section 29 provides that it is *ultra vires* for the Scottish Parliament to legislate in a way that is incompatible with Community law. Section 53 transfers to the Scottish Ministers any functions of Ministers of the Crown of observing and implementing Community Law in relation to devolved matters in or as regards Scotland. Section 57(1) provides that, notwithstanding that transfer, Ministers of the Crown shall continue to be able to exercise those functions as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972. Section 57(2) provides that it is *ultra vires* for the Scottish Executive to make subordinate legislation or otherwise to act in any way which is incompatible with Community law.

Details of Provisions

The European Communities Act 1972 is not reserved but certain sections of the Act are entrenched by paragraph 2 of Schedule 4.

The effect of section 53 is that Scottish Ministers are able to exercise the powers under section 2(2) of the 1972 Act to make regulations for the purpose of implementing any Community obligation in relation to devolved matters and as regards Scotland.

Paragraph 15 of Schedule 8 makes certain necessary amendments to the 1972 Act.

Paragraph 15(1) states that the European Communities Act shall be amended.

Paragraph 15(2) provides that in section 2 of the 1972 Act (general implementation of Treaties), references to a statutory power or duty include a power or duty conferred by an Act of the Scottish Parliament (or an instrument made under such an Act); and references to an enactment include an enactment within the meaning of the Scotland Act.

Paragraph 15(3) makes provisions about regulations made by the Scottish Ministers, or an Order in Council made on the recommendation of the First Minister, under section 2 of the 1972 Act.

Paragraph 15(3)(a) provides that the Scottish Ministers do not require to be “designated” in order to make regulations under section 2(2) of the 1972 Act. Section 2(2) of the 1972 Act provides that a “designated” Minister may make regulations for the purpose of implementing any Community obligation, or enabling any such obligation to be implemented. Section 2(2) further provides that any “designated Minister” means such Minister of the Crown as may from time to time be designated by Order in Council. The amendment removes the need for Scottish Ministers to be designated by Order in Council before they can exercise the powers under section 2(2) to make regulations to give effect to Community obligations for Scotland.

Paragraphs 15(3)(b) and (c) make further minor amendments in relation to such regulations or Orders in Council made under section 2. Paragraph 15(3)(b) provides that references to an Act of Parliament shall be read as referring to an Act of the Scottish Parliament. Paragraph 15(3)(c) provides that paragraph 2(2) of Schedule 2 (which makes provision about the parliamentary procedure for statutory instruments made under section 2(2)) shall have effect as if the references to each, or either, House of Parliament were to the Scottish Parliament.

Paragraph 15(4) provides that in section 3(4), which relates to evidence, references to a government department include any part of the Scottish Administration.

SCHEDULE 8, Paragraph 16: Interpretation Act 1978

Purpose and Effect

The Interpretation Act 1978 is concerned with the construction and operation of Acts of Parliament and subordinate legislation. This provision amends the Interpretation Act 1978 to regulate the relationship between an Act of the Scottish Parliament and an Act of the UK Parliament where either one operates on the other.

General

This amendment provides a new section 23A for the Interpretation Act 1978 which will provide for the interpretation of Westminster legislation in connection with Acts of the Scottish Parliament. It deals with those sections of the 1978 Act which contemplate one Act operating on another Act. They make provision about references to Acts of the Scottish Parliament in Acts of the UK Parliament and UK statutory instruments and about regulating certain effects of an Act of the Scottish Parliament which repeals or consolidates an Act of the UK Parliament, and vice versa.

In addition, the amendment inserts new definitions in Schedule 1 to the Act to provide that the terms “Act” and “Enactment” will not include Acts of the Scottish Parliament or instruments made under an ASP. This has the effect of providing a general rule, as a

starting point, that in future Westminster legislation, references to Acts and enactments will not include ASPs and instruments under ASPs.

The Scottish Parliament is able to make its own legislative provision about the construction and operation of Acts of the Scottish Parliament and statutory instruments made under such Acts. Provision is made for these matters in the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (S.I. 1999/1379) until the Scottish Parliament does so.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LR	3-Nov-98	253

Details of Provisions

Paragraph 16(1) states that the Interpretation Act 1978 shall be amended.

Paragraph 16(2) inserts new sections after section 23 of the Interpretation Act.

New section 23A(2) and (3) provide that, in certain sections of the Interpretation Act 1978, “Act” includes an Act of the Scottish Parliament. These are sections 15 to 17 (repealing enactments) and section 18 (duplicated offences). The amendment will mean that the provisions in sections 15 (repeal of repeals), 16 (general savings) and 17 (repeal and re-enactment) apply both where a UK Act repeals a previous enactment and where an Act of the Scottish Parliament repeals a previous UK enactment. The subsections also provide that “Act” in section 18 (duplicated offences) includes an Act of the Scottish Parliament. This is to prevent an offender being liable to be punished under both an Act of the UK Parliament and an Act of the Scottish Parliament.

New section 23A(4) provides for the application of section 20, which makes provision about how an Act of the UK Parliament or a UK statutory instrument may describe or refer to another enactment. The amendment will provide that in section 20 a reference to an “enactment” includes an enactment comprised in an Act of the Scottish Parliament.

Paragraph 16(3) amends Schedule 1 of the 1978 Act to provide definitions of “Act” and “enactment” which will apply to future Acts of Parliament. These definitions exclude Acts of the Scottish Parliament and instruments made under them. This will ensure that future references in Westminster legislation to “Act” or “enactment” do not inadvertently include Scottish legislation.

SCHEDULE 8, Paragraph 17: Education (Scotland) Act 1980

Purpose and Effect

Paragraph 17 amends the Education (Scotland) Act 1980 by removing the Secretary of State’s function to make recommendations to Her Majesty with regard to the appointment of Her Majesty’s Inspectors of Schools.

General

Section 135(1) of the Education (Scotland) Act 1980 defines “Her Majesty’s inspectors” as the inspectors of schools appointed by Her Majesty on the recommendation of the Secretary of State. Paragraph 17 removes the reference to the recommendation to the Secretary of State. These recommendations are to be made by the First Minister.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CR	12-May-98	757

Details of Provisions

Paragraph 17 amends section 135(1) of the Education (Scotland) Act 1980 by removing the words which provide for the Secretary of State to make recommendation to Her Majesty in relation to the appointment of Schools Inspectors.

SCHEDULE 8, Paragraph 17: Civil Jurisdiction and Judgments Act 1982

Purpose and Effect

This paragraph amends section 46 of the Civil Jurisdiction and Judgements Act 1982, which makes provision about the domicile and seat of the Crown for the purposes of the 1982 Act. The amendment to subsection (3) provides that the Crown in right of the Scottish Administration has its seat in, and in every place in, Scotland. (See note on paragraph 7 of Schedule 8 for discussion of the Crown in right of the Scottish Administration).

Subsection (7) provides that nothing in section 46 applies to the Crown otherwise than in right of Her Majesty's Government in the United Kingdom or Her Majesty's Government in Northern Ireland. This is amended to insert a reference to the Scottish Administration.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	8-Oct-98	649

SCHEDULE 8, Paragraph 19: Mental Health Act 1983

Purpose and Effect

This paragraph amends section 141 of the Mental Health Act 1983 for the purposes of ensuring that the Presiding Officer is informed when a member of the Parliament is detained on grounds of mental illness in the same way that the Speaker of the House of Commons is notified when a Member of Parliament is detained. It also enables the Presiding Officer to have the member examined independently by medical practitioners in the same way that the Speaker can provide for such examination of an MP. It also provides that the member's seat is vacated if he is still detained after 6 months.

General

Section 141 of the Mental Health Act makes provision for the Speaker of the UK Parliament to be informed if a member of the House of Commons is authorised to be detained on grounds of mental illness. Where the Speaker receives such a notification, or is notified by two MPs that they are credibly informed that such an authorisation has been made, the Speaker can have the member examined by 2 registered medical practitioners appointed by the Royal College of Psychiatrists. If they report that he is suffering from mental illness and is authorised to be detained, the Speaker is to have him examined again after six months. If after the second examination the position has not changed, the Speaker must lay both medical reports before the House of Commons and the member's seat then becomes vacant. This amendment provides for the same

procedures to apply to members of the Scottish Parliament detained on grounds of mental illness for the purposes of determining when their seat should become vacant.

Section 17(4) makes further provision in relation to an MSP to whom section 141 as amended applies. In particular it provides that he may not take part in the proceedings of the Parliament while he is disqualified, even though his seat is not yet vacated.

Details of Provisions

Paragraph 19 adds a new subsection (8) to section 141 of the Mental Health Act 1983 so as to apply its provisions (as described above) with appropriate modifications to Members of the Scottish Parliament in the same way that it applies to Westminster MPs. The section will then provide for the Presiding Officer of the Scottish Parliament to be informed when any Member of the Scottish Parliament is authorised to be detained on grounds of mental illness, and for the member's seat to be vacated in accordance with section 141.

The Presiding Officer may be informed of a member's detention by the court, authority or person on whose order or application the detention was authorised, or by any registered medical practitioners who recommended detention, or by the person in charge of the establishment where the MSP is authorised to be detained. Two members of the Scottish Parliament may also notify the Presiding Officer that they are credibly informed that such an authorisation has been given notification of a detention the Presiding Officer must have the member examined by two registered medical practitioners appointed by the President of the Royal College of Psychiatrists. A report is then made to the Presiding Officer. A second such report is made after a period of six months from the first report (if the Parliament is sitting: if not as soon as possible thereafter).

If the second report confirms that the member is suffering from mental illness and is still detained the Presiding Officer will lay both reports before the Parliament and the seat of the MSP shall become vacant.

The fees and expenses incurred by medical practitioners in examining the member on behalf of the Scottish Parliament should be paid out of the Scottish Consolidated Fund.

SCHEDULE 8, Paragraph 20: National Audit Act 1983

Purpose and Effect

Paragraph 20 amends the National Audit Act 1983 so as to ensure that the powers of the UK Comptroller and Auditor General under sections 6 and 7 do not apply in relation to the Scottish Administration or any Scottish public authority with mixed functions or no reserved functions.

General

At present the Comptroller and Auditor General has powers under sections 6 and 7 of the National Audit Act 1983 to carry out examinations into the economy, efficiency and effectiveness with which certain public authorities and bodies have used their resources in discharging their functions. These are commonly known as value for money studies. These apply in relation to government departments and other authorities and bodies including any authority or body, whose members are appointed by or on behalf of the Crown, and which has received more than half its income from public funds. It could therefore apply to the Scottish Administration and a wide range of bodies with functions in relation to devolved matters. However it is intended that they should instead be subject to such provision as to value for money studies as the Scottish Parliament makes under section 70(1)(c) and (2)(c) and (d). Those require the Parliament to make provision for independent persons to carry out value for money studies in relation to the Scottish Ministers, the Lord Advocate and other persons who receive funds from the Scottish Consolidated Fund or from the Scottish Ministers. Therefore this section

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

ensures that they are not also subject to the UK Comptroller and Auditor General's examinations under sections 6 and 7 of the 1983 Act.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LR	3-Nov-98	258

Details of Provisions

Paragraph 20 disapplies the provisions of sections 6 and 7 of the National Audit Act 1983 as described above in relation to:

the Scottish Administration; and

any Scottish public authority with mixed functions or no reserved functions.

Persons with functions relating solely to reserved matters will still be subject to sections 6 and 7.

SCHEDULE 8, Paragraph 21: Tourism (Overseas Promotion) (Scotland) Act 1984

Purpose and Effect

This paragraph deletes the requirement in section 1(2) of the Tourism (Overseas Promotion) (Scotland) Act 1984 for the Scottish Tourist Board to obtain the consent of the Secretary of State before carrying out overseas marketing activities and for the Secretary of State to consult the British Tourist Authority before giving or withholding such consent.

General

The Scottish Tourist Board (STB) has responsibility for developing tourism in Scotland. Section 1(1) of the 1984 Act provides the power for STB to market Scotland overseas. However, the British Tourist Authority (BTA) also has responsibility, under the Development of Tourism Act 1969, for marketing Scotland overseas. The STB powers are used to supplement BTA activity. Because of this secondary nature of STB's overseas marketing, section 1(2) of the 1984 Act requires the Secretary of State's consent to STB's marketing proposals, following consultation with the BTA.

Following devolution, legislative and executive powers for tourism rests with the Scottish Parliament and Executive. Overseas marketing is simply one of a number of STB activities for which the Board will be accountable to the Scottish Ministers and through them to the Scottish Parliament. The requirement for consultation with the BTA is incompatible with this position. The requirement to obtain the consent of the Secretary of State, which would also have passed to Scottish Ministers, is unnecessary. Such consent is not required for any other STB activity and is removed.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	8-Oct-98	651

SCHEDULE 8, Paragraph 22: Bankruptcy (Scotland) Act 1985

Purpose and Effect

This paragraph provides that the Accountant in Bankruptcy is to be appointed by the Scottish Ministers. It further provides that the Scottish Ministers may appoint a member of staff to be his Depute and to exercise all his statutory functions when he is unable to do so. It replaces existing provision for the Secretary of State to appoint the Accountant in Bankruptcy and his staff on such terms and conditions, and to pay such remuneration and allowances as he determines, with the approval of the Treasury. This existing provision also provides for the Secretary of State to appoint a member of staff to be Depute Accountant in Bankruptcy. Powers to appoint staff are effectively replaced by section 51.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CR	12-May-98	757

Details of Provisions

Paragraph 22 replaces section 1 of the Bankruptcy (Scotland) Act 1985 (as amended by the Bankruptcy (Scotland) Act 1993) with:

- “1(1) The Accountant in Bankruptcy shall be appointed by the Scottish Ministers
- (2) The Scottish Ministers may appoint a member of the staff of the Accountant in Bankruptcy to be Depute Accountant in Bankruptcy to exercise all of the functions of the Accountant in Bankruptcy at any time when the Accountant in Bankruptcy is unable to do so”.

SCHEDULE 8, Paragraph 23: Insolvency Act 1986

Purpose and Effect

This paragraph amends the Insolvency Act 1986 so that certain functions of and in relation to the Registrar of Companies in Scotland and the Assistant Registrar of Friendly Societies for Scotland are transferred to the Accountant in Bankruptcy, or are to be performed also by him.

This paragraph also amends the 1986 Act to apply the requirements of section 427(4) to (6) (which require a court to notify a bankruptcy adjudication or award of sequestration of a member of Parliament to the Speaker) to members of the Scottish Parliament.

General

The Registrar of Companies in Scotland is appointed by the Secretary of State for Trade and Industry. The Assistant Registrar of Friendly Societies for Scotland is appointed by the Treasury. The bulk of the functions of these two office-holders relate to the reserved matters of business associations and financial services, but some are concerned with the registration of documents which relate to the process of the winding-up of business associations or the receivership of such associations - matters which are excepted from the reservation.

To create a divide between the reserved and devolved aspects of insolvency, the devolved functions of the Registrar and the Assistant Registrar were therefore to be transferred to a office-holder within the Scottish Administration, the Accountant in Bankruptcy, who following devolution is to be appointed and funded by the Scottish Ministers. This is achieved by the present amendments, and by consequential

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

amendments made by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820).

The Accountant is already responsible for maintaining a register of the insolvency of individuals, partnerships, unincorporated bodies and certain bodies corporate, but not companies and other business associations.

Although the provisions require insolvency practitioners to submit forms to 2 officials in certain circumstances, any additional bureaucratic burden can be lessened by making the relevant forms identical, through administrative arrangements.

Section 427(1) of the 1986 Act provides that where a bankruptcy adjudication or award of sequestration is made against any person, he is disqualified from sitting and voting in the House of Commons. Section 427(4) provides that where a member of the House of Commons continues to be disqualified until the end of the 6 month period beginning with the day of adjudication or award, then his seat shall be vacated at the end of that period. By virtue of section 15(1)(b) of this Act, he would also thereby become disqualified for membership of the Scottish Parliament. It is therefore considered appropriate that notification should also be given to the Presiding Officer of the Scottish Parliament in respect of the bankruptcy or sequestration of any MSP. Section 427(5) of the Insolvency Act 1986 provides that a court must notify the Speaker of the House of Commons if a member is adjudged bankrupt or if an award of sequestration is made in respect of such a member.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LR	3-Nov-98	258

Details of Provisions

Paragraph 23(6) inserts a new section 427(6A), the effect of which is to apply section 427(4) to (6) in relation to a member of the Scottish Parliament so as to ensure that if a court adjudges that an MSP is bankrupt or awards sequestration of an MSP's estate the Presiding Officer must be notified and his seat will be vacated in accordance with section 427(4).

In the period before his seat is vacated, section 17(4) provides that the MSP may not take part in the proceedings of the Parliament and gives the Parliament the power to withdraw his rights and privileges.

SCHEDULE 8, Paragraph 24: Public Order Act 1986

Purpose and Effect

Part III of the Public Order Act 1986 creates certain offences in relation to the stirring up of racial hatred. Section 26(1) of the Act provides that nothing in Part III applies to a fair and accurate report of proceedings in Parliament. Paragraph 20 of the Act amends section 26(1) so that Part III does not apply to such a report of proceedings in the Scottish Parliament.

General

This amendment relates to reports of the proceedings of the Parliament. Section 21(1) provides that the proceedings shall be regulated by standing orders. Schedule 3, paragraph 1(1) provides that the standing orders shall include provision for preserving order in the proceedings of the Parliament, including provision for preventing conduct which would constitute a criminal offence.

Details of Provisions

This provision inserts in section 26(1) of the Public Order Act 1986 after the reference to proceedings in Parliament a reference to proceedings in the Scottish Parliament.

SCHEDULE 8, *Paragraph 25: Copyright, Designs and Patents Act 1988*

Purpose and Effect

Part I of the Copyright, Designs and Patents Act 1988 sets out the law relating to copyright. Amendments to the 1988 Act are required to make provision about copyright in Bills and Acts of the Scottish Parliament and about copying for the purposes of proceedings of the Parliament.

General

Her Majesty is entitled to copyright in every Act of the Scottish Parliament and copyright in every Bill introduced into the Scottish Parliament belongs to the Scottish Parliamentary Corporate Body.

The provisions of section 45 of the 1988 Act which provides that copyright is not infringed by anything done for the purposes of parliamentary proceedings apply to the Scottish Parliament.

In regard to Scottish parliamentary copyright, which for Westminster is dealt with in section 165 of the 1988 Act which applies to work made by or under the direction or control of the House of Commons or the House of Lords, provision was made under section 165(7) of the 1988 Act which permits an Order in Council to apply that section, with exceptions or modifications, to works of any other legislative body of a country to which the Act extends. This was done in making the Parliamentary Copyright (Scottish Parliament) Order 1999 ([S.I. 1999/676](#)).

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LR	3-Nov-98	260

Details of Provisions

Paragraph 25(1) states that the Copyright, Designs and Patents Act 1988 shall be amended.

Paragraph 25(2) provides for a reference to ‘section 166A’ in place of a reference to section 166 in section 12(9) of the Act. Section 12 of the 1988 Act deals with the duration of copyright. A new section 12 was inserted by the Duration of Copyright and Rights in Performances Regulations 1995 ([S.I. 1995/3297](#)) which came into force on 1 January 1996. Subsection (9) of section 12 provides that the section does not apply to Crown copyright or Parliamentary copyright and refers to sections 163 to 166. By virtue of this amendment, the reference will instead be to sections 163 to 166A.

Paragraph 25(3) provides for a reference to “section 166A” in place of a reference to section 166 in section 153(2) of the Act. Section 153 of the 1988 Act deals with qualification for copyright protection but subsection (2) provides that subsection (1) does not apply in relation to Crown copyright or Parliamentary copyright. Again there is a reference to sections 163 to 166 which by virtue of this amendment will instead be to sections 163 to 166A.

Paragraph 25(4) provides for a reference to “to 166A” in place of a reference to “and 166” in section 163(6) of the Act. Section 163 of the 1988 Act deals with Crown copyright and subsection (6) provides that the section does not apply to a work if, or to

the extent that, Parliamentary copyright subsists in the work. Again there is a reference to sections 165 and 166 which by virtue of this amendment will instead be to sections 165 to 166A.

Paragraph 25(5) provides for the insertion of a reference to Acts of the Scottish Parliament in relation to Crown copyright in section 164(1) of the Act. This means that Her Majesty is entitled to copyright in every Act of the Scottish Parliament as well as every Act of Parliament.

Paragraph 25(6) provides for the insertion after section 166 of a new section 166A which makes provision about copyright in Bills of the Scottish Parliament. Subsections (1) and (2) of subsection 166A provide that copyright in every Bill introduced to the Scottish Parliament belongs to the Scottish Parliamentary Corporate Body. That copyright subsists from the time when the text of the Bill is handed into the Parliament for introduction until the Bill receives Royal Assent or, if the Bill does not receive Royal Assent, until it is withdrawn or rejected or no further Parliamentary proceedings may be taken in respect of it. Subsection (3) of section 166A provides that references in Part I (copyright) of the 1988 Act to Parliamentary copyright include copyright under section 166A (except in section 165 which makes provision about work made by or under the direction or control of the House of Commons or the House of Lords). Subsection (4) of section 166A provides that no other copyright or right in the nature of copyright subsists in a Bill after copyright has subsisted under section 166A but without prejudice to the subsequent operation of that section in relation to a Bill which, not having received Royal Assent, is later re-introduced into the Parliament.

Paragraph 25(7) provides for the insertion of a reference to “the Scottish Parliament” in the definition of “Parliamentary proceedings” in section 178. This will mean that “parliamentary proceedings” in the 1988 Act includes proceedings of the Scottish Parliament. So for example the provisions of section 45 of the 1988 Act (parliamentary and judicial proceedings) apply to proceedings of the Scottish Parliament. That section provides that copyright is not infringed by anything done for the purposes of parliamentary or judicial proceedings nor by anything done for the purposes of reporting such proceedings. The paragraph also amends the definition of “the Crown” in section 178 so that it includes the Crown in right of the Scottish Administration.

Paragraph 21(8) provides for the insertion of a reference to “section 166(6) and 166A(3)” in place of the reference to “section 166(6)” in section 179 of the Act (Index of defined expressions). This is to indicate that the meaning of “Parliamentary copyright” is to be found in 166A(3) as well as in the other sections of the Act already mentioned in that entry.

SCHEDULE 8, Paragraph 26: Official Secrets Act 1989

Purpose and Effect

This amendment provides that members of the Scottish Executive and junior Scottish Ministers are to be Crown servants for the purposes of the Official Secrets Act 1989. It also provides that people providing goods or services for the purpose of office holders of the Scottish Administration are government contractors for the purposes of the 1989 Act.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	8-Oct-98	652

Details of Provisions

The Official Secrets Act 1989 makes it an offence in certain circumstances, for a person who is or has been a Crown servant or a government contractor within the meaning of that Act, to disclose without lawful authority information which relates to: security and intelligence, defence; international relations; or crime and special investigation. A disclosure by a Crown servant is made with lawful authority if it is made in accordance with his official duty. A disclosure by a government contractor is made with lawful authority if it is made in accordance with an official authorisation or without contravening an official restriction. Again “official authorisation” and “official restriction” are defined in the Act.

Section 12(1) of the Official Secrets Act 1989 defines what is meant by Crown Servant for the purposes of the 1989 Act. The definition covers Ministers of the Crown and anyone employed in the civil service of the Crown, as well as members of the military forces, the police or holders of prescribed offices and members and employees of prescribed bodies. The amendment will extend the definition to cover members of the Scottish Executive and junior Scottish Ministers. This amendment is required because otherwise offences created by the 1989 Act would not catch members of the Scottish Executive but it would catch their staff by virtue of section 12(1)(c). It will ensure that the Scottish Ministers are able to receive and if necessary authorise disclosure of information covered by the 1989 Act and puts them in the same position as Ministers in the UK government.

Section 12(2) defines what is meant by a government contractor. The definition includes any person who is not a Crown servant but who provides goods or services for the purposes of any Minister or of the civil service, armed forces etc. The amendment makes clear that the definition of Government contractor includes anyone who provides goods and services for the purposes of any office-holder in the Scottish Administration.

The order-making power in section 12 has also been executively devolved to the Scottish Ministers by [S.I. 1999/1750](#).

SCHEDULE 8, Paragraph 27: Prisons (Scotland) Act 1989

Purpose and Effect

Paragraph 27 amends the Prisons (Scotland) Act 1989 to remove or amend specific provisions for appointment of staff in relation to prisons. These powers of appointment are no longer required as a consequence of the provision in section 51 for the Scottish Ministers to appoint persons to be members of the staff of the Scottish Administration.

Details of Provisions

Paragraph 27(1) provides that the Prisons (Scotland) Act 1989 is to be amended.

Paragraph 27(2) repeals section 2 of the 1989 Act, which provides for the employment and payment of such inspectors and other officers and servants as the Secretary of State with the sanction of the Treasury as to number, may appoint.

Paragraph 27(3) removes provision in section 3(1) of the 1989 Act for the Secretary of State to appoint the governors and other officers of prisons. This is replaced by a requirement for every prison to have a governor and such other officers as may be necessary.

Section 3A of the 1989 Act requires the Secretary of State to secure the provision of appropriate medical services within prisons, and provides that he may perform this duty by appointing for a prison one or more medical officers. Paragraph 27(4) replaces the power in section 3A(2) for the Secretary of State to appoint medical officers with a power to provide medical officers. A consequential amendment is also made to section 3A(4).

SCHEDULE 8, Paragraph 28: European Communities (Amendment) Act 1993

Purpose and Effect

This paragraph amends section 6 of the European Communities (Amendment) Act 1993 to provide that a person may be proposed as a member for the UK of the Committee of the Regions if he or she is a member of the Scottish Parliament.

General

This section forms part of the set of sections and Schedules dealing with the relations between the Scottish Parliament and Executive and the European Union. Schedule 5 provides that relations with the European Communities (and their institutions) are to be reserved to the UK Parliament and Government. But the Scottish Parliament and Executive are responsible for observing and implementing obligations under Community law in relation to devolved matters.

Details of Provisions

Section 6 of the European Communities (Amendment) Act 1993 provides that a person may be proposed as a member or alternate member for the UK of the Committee of the Regions constituted under Article 198a of the Treaty establishing the European Community only if, at the time of the proposal, he is an elected member of a local authority.

This paragraph provides that in section 6 a reference to a member of the Scottish Parliament is inserted before the reference to an elected member of a local authority. The purpose of the amendment is to provide that a person may also be proposed as a member or alternate member of the Committee of the Regions if he or she is a member of the Scottish Parliament.

SCHEDULE 8, Paragraph 29: Scottish Land Court Act 1993

Purpose and Effect

This paragraph amends the Scottish Land Court Act 1993 to provide that it is for the First Minister to make recommendations to The Queen on the appointment of members of the Scottish Land Court and adds a new subsection requiring the First Minister to consult the Lord President of the Court of Session before recommending a person as Chairman of the Scottish Land Court.

General

The Scottish Land Court Act 1993 consolidates certain enactments relating to the constitution and proceedings of the Scottish Land Court. Section 1(2) of the 1993 Act provides for the appointment and number of members of the Court and for the appointment of the Chairman.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CR	12-May-98	757

Details of Provisions

Paragraph 29 provides that in section 1 of the Scottish Land Court Act 1993 (the Scottish Land Court):

- (a) in subsection (2), for Secretary of State there is substituted “First Minister”, and

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

(b) after subsection (2) there is inserted:

“(2A) Before recommending the appointment of a person as Chairman, the First Minister shall consult the Lord President of the Court of Session.”

Paragraph 29(a) provides that the First Minister will take over from the Secretary of State the function of recommending to Her Majesty persons for the appointment as members of the Scottish Land Court and paragraph 29(b) requires him to consult the Lord President before recommending a person for appointment as Chairman of the Scottish Land Court.

SCHEDULE 8, Paragraph 30: Value Added Tax Act 1994

Purpose and Effect

To secure that the Scottish Administration is treated in the same way as a government department for VAT purposes.

General

Special rules under section 41 of the Value Added Tax Act 1994 apply to the treatment of supplies of goods and services by and to government departments for VAT purposes. In particular the section allows the Treasury to direct that VAT should be charged on any goods or services provided by a government department even though the supply of those goods or services does not amount to the carrying on of a business. It also enables refunds of VAT to be made, subject to Treasury directions, to government departments in respect of goods or services supplied to it for non-business purposes. The most significant of these is the ability of departments to reclaim VAT they pay on contracted-out services. The section will apply these rules to the Scottish Administration, in the same way that they apply to government departments and will ensure continuation of the same treatment for VAT purposes in relation to functions that are transferred to the Scottish Administration.

Details of Provisions

The definition of “government department” in section 41(6) of the Value Added Tax Act 1994 is extended to include the Scottish Administration. The Scottish Administration is defined in section 126.

SCHEDULE 8, Paragraph 31: Requirements of Writing (Scotland) Act 1995

Purpose and Effect

This paragraph makes amendments to the Requirements of Writing (Scotland) Act 1995 so as to apply the provisions of that Act to the execution of documents for the purposes of Scots law by a member of the Scottish Executive in the same way as they apply to the execution of documents by Ministers of the Crown.

General

The Requirements of Writing (Scotland) Act 1995 makes provision with regard to the execution of documents and their formal validity for the purposes of Scots law.

Paragraph 31 amends section 12(1) of the 1995 Act (interpretation) to extend the definition of “Minister” to include a member of the Scottish Executive and the definition of “officer” to include a member of staff of the Scottish Ministers or the Lord Advocate. Section 55(4) provides that a document is validly executed by the Scottish Ministers if it is executed by any member of the Scottish Executive.

Details of Provisions

Paragraph 31 provides that in section 12(1) of the Requirements of Writing (Scotland) Act 1995 (interpretation):

- (a) in the definition of “Minister” after “1975” there is inserted “and also includes a member of the Scottish Executive”, and
- (b) in paragraph (a) of the definition of “officer”, after “Department” there is inserted “or, as the case may be, as a member of staff of the Scottish Ministers or Lord Advocate.”

Schedule 2 of the 1995 Act contains special rules relating to the execution of documents by Ministers, amongst others. Paragraph 6 of that Schedule provides that, except where an enactment expressly provides otherwise, where a grantor of a document is a Minister the document is signed by the Minister if it is signed by him personally, or, in a case where by virtue of any enactment or rule of law a document by a Minister may be signed by an officer of his or by any other Minister, it is signed by that officer or by that other Minister as the case may be. It also provides that, for the purposes of signing a document under that paragraph, a person of the signing of a document under that paragraph, a person purporting to sign as an officer of a Minister or as another Minister shall be presumed to be the officer or other Minister as the case may be. It is expected that the *Carltona* doctrine will apply in relation to the members of the Scottish Executive as it applies to Ministers of the Crown so that any member of staff appointed by the Scottish Minister can, amongst other things, execute documents which the Scottish Minister could execute. This amendment ensures that the provisions of the 1995 Act apply to the execution of documents by a member of the Scottish Executive in the same way as they apply to the execution of documents by a Minister.

SCHEDULE 8, Paragraph 32: Criminal Procedure (Scotland) Act 1995

Purpose and Effect

This paragraph inserts a new section 288A into the Criminal Procedure (Scotland) Act 1995 to enable the Advocate General for Scotland to refer a devolution issue which may arise in criminal proceedings to the High Court of Justiciary for their opinion.

The paragraph also inserts a new section 288B into the 1995 Act. The new section makes provision for the implementation by the High Court of Justiciary of any determination by the Judicial Committee of the Privy Council following an appeal on a devolution issue from the High Court.

General

The procedures for dealing with devolution issues in Schedule 6 have implications for civil and criminal proceedings in Scotland. Where a devolution issue arises in the course of proceedings, under the provisions of paragraphs 5 and 6 of Part I of Schedule 6 to the Act the Advocate General is required to be given an opportunity of taking part in the proceedings but only so far as they relate to the devolution issue.

The Advocate General has no existing rights of appeal. In the context of criminal proceedings, the provision made by this amendment is necessary to give the Advocate General for Scotland the right to appeal against the determination of a trial judge upon a devolution issue. So far as the accused is concerned, where he is convicted, he can simply appeal against conviction or sentence in terms of sections 106 or 175 of the Criminal Procedure (Scotland) Act 1995. So far as the Lord Advocate is concerned, if the devolution issue has arisen in solemn proceedings, as the devolution issue will be a point of law, the Lord Advocate will be able to refer the issue to the High Court for their opinion under section 123 of the 1995 Act whether the accused has been acquitted or convicted. If the devolution issue has arisen in summary proceedings, under section 175(3) of the 1995 Act the Lord Advocate will be able to appeal to

the High Court on a point of law against an acquittal or against a sentence passed on conviction. In addition, he will be able to appeal by way of suspension under section 191 of the 1995 Act.

The provision made by new section 288A ensures that where the Advocate General wishes to appeal against the decision of the trial court on a devolution issue then, whether the accused is tried on indictment or summarily and whether he is acquitted or convicted, the Advocate General may make a reference to the High Court for their opinion on the devolution issue in a similar way to that in which the Lord Advocate can make a reference under section 123 of the 1995 Act. The new section is in similar terms to section 123 of the 1995 Act.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	8-Oct-98	653

Details of Provisions

Paragraph 27 inserts new sections 288A and 288B into the 1995 Act. Subsection 288A(1) and 288A(2) provide that where the Advocate General has been a party to criminal proceedings in Scotland during which a devolution issue has been raised, she may refer that issue to the High Court after the criminal proceedings have concluded. Subsection 288A(2) also provides that notice of the appeal and the date of the hearing must be notified to the person acquitted or convicted in the case and his solicitor.

Subsection 288A (3) provides that the individual can elect to appear personally at the hearing or be represented by counsel.

Subsection 288A (4) provides that where the individual does not indicate that he will be represented then the court may appoint an *amicus curiae* (counsel to assist the court). This will help ensure that the relevant legal arguments are led before the court.

Subsection 288A(5) provides that counsel's costs will be paid by the Advocate General out of money provided by Parliament.

Subsection 288A(6) provides that the opinion of the court on the devolution issue shall not affect the acquittal or conviction.

Subsection 288A(7) makes it clear that "devolution issue" has the same meaning as in Schedule 6 to the Act. The meaning of "devolution issue" is set out in paragraphs 1 and 2 of Schedule 6.

Section 288B makes provision for the implementation by the High Court of Justiciary of any determination by the Judicial Committee of the Privy Council following an appeal on a devolution issue from the High Court. Under Schedule 6, paragraph 13 of the Bill, provision is made for an appeal against the determination of a devolution issue by the High Court of Justiciary to the Judicial Committee of the Privy Council. This deals with devolution issues raised in criminal proceedings.

The matter will be remitted to the High Court which is empowered to deal with the case as it would as if it were determining it as a fresh appeal. This would enable the High Court to decide in the light of the Judicial Committee's decision whether a conviction should be upheld or quashed and, if appropriate, a retrial ordered, and so on. The new section also makes it clear that the Judicial Committee's determination does not affect any earlier acquittal in the proceedings.

In the case of the criminal law the role of the Judicial Committee will be limited to determining devolution issues as a matter of law but it will be for the High Court to give

effect to the determination in a particular case. In order to do this it needs all the powers it would have when sitting as an appeal court and this is what the amendment provides.

In addition it ensures that where there has previously been an acquittal or a quashing of a conviction, these would not be affected by a Judicial Committee determination.

SCHEDULE 8, Paragraph 33: Defamation Act 1996

Purpose and Effect

This paragraph makes amendments to the Defamation Act 1996 which are consequential upon the establishment of the Scottish Parliament and the Scottish Executive to ensure that relevant provisions made by or under Acts of the Scottish Parliament and appointments made by members of the Scottish Executive are covered by the 1996 Act in the same way that equivalent provisions made by or under UK Acts or appointments by UK Ministers are covered.

General

The Defamation Act 1996 makes provision amending the law of defamation in each part of the United Kingdom. In particular sections 14 and 15 make provision as to the circumstances in which certain reports will enjoy absolute privilege and qualified privilege. These amendments ensure that the Act will apply taking account of provisions that may be made by or under Acts of the Scottish Parliament and appointments made by the Scottish Executive. It complements section 41 (Defamatory statements), paragraph 10 of Schedule 8 (Defamation Act 1952) and paragraph 11 of Schedule 8 (Defamation Act (Northern Ireland) 1955).

Details of Provisions

Paragraph 33(2) amends the definition in the 1996 Act of “statutory provision” for the purposes of the Act so that it includes provisions contained in an Act of the Scottish Parliament or in a Statutory Instrument made under any such Act. There are references in the 1996 Act to “statutory provision” in section 14(2) of the Act (reports of court proceedings absolutely privileged) and in paragraphs 11(c) to (e) and 13(2)(c) and (4)(b) of Schedule 1 which deal with statements which have qualified privileged under the Act subject to explanation or contradiction.

Paragraph 33(3) amends paragraph 11(1)(c) of Schedule 1 to the 1996 Act, which provides qualified privilege for certain reports of proceedings of a commission, tribunal, committee or person appointed for the purpose of any inquiry by Her Majesty or by a Minister of the Crown or a Northern Ireland Department, so that it also applies in relation to any such commission etc. appointed by a member of the Scottish Executive.

SCHEDULE 8, Paragraph 34: Damages Act 1996

Purpose and Effect

The Damages Act 1996 makes provision in relation to damages for personal injury, including provision for structured settlements. It also provides for Ministers of the Crown to guarantee payments for public sector settlements to be made by bodies which are designated in relation to their department by guidelines agreed between that department and the Treasury.

The amendment would enable the Scottish Ministers to designate bodies in relation to the Scottish Administration, without a requirement to follow guidelines agreed with the Treasury. Any liabilities arising from guarantees provided by the Scottish Ministers should fall on the Scottish Consolidated Fund.

General

The Damages Act 1996 makes provision in relation to damages for personal injury. This includes provision for structured settlements. A structured settlement is an agreement settling a claim or action for damages for personal injury on terms whereby:

- (a) the damages are to consist wholly or partly of periodical payments; and
- (b) (in effect) the person against whom a claim is made has purchased an annuity (or annuities) which would enable all or part of the sum to be paid in periodical payments by him (or his insurer).

The claimant (as the annuitant) would receive periodical payments for life, for a specified period or for a specified number of payments. A court may make an order awarding damages for personal injury which incorporates such terms.

Section 6 of the 1996 Act provides for guarantees for public sector settlements.

Where payments are to be made by a body in relation to which a Minister of the Crown has power to do so, under the provisions of section 6(2) the Minister of the Crown may guarantee the payments to be made under the agreement or court order.

Section 6(3) of the 1996 Act provides that bodies in relation to which a Minister may give such a guarantee are such bodies as are designated in relation to the relevant government department by guidelines agreed between that department and the Treasury.

The function of guaranteeing public sector settlements under section 6(2) of the 1996 Act will transfer to the Scottish Ministers under section 53 insofar as these guarantees concern designated Scottish public authorities with mixed functions or no reserved functions.

It is intended that the Scottish Ministers will designate the bodies and, since any liabilities arising from guarantees provided by the Scottish Ministers should fall on the Scottish Consolidated Fund, the requirement to agree guidelines for the designations with the Treasury is not considered necessary.

The amendment therefore makes it clear that it is for the Scottish Ministers to designate bodies without the requirement for Treasury consent.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	8-Oct-98	655

SCHEDULE 9: Repeals

Purpose and Effect

This Schedule lists the legislation which is repealed to the extent set out in the third column.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CR	19-May-98	754
LC	8-Oct-98	655
L3	9-Nov-98	612

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

Details of Provisions

Sheriff Courts and Legal Officers (Scotland) Act 1927. This repeal is related to paragraph 3 of Schedule 8;

Administration of Justice (Scotland) Act 1933. This repeal is related to paragraph 4 of Schedule 8;

House of Commons Disqualification Act 1975. This repeal is related to section 48(6);

Ministerial and other Salaries Act 1975. This repeal is related to section 48(6);

Education (Scotland) Act 1980. This repeal is related to paragraph 17 of Schedule 8;

Tourism (Overseas Promotion) (Scotland) Act 1984. This repeal is related to paragraph 21 of Schedule 8;

Parliamentary Constituencies Act 1986. This repeal is related to section 86(2); and

Prisons (Scotland) Act 1989. This repeal is related to paragraph 27 of Schedule 8.