

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

# SCOTLAND ACT 1998

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## EXPLANATORY NOTES

### COMMENTARY

#### **Part V: Miscellaneous and General**

**Section 101:** Interpretation of Acts of the Scottish Parliament

#### **Purpose and Effect**

This section makes provision for the interpretation of an Act or a Bill of the Scottish Parliament, or of subordinate legislation made, confirmed or approved or purporting to be made confirmed or approved by a member of the Scottish Executive. The purpose of the section is to enable the courts to give effect to such legislation, wherever possible, rather than to invalidate it. It is intended to ensure that the courts will not invalidate such legislation merely because it could be read in such a way as to make it outside competence, such as outside the legislative competence of the Parliament or the competence of Scottish Ministers. It provides that, in that case, such legislation is to be read as narrowly as is required for it to be considered to be within competence, if such a reading is possible.

#### **General**

This section is intended to assist the courts by providing a statutory interpretative rule when they are construing such Scottish legislation. Arguably, it does no more than replicate the normal common law rule of construction which the courts should apply when construing legislation which might be *ultra vires*, namely to seek, so far as it is possible to do so, to give effect to that legislation rather than invalidate it. This is sometimes called the principle of efficacy.

For example an ASP which purports to confer a power on the Scottish Ministers to hold a referendum on any matter could be read as enabling the Ministers to hold a referendum on independence or the Monarchy. Those are reserved matters and the ASP might therefore be read as relating to those reserved matters and therefore outside the legislative competence of the Parliament under section 29(2)(b). Rather than invalidating the ASP (or invalidating it to the extent that it could be so read), this section would require the ASP to be read, if it is possible to do so, as conferring a power to hold a referendum only on matters within the competence of the Parliament. However, if a provision clearly cannot be read to be within competence, for example an ASP providing only for a referendum on independence, then the section will not allow it to be read as being within competence.

The section also provides that the interpretative provision should apply to the interpretation of the provisions of a Bill before the Scottish Parliament as well as to those of an ASP. It will therefore apply in any case where the Judicial Committee of the Privy Council are considering any reference to them of a Bill or of a devolution issue in connection with an ASP.

There are other statutory interpretative rules which the courts are required to apply when construing such Scottish legislation. For example:

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- (a) section 2(4) of the European Communities Act 1972 would require such legislation to “be construed and have effect subject to the foregoing provisions of this section” - see the gloss on the meaning of enactment in that section by paragraph 15(2)(b) of Schedule 8 to the Scotland Act; and
- (b) section 3(1) of the Human Rights Act 1998 would require such legislation “so far as it is possible to do so, to be read and given effect in a way which is compatible with the Convention rights” because ASPs and instruments under ASPs are subordinate legislation for the purposes of that Act.

### **Parliamentary Consideration**

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LR	28-Oct-98	1952