

*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 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 deputies), “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

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salaries of sheriff clerk deutes appointed by the Secretary of State or of procurator fiscal deutes by the Lord Advocate.

Paragraph 3(4) provides that in section 3 (whole-time sheriff clerks and procurators fiscal and deutes), “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 deute) or the Lord Advocate (in the case of a procurator fiscal or a procurator fiscal deute) 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.