

*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 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.

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".

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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

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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 deposes), “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 deposes appointed by the Secretary of State or of procurator fiscal deposes by the Lord Advocate.

Paragraph 3(4) provides that in section 3 (whole-time sheriff clerks and procurators fiscal and deposes), “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

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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.

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.

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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.

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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.

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.

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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;
- (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.

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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

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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.

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

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 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

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

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 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

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

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

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

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.

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

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
- (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 granter 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 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.

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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 privilege 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

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