

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

SCOTLAND ACT 1998

EXPLANATORY NOTES

POWERS TO MAKE SUBORDINATE LEGISLATION

SECTION 126: Interpretation

Purpose and Effect

This section provides for the interpretation of various terms used in the Act.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	30-Mar-98	951
CC	31-Mar-98	1162
CR	12-May-98	197
CR	12-May-98	244
CR	19-May-98	754
CR	19-May-98	823
CR	19-May-98	824
LC	8-Oct-98	655
LC	8-Oct-98	656
LC	8-Oct-98	657
LR	28-Oct-98	1918
L3	9-Nov-98	545
L3	9-Nov-98	601
L3	9-Nov-98	602

Details of Provisions

Subsection (1) defines a number of terms used in the Act.

Subsection (2) enables Her Majesty by Order in Council to determine, or make provision for determining, for the purposes of the Act, any boundary between waters which are to be treated as internal waters or territorial sea of the United Kingdom, or sea within British fishery limits, adjacent to Scotland and those which are to be treated as adjacent to other parts of the United Kingdom.

Section 126 (1) defines:

- (a) “Scotland” as including “so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Scotland”; and

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- (b) “the Scottish zone” as meaning the sea within British fishery limits which is adjacent to Scotland. (The Scottish zone is used in the reservation of sea fishing in section C6 of Part II of Schedule 5.)

It is therefore necessary to distinguish clearly between those parts of the internal waters and territorial sea of the UK and of British fishery limits which are in future to be treated as part of Scotland for the purpose of matters devolved to the Scottish Parliament. Such a boundary will, for example, be required in the internal waters of the Solway Firth, in the territorial sea on the East Coast, and in the west, between Scotland and England (outside the Solway Firth), between Scotland and the Isle of Man and between Scotland and Northern Ireland and, in the British fishery limits around Rockall.

The matters being devolved to the Scottish Parliament which may be affected by such boundaries include: inshore fisheries management (including salmon fisheries in the Solway Firth); control of pollution from landward sources; regulation of possible inshore developments such as aquaculture or marine dredging; licensing deposits in the sea; and enforcement of criminal law. Offshore oil activities would not be affected, since such matters are reserved.

Further provision about the making of subordinate legislation is to be found in sections 112 to 115 and Schedule 7.

This power was exercised in making the Scottish Adjacent Waters Boundaries Order 1999 (S.I. 1999/1126).

Subsection (3) makes provision for determining various questions as to whether the functions of a body etc. relate to reserved matters.

Paragraph (a) provides that any question as to whether any function of a body, government department, office or office-holder relates to reserved matters is to be determined by reference to the purpose for which the function is exercisable. This purpose test echoes that which is included in section 29 (3). This ensures that a function of such a body is not deemed to relate to reserved matters merely because it incidentally affects reserved matters.

Paragraph (b) makes it clear that the bodies to which paragraph 3 of Part III of Schedule 5 applies (bodies or classes of bodies reserved by name in Schedule 5 plus the equal opportunities bodies etc.) are to be treated as if all their functions were functions which relate to reserved matters. This is to ensure that such bodies, even if they have functions which relate to devolved matters, do not fall to be treated as cross-border public authorities under section 88 or to be summonable by the Scottish Parliament under section 23. Such bodies are to remain accountable only to Whitehall and Westminster.

Subsection (4) defines what is meant by references in the Act to Scots private law - see section 29(4) and paragraph 2(3) of Schedule 4. It includes the general principles of private law (including private international law), the law of persons, the law of obligations, the law of property and the law of actions. The definition also includes judicial review of administrative action so that amendments to that law are also subject to the provisions of section 29(4).

Subsection (5) defines what is meant by references in the Act to Scots criminal law. It includes jurisdiction, criminal offences, evidence, procedure and penalties and the treatment of offenders.

Subsections (6) to (8) define the term “Scottish Administration” for the purposes of the Scotland Act and other enactments.

These subsections define references to the Scottish Administration as being to:

- (a) the office-holders in the Scottish Administration:
- (i) members of the Scottish Executive and junior Scottish Ministers; and

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(ii) holders of non-ministerial offices, as follows:

the Registrar General of Births, Deaths and Marriages for Scotland;

the Keeper of the Registers of Scotland;

the Keeper of the Records of Scotland; and

any other office of a description specified in an Order in Council; and

(b) the members of the staff of the Scottish Administration i.e. the staff of the persons referred to in (a). Those staff, together with the non-ministerial office holders, are all civil servants under section 51(2).

The power to make an Order in Council was exercised in the Scottish Administration (Offices) Order 1999 (S.I. 1999/1127).

Subsection (9) defines “Community law” for the purposes of the Act as:

(a) all those rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties; and

(b) all those remedies and procedures from time to time provided for by or under the Community Treaties.

The definition of Community law thus includes all rights, powers, liabilities, obligations and restrictions from time to time created or arising under the Community Treaties as defined by section 1(2) of the European Communities Act 1972, or as specified in an order under section 1(3) of that Act. It also includes international agreements to which the Communities are party and which form part the Community legal order.

Subsection (10) defines what is meant by references in the Act to “international obligations”. These include any international obligations of the United Kingdom other than obligations to observe and implement Community law or the Convention rights. “Convention rights” are defined in subsection (1) by reference to the Human Rights Act 1998.

Subsection (11) provides that the term “by virtue of” includes “by” and “under”.