

*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 5

Part II: Preliminary paragraphs

Head B - Home Affairs

Section B1: Misuse of Drugs

Purpose and Effect

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

General

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

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

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

Parliamentary Consideration

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

Details of Provisions

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

- (a) *the Misuse of Drugs Act 1971*, which makes provision with respect to dangerous or otherwise harmful drugs and related matters. In particular, it makes provision in relation

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to criminal offences in respect of the cultivation, possession, production, supply, import and export of “controlled drugs” (those controlled by the Act), the authorisation of certain activities in relation to such drugs, and confers certain special powers on the police in relation to such drugs. It also provides for the establishment of an Advisory Council on the Misuse of Drugs;

- (b) *Sections 12 to 14 of the Criminal Justice (International Co-operation) Act 1990*, which make it an offence to manufacture or supply certain substances knowing or suspecting that the substance is to be used in or for the unlawful production of a controlled drug; enable the Secretary of State to make regulations about Scheduled substances; and make it an offence to conceal, disguise, transfer, convert or remove from the jurisdiction the proceeds of drug trafficking for the purpose of avoiding, or assisting someone to avoid, prosecution for a drug trafficking offence or the making or enforcement of a confiscation order;
- (c) *Part V of the Criminal Law (Consolidation) (Scotland) Act 1995*, which confer powers of search and investigation and create offences in respect of drug trafficking, in particular making it an offence for a person to acquire, use or possess property knowing that it represents the proceeds of drug trafficking; and
- (d) *the Proceeds of Crime (Scotland) Act 1995*, so far as relating to drug trafficking. This Act makes general provision for the forfeiture of things used in the commission of crime and special provision for the confiscation of the proceeds of crime.

Executive devolution

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

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