

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

# SCOTLAND ACT 1998

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## EXPLANATORY NOTES

### SCHEDULES

#### Schedule 5

### Part II: Preliminary paragraphs

#### Head B - Home Affairs

#### *Section B8: National Security, Interception of Communications, Official Secrets and Terrorism*

#### Details of Provisions

The reserved matters are:

- (a) national security;
- (b) the interception of communications. This is now mainly covered by the Interception of Communications Act 1985. The 1985 Act sets out the circumstances in which communications (by post or by means of a public telecommunications system) may be intercepted and provides for the issue of warrants for such purposes. It also provides for the establishment of a tribunal to investigate whether interceptions have been conducted lawfully, and for the functions and appointment by the Prime Minister of a Commissioner to keep interception activity under review and to assist the tribunal. There is, however, excepted from this reservation:
  - (i) the subject-matter of Part III of the Police Act 1997 (authorisation to interfere with property etc.);
  - (ii) surveillance by the police not involving interference with property; and
  - (iii) the interception of certain communications made to or by a person detained at a place of detention such as a prison or hospital<sup>1</sup>. The types of communication which are not caught by the reservation are written communications intercepted at the place of detention or certain telephone calls from the place of detention. "Place of detention" is defined in the interpretation Section, as is "private telecommunications system" used in the reference to telephone calls. Place of detention includes prison, young offenders institution, remand centre, legalised police cell and hospitals in which persons can be detained.
- (c) the subject-matter of:
  - i. the Official Secrets Act 1911 which makes provisions directed against spying and includes a definition of "prohibited place" such as military establishments, which may not be entered, and the Official Secrets Act 1920, which makes further provision for the protection of prohibited places; and

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<sup>1</sup> As amended by S.I. 1999/1749

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- ii. the Official Secrets Act 1989, which makes provision in relation to the disclosure of official information and in particular about the circumstances in which disclosure can be made and the circumstances in which disclosure amounts to an offence. Section 4(2) protects from disclosure information, the disclosure of which results in the commission of a crime, facilitates an escape or otherwise prejudices the safekeeping of persons in legal custody, or impedes the prevention or detection of offences or the apprehension or prosecution of suspected offenders. In line with the general devolution of the criminal law, the protection of information for such criminal law purposes by that subsection is excepted from the reservation.
- iii. special powers and other special provisions for dealing with terrorism. This will reserve competence to make special provision about terrorism such as is made in the Suppression of Terrorism Act 1978, the Prevention of Terrorism (Temporary Provisions) Act 1989 and the Prevention of Terrorism (Additional Powers) Act 1996. The reservation does not catch general provisions of the criminal law or public order statutes which, although not directed against terrorists as such, can be used to deal with terrorists.