

*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 C: Trade and Industry

#### *Section C4: Intellectual Property*

#### Purpose and Effect

This Section reserves intellectual property, subject to an exception for plant breeders' rights.

#### Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CR	19-May-98	815
LC	23-Jul-98	1097

#### Details of Provisions

##### Reservation

Intellectual property is reserved.

This reservation covers all matters relating to existing and future intellectual property and ancillary matters, including registration of patent and trademark agents. This includes patents, design right, trade marks and copyright and all other existing and future analogous rights and matters, such as design registration, publication rights, rights in performances and semi-conductor topographies, technical measures for protection of works and rights management information, moral rights, and the law on passing-off, trade secrets and database rights.

##### Exception

There is excepted from this reservation the subject-matter of Parts I and II of the Plant Varieties Act 1997. These Parts deal with the proprietary rights of plant breeders, the licensing of the use of the plant varieties, and with the establishment of an appeals tribunal and related matters. The Scottish Parliament has legislative competence to legislate about plant breeders' rights in view of the devolution of agricultural matters generally.

The purpose and scope of the reservation of intellectual property was explained in a Written answer by Henry McLeish on 17 November 1998 (WA Col 466). The same question was also answered by Lord Sewel on the same day (WA Col 152). The text is as follows:

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*“Intellectual Property*

**Mr. David Stewart:** To ask the Secretary of State for Scotland what is the purpose and scope of the reservation of intellectual property in the Scotland Bill. [60441]

**Mr. McLeish:** The purpose of the reservation is to ensure the continuation of uniform intellectual property laws across the UK. This will avoid difficulties for owners of intellectual property rights arising from, for example, difference in what can be protected, the extent of the protection and remedies for breach of rights. Indeed, the benefits of harmonisation in this area are becoming increasingly recognised with the ever wider harmonisation of intellectual property rights and related matters across Europe and the rest of the world.

Patents, designs, registered trade marks and copyright are well known examples of intellectual property rights and are reserved. The reservation also embraces all other existing and future analogous rights and matters, such as rights in performances and semi-conductor topographies, moral rights, the law of passing off and trade secrets, and the new database right. Moreover, rights such as those in utility models and matters such as technical measures for the protection of copyright works and information relating to the management of rights, all of which are included in recent draft EC Directives on intellectual property, fall within the scope of the reservation. Furthermore, all matters relating to the Patent Office are reserved, as are current and future ancillary matters.

The existing major legislation on intellectual property, namely the Copyright, Designs and Patents Act 1988, the Patents Act 1977, the Trade Marks Act 1994 and the Registered Designs Act 1949, exemplifies but does not limit the range of provisions relating to 'intellectual property' which falls or may in the future fall within the reservation.

There is just one exception from the reservation, that is UK plant breeders' rights within the meaning of the Plant Varieties Act 1997. Agricultural Ministers, that is the Minister of Agriculture, Fisheries and Food and the Secretaries of State for Scotland, Wales and Northern Ireland, are jointly responsible for UK plant breeders' rights. Devolution in this one area of intellectual property is therefore consistent with the joint responsibility which already exists for plant breeders' rights.

**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](#)).

<a href="#">The Copyright, Designs and Patents Act 1988 (c.48)</a> , sections 145(2) and 150(1).	Section 145(2) - The function of the Secretary of State of being consulted by the Lord Chancellor on appointment of chairman and 2 deputy chairmen of the Copyright Tribunal.
	Section 150(1) - The function of the Secretary of State of being consulted by the Lord Chancellor on procedural rules for the Copyright Tribunal.
<a href="#">The Trade Marks Act 1994 (c.26)</a> , section 77(4).	The function of the Secretary of State of being consulted by the Lord Chancellor on appointing a person to hear appeals under the Act and on removing such a person from office.

**Residual Functions**

The functions of the Secretary of State for Scotland under the Plant Varieties and Seeds Act 1964 and the Plant Varieties Act 1997 were transferred to the Minister

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for Agriculture, Fisheries and Food, as appropriate, by the Transfer of Functions (Agriculture and Food) Order 1999 ([S.I. 1999/3141](#)).