

*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 III: General provisions

Purpose and Effect

This Part contains general provisions about Scottish public authorities, reserved bodies and financial assistance to industry. It also contains a general interpretation provision.

Detail of Provisions

Paragraphs 1 and 2: Scottish public authorities

These paragraphs clarify the extent to which the Scottish Parliament can legislate with regard to a Scottish public authority with mixed functions and a Scottish public authority with no reserved functions. There are other provisions in the Act which refer to such authorities - see sections 91, 92, 118, 119, Schedule 5, Part II, Sections B13 and L2.

Paragraph 1(1) provides that the Schedule does not reserve any Scottish public authority if some of its functions relate to reserved matters and some do not, unless it is a cross-border public authority. This is referred to as a Scottish public authority with mixed functions. A Scottish local authority is an example of such an authority.

The expression “Scottish public authority” is defined in section 126(1) as meaning any public body (except the Scottish Parliamentary Corporate Body), public office or holder of such an office whose functions are exercisable in or as regards Scotland. Section 126(3) makes provision for determining whether any function of a public body etc relates to reserved matters. A cross-border public authority is defined in section 88.

Paragraphs 1(2) and (3) make it clear that paragraph 1(1) means that the Scottish Parliament can legislate as regards the constitution of the authority (including its establishment and dissolution, its assets and liabilities and its funding and receipts) and as regards conferring or removing any function specifically exercisable in relation to the authority, but not where that function is specifically exercisable in relation to a particular function of the authority if that particular function relates to reserved matters.

Paragraph 2 provides that paragraph 1 of Part I of the Schedule (which reserves aspects of the Constitution) does not reserve any Scottish public authority with functions none of which relate to reserved matters. This ensures that such authorities are not caught by the reservation of the Crown. This type of authority is referred to as a Scottish public authority with no reserved functions.

Paragraph 3: Reserved bodies

This paragraph makes clear what is meant by the reservation of certain bodies to which it applies which are referred to in the cross heading as “reserved bodies”.

Paragraph 3(1) provides that the reservation of a “reserved body” has effect to reserve the following key aspects of it:

- (a) its constitution, including its establishment and dissolution, its assets and liabilities and its funding and receipts;
- (b) conferring functions on it or removing functions from it; and
- (c) conferring or removing any functions specifically exercisable in relation to it.

Paragraph 3(2) provides that paragraph 3 applies to the following bodies:

- (a) bodies reserved by name in Part 11 of Schedule 5. These are¹:
 - the Bank of England (Section A1);
 - the Industrial Development Advisory Board (Section C14);
 - the Health and Safety Commission, the Health and Safety Executive and the Employment Medical Advisory Service (Section H2, as inserted by [S.I. 1999/1749](#), article 6);
 - the BBC (Section K1);
- (b) each of the councils reserved by Section C12 in Part 11. These are the Research Councils;
- (c) the Commission for Racial Equality, the Equal Opportunities Commission and the Disability Rights Commission².

Paragraph 4: Financial Assistance to Industry

Paragraph 4 clarifies the extent to which the Scottish Parliament can legislate about financial assistance to industry.

Paragraph 4(1) provides that the giving of financial assistance to commercial activities is not reserved where it is for the purpose of promoting or sustaining economic development or employment. This would include provision of a general nature which permits assistance to industries whose regulation is a reserved matter.

However, provision is made by paragraph 4(2) for certain exceptions. These are as follows:

- (a) the giving of financial assistance to any activities in pursuance of a power exercisable only in relation to activities which are reserved. This means that the Parliament cannot legislate for such assistance specifically in relation to a reserved commercial activity such as coal mining;
- (b) the giving of financial assistance in relation to matters covered in Part I of Schedule 5 (such as the Constitution, the Crown, foreign affairs, etc.), except for the matters in paragraph 9 (defence). The Parliament could therefore give financial assistance of a general nature to the defence industry in Scotland; and
- (c) the giving of financial assistance to the “reserved bodies” to which paragraph 3 of Part III of Schedule 5 applies (see list above).

Paragraph 4(2)(c) clarifies that paragraph 4(1) does not prejudice the non-reservation of specific types of financial assistance to industry in Sections C11³, E2 and E3 of Part II of Schedule 5, such as financial assistance for certain types of rail and shipping services or the provision of certain services at public post offices.

¹ This list also used to include the Post Office which was reserved by C11. However that Section was amended by [S.I. 2000/3252](#) and there is no longer any reference to the Post Office.

² 18 The reference to the Disability Rights Commission was substituted for a reference to the National Disability Council by paragraph 4 of Schedule 4 to the Disability Rights Commission Act 1999.

³ This was added by Article 2(2) of [SI 2000/3252](#).

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Paragraph 4(3) clarifies that paragraph 4(1) does not affect the question whether any matter other than financial assistance to which it applies is reserved..

The provisions in Schedule 5 relating to financial assistance should be read in conjunction with section 56. This provides for a number of “devolved” functions relating to the giving of specific types of financial assistance to be shared powers. This means that a UK Minister can also exercise those listed functions in or as regards Scotland.

Paragraph 5: Interpretation

Paragraph 5 makes provision as to how references to the subject matter of any enactment are to be construed.

Many reservations (or exceptions from reservations) in Schedule 5 are expressed by reference to the subject matter of particular enactments. Paragraph 5(1) provides that references in Schedule 5 to enactments are to be read as references to that enactment as it has effect on the principal appointed day (1 July 1999) or, if it ceased to have effect at any time within the period ending with that day and beginning with the day on which the Scotland Act was passed (17 November 1999), as it had effect immediately before that time. Accordingly, it does not matter if those enactments are amended or even repealed after that time: the references to them in the Schedule will continue to be read as they have effect on 1 July 1999.

“Principal appointed day” is defined in section 126(1) to mean the day which is designated as such in a commencement order under section 130. This day is 1 July 1999 by virtue of [S.I. 1998/3178](#).

Paragraph 5(1) is disapplied by Section C11 in Part II of Schedule 5, as amended by [S.I. 2000/3252](#). This is because it refers to the subject matter of the Postal Services Act 2000. Instead that Section provides that this reference falls to be read by reference to the subject matter of that Act at the date when it received Royal Assent (28 July 2000).

Paragraph 5(2) provides for the making of transitional provision in relation to the operation of Schedule 5 at any time before 1 July 1999.