

*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 I: General Reservations

##### *Part I, Paragraph 7: Foreign affairs, etc.*

#### Purpose and Effect

This paragraph reserves foreign affairs, subject to certain exceptions.

#### Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	30-Mar-98	914
LC	21-Jul-98	862

#### Details of Provisions

##### Reservation

Paragraph 7(1) provides that international relations, including:

- (a) relations with territories outside the UK, the European Communities (and their institutions) and other international organisations;
  - (b) regulation of international trade; and
  - (c) international development assistance and co-operation,
- are reserved matters.

Subject to the exceptions in paragraph 7(2), this means that the conduct of international relations, including conduct of relations with the European Communities, is therefore a matter reserved to the UK Parliament and UK Government.

The reservation of international relations does not have the effect of precluding the Scottish Ministers and officials from communicating with other countries, regions, or international or European institutions, so long as the representatives of the Scottish Parliament or the Scottish Ministers do not purport to speak for the United Kingdom or to reach agreements which commit the UK.

##### Exceptions

Paragraph 7(2) makes certain exceptions to this reservation:

- (a) *Observing and implementing international obligations etc.* Firstly, paragraph 7(2)(a) provides that observing and implementing international obligations, obligations under

the ECHR and obligations under Community law are not reserved. Community law and international obligations are defined in section 126(9) and (10).

So far as the legislative competence of the Scottish Parliament is concerned, this has the result that the Scottish Parliament will be able and required to legislate for the purpose of observing and giving effect to those obligations so far as they relate to devolved matters. Section 29(2)(d) provides that a provision of an Act of the Scottish Parliament would be beyond the legislative competence (i.e. *ultra vires*) of the Scottish Parliament if it was incompatible with any of the “Convention rights” (see section 126(1)) or with Community law. In the case of other international obligations, (i.e. not Convention obligations or EC law), which are not justiciable in our courts, section 35 enables the Secretary of State to make an order prohibiting the Presiding Officer from submitting a Bill for Royal Assent where he has reasonable grounds to believe that it would be incompatible with such obligations.

So far as executive competence is concerned, this exception also achieves the result that any obligations upon Ministers of the Crown to observe and implement international obligations in relation to devolved matters are transferred to the Scottish Ministers under section 53. In particular, this will mean that, in the case of EC obligations, the Scottish Ministers are liable under EC law for the same penalties as Ministers of the Crown if they fail to do so. Section 57(1) ensures, however, that Ministers of the Crown continue to share this responsibility and will have concurrent functions for the purpose of implementing EC obligations. In addition, section 57(2) makes a similar provision to section 29(2)(d) by providing that it would be *ultra vires* for a member of the Scottish Executive to make any subordinate legislation or to do any act which would be incompatible with any of the Convention rights or with EC law. There is also a similar provision to section 35 in section 58 enabling the Secretary of State to make an order revoking any subordinate legislation made by a member of the Scottish Executive or requiring him to make any such instrument if he considers that the instrument (or failure to make the instrument) would be incompatible with any international obligation (i.e. not Convention obligations or EC obligations).

- (b) *Assisting Ministers of the Crown.* Paragraph 7(2)(b) provides that assisting Ministers of the Crown in relation to any matter to which the reservation in paragraph 7(1) applies is not reserved.

This enables the Scottish Ministers to assist the UK Government in the conduct of international relations so far as relating to devolved matters and enables the Scottish Parliament to legislate about this. The Scottish Ministers will thus be able to assist Ministers of the Crown in the formulation, negotiation and implementation of policy relating to international relations. This allows the Scottish Ministers to be involved in the discussions within the UK Government about the formulation of the UK’s policy position on all issues which touch on devolved matters; and allows participation where appropriate by the Scottish Ministers and officials in relevant European Council meetings and other negotiations with the UK’s EU partners.

## **Executive devolution**

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

<a href="#">The Multilateral Investment Guarantee Agency Act 1988 (c.8)</a> , section 6.	The function of the Secretary of State of making, by order, provision for the attendance of witnesses, taking of evidence and production of documents in relation to certain arbitration proceedings.
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