

*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 C3: Competition

Purpose and Effect

This Section reserves the regulation of anti-competitive practices and agreements; abuse of dominant position, and monopolies and mergers. It does not, however, prevent the Scottish Parliament from legislating to regulate particular practices in the legal profession for the purpose of regulating the profession or the provision of legal services, although the Scottish legal profession will still be subject to general UK competition law.

General

This reservation is designed to ensure the continuation of a common United Kingdom system for the regulation of competition matters. Responsibility for competition policy rests with the Secretary of State for Trade and Industry.

Competition matters are currently regulated by the Competition Act 1998 which introduced a prohibition approach to anti-competitive agreements and abuse of a dominant position. The Director General of Fair Trading is responsible for enforcement of the prohibitions with rights of appeal to a new tribunal within a new Competition Commission. The Competition Commission will also take over the existing functions of the Monopolies and Merger Commission. Existing merger and monopoly legislation under the Fair Trading Act 1973 will remain in force.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	23-Jul-98	1070
Stage	Date	Column
LC	23-Jul-98	1091
L3	9-Nov-98	607
L3	9-Nov-98	609

Details of Provisions

Reservation

What is reserved is the regulation of anti-competitive practices and agreements; abuse of dominant position; monopolies and mergers. This includes all matters relating to that regulation, including:

- (a) the powers to investigate any body or person for the purposes of enforcing competition law;
- (b) the administration of competition law through the respective powers of the Secretary of State for Trade and Industry, the Director General of Fair Trading and any other authority exercising competition functions.

Exception

What is excepted from the reservation is the regulation of particular practices in the legal profession for the purpose of regulating that profession or the provision of legal services. What constitutes the legal profession for this purpose is expressly defined.

This is intended to reflect the former position in terms of which the Secretary of State for Scotland had policy responsibility for regulating the legal profession and the provision of legal services in Scotland. This is mainly for the purpose of the protection of the public (or, in other words, consumer protection) but also includes regulating the rules and organisations of the legal profession, where the regulation may affect competition in the provision of legal services. For example, provisions increasing the provision of court services by permitting certain solicitor advocates to have a right of audience in the Court of Session and High Court requires, in order to be effective, to be accompanied by provisions which regulate rules of conduct by advocates which, by being anti-competitive, might thwart that policy objective - see, for example, section 31 of the Law Reform (Miscellaneous Provisions)(Scotland) Act 1990 (“the 1990 Act”) which requires the Faculty of Advocates to submit certain rules for the approval of the Secretary of State for Scotland who, in turn, is required to consult the Director General of Fair Trading. One of the effects of this exception is that the functions exercisable by the Secretary of State for Scotland were, upon devolution, transferred to the Scottish Ministers under section 53. However the Scottish Ministers are still required to consult the DGFT before exercising those functions.

The exception does not, however, enable the Scottish Parliament to legislate generally about the regulation of anti-competitive practices concerning the legal profession in Scotland. This remains a matter for the UK Parliament. Nor does the exception limit the ability of the UK competition authorities to investigate anti-competitive practices concerning the Scottish legal profession and apply to the members of that profession the provisions of general competition legislation.

Interpretation

The expression “legal profession” is defined as meaning not only advocates and solicitors but also qualified conveyancers and executry practitioners who are authorised under the 1990 Act to provide conveyancing and executry services respectively.

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 Competition Act 1998 (c.41), Schedule 7, paragraphs 2(4) and 4(4).</p>	<p>The functions of the Secretary of State of being consulted by the Secretary of State on appointments to the panel of chairmen of the Competition Commission and on appointment of the President of the Competition Commission Appeal Tribunals.</p>
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